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DEC 13 1990

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of) MM DOCKET NO. 88-382
)
WNOR-TV, INC.) File No. ERCT-871221KE
)
For Renewal of License of Station)
WNOR(TV), Channel 9, Secaucus,)
New Jersey)
)
GARDEN STATE BROADCASTING LIMITED)
PARTNERSHIP) File No. EPCF-871223KG
)
For a Construction Permit for a)
Television Station on Channel 9 at)
Secaucus, New Jersey)

To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dzedzic
Chief, Hearing Branch

Y. Paulette Loden

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Attorneys
Federal Communications Commission

December 13, 1990

awarding the law firm a 10% bonus in the event of dissolution or settlement. The retainer agreement also contained a provision referencing a bonus in the event Center City obtained the license. (MMB Ex. 6). The Center City limited partners instructed Cohen to settle the case following a problem with the general partner. (Tr. 1526). The case was settled for expenses. (Tr. 1610).

72. Rynd, Stanley Orlove, William Orlove, and Ben Shuster currently are shareholders in an applicant, represented by Cohen & Berfield, P.C., which is challenging the renewal of KQKS(FM), Longmont, Colorado, a station owned by Western Cities Broadcasting, Inc. The case is still in litigation. (Tr. 1477-1479, 1482, 1662-1663).

73. Cohen & Berfield, P.C., also represented an applicant that challenged the renewal of WBNX-FM, New York, New York, a station owned by United Broadcasting of New York, Inc. This case was also settled. Although Cohen could not recall the amount of the settlement, he remembered that his law firm did not receive a bonus. (Tr. 1596).

74. Cohen & Berfield, P.C., also represented an applicant that challenged the renewal of WOCK-FM, Washington, D.C., a station owned by United Broadcasting Company, Inc. This case, too, was settled. Cohen could not recall the amount of the settlement, but he did recall that his law firm did not receive a bonus. (Tr. 1596-1597).

75. Cohen & Berfield, P.C., is also representing Southeast Broadcasting Limited Partnership, an applicant that is challenging the renewal of WHYI-FM, Ft. Lauderdale, Florida. In Metroplex Communications, Inc., 5 FCC Rod 5610 (1990), the Commission held the application to be a sham. The Southeast

retainer agreement provides for a 15% bonus to Cohen & Berfield, P.C., in the event the case is settled. Unlike the Garden State retainer agreement, which referenced a bonus upon grant but did not specify a particular dollar figure or percentage, the Southeast retainer agreement provides that Cohen & Berfield, P.C., will receive a bonus of \$500,000 if Southeast's application is granted. (MMB Ex. 1).

76. In addition, Rynd, Steinberg, and also Stanfield (see, supra, ¶¶ 20 and 45) are principals in an application for a new FM station at Fresno, California. In Carta Corporation, 5 FCC Rcd 3696 (Rev. Bd. 1990), the Review Board determined that their limited partnership, which was organized by Cohen, was a "model sham."

77. Wells is a limited partner in Hamptons Communications Limited Partnership, an applicant for a new FM station in Center Moriches, New York. The application was filed on April 15, 1987, just after the Mainstream settlement. (Tr. 1431-1432). Following a hearing, the applicant was found not to be a bona fide limited partnership. See Initial Decision of Administrative Law Judge Edward Luton, FCC 90D-42 (released November 13, 1990).

78. Wells is also a limited partner in Poughkeepsie Communications Limited Partnership, an applicant for a new FM station in Poughkeepsie, New York. This application, too, was filed on April 15, 1987, just after the Mainstream settlement. (Tr. 1431-1432). The Review Board concluded that this applicant was not a bona fide limited partnership. Poughkeepsie Broadcasting Limited, 5 FCC Rcd 3374 (Rev. Bd. 1990).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88-1954

4296

In re Applications of	)	MM DOCKET NO. 88-69
CBS, INC.	)	File No. BRCT-870803KX
For Renewal of License of)	
Station WBBM-TV)	
Chicago, Illinois)	
CENTER CITY COMMUNICATIONS)	
LIMITED PARTNERSHIP	)	File No. BPCT-871028KF
For Construction Permit for a New)	
Television Station on Channel 2,)	
Chicago, Illinois)	

ORDER

Issued: June 22, 1988 ; Released: June 23, 1988

Under consideration are a "Motion of Center City Communications Limited for Order Requesting Production of Documents" filed by Center City Communications Limited Partnership (Center City) on May 17, 1988; "Objections of CBS, Inc., to Motion of Center City Communications Limited for Order Requesting Production of Documents" filed by CBS, Inc. (CBS) on May 27, 1988; and a supplement filed by CBS on June 9, 1988.

Center City requests the production of documents specified in 36 categories. Most of these requests are opposed by CBS.¹ The Presiding Judge is in basic agreement with the arguments advanced by CBS.² Indeed, Center City

nothing more than an unbridled fishing expedition. The following rulings WILL GOVERN Center City's document requests:

Request Nos. 1 - 23

With the exception of Requests Nos. 1 and 2, the remaining documents NEED NOT BE PRODUCED. They involve a request for documents relating to an alleged transfer of control of CBS. However, the Presiding Judge is not persuaded by Center City's three arguments as to why those documents are relevant or reasonably calculated to lead to the discovery of admissible evidence. In this connection, the Commission has ruled that no transfer of control of CBS has occurred. CBS, Inc., 1 FCC Red 1025 (1986), recon. denied, 2 FCC Red 2274 (1987). This was upheld recently by the U.S. Court of Appeals for the District of Columbia Circuit in Fairness in Media v. FCC, No. 87-1217 (D.C. Cir.), issued June 8, 1988. The Presiding Judge will not permit this proceeding to be used as a vehicle to launch a collateral attack on the Commission's earlier determination. As noted by the Court in Fairness in Media v. FCC, cited supra, "[w]ere agencies forced to prolong inquiries and to spend large resources whenever confronted with allegations, speculation or prediction of the kind petitioner presses, the expeditious scheduling of agency agendas and efficient execution of agency business would be severely impeded." Thus,

presented by WBBM-TV during the license term. These documents may duplicate the ones required to be produced under Request No. 26(1).

Request No. 28

These documents NEED NOT BE PRODUCED. The request is overly broad. Also, the extent of pre-empted network programming is not a relevant factor. Community needs may be met by programming other than local programs. (See, Harrisburg of Chicago, Inc., et al., FCC 68R-31, paragraph 11, released June 6, 1968.) Thus, the assumption upon which this request is based is faulty. Good cause for production of these documents has not been shown.

Request No. 29

CBS SHALL PRODUCE its political file for inspection under this request. The remainder of the request is too broad, and the requested documents NEED NOT BE PRODUCED.³

Request Nos. 32, 33, 34, 35, 36

These requests are either irrelevant, overly broad, lack specificity, or are nothing more than mere fishing expeditions. In this connection, no basic qualifying issues have been sought or specified against CBS. Nevertheless, Center City is of the view that under the rubric of renewal expectancy, it is entitled to engage, under discovery, in a free-wheeling fishing expedition into each and every aspect of WBBM-TV's operations. No competent prima facie showing has been made that significant violations have been committed by CBS in the operation of WBBM-TV. Yet, Center City requests documents to determine whether the licensee has complied with Commission statute or rule; documents relating to violations or alleged violations of the Communications Act of 1934, as amended, or "any rule, regulation, or policy of the Commission . . ."; and documents relating to a boycott of WBBM-TV. Such broad, non-specific, and sweeping requests are clearly improper.⁴ Discovery will not be permitted to determine whether a basis exists for enlargement of issues. Amendment of Part I of the Rules of Practice and Procedure to Provide for Discovery Procedures, 11 FCC 2d 185, 187 (1968). Furthermore, the Commission has made clear that in the absence of a designated issue, character evidence will not be taken. Policy Statement on Comparative Broadcast

3 See also, discussion under Request Nos. 32 - 36.

4 For example, Request No. 35 calls for the production of "all documents . . . referring to or relating to violation or alleged violation of the Communications Act of 1934, as amended, or of any rule, regulation or policy of the Commission"

Hearings, 1 FCC 2d 393, 399 (1965). Moreover, "discovery into possible misconduct of an applicant, which, if proven, would bear on [the] applicant's qualifications," is not permitted under the comparative issue. Regal Broadcasting Corp., 15 RR 2d 703, 706 (1969) (emphasis in original). Finally, in the more recent Character Qualifications, 102 FCC 1179, 1232 (1986), the Commission made clear that if the character evidence does not give rise to disqualification, "it will no longer be a relevant criterion in comparative renewal proceedings" Notwithstanding footnote 125 to Character Qualifications, relied on by Center City, in the absence of a specific issue or a competent prima facie showing of violations impacting renewal expectancy, discovery to learn whether possible violations of Commission rules or policies exist will not be permitted.⁵ To hold otherwise would contravene the long time limitation on discovery and open the proceeding to unlimited and unknown bounds.

Accordingly, IT IS ORDERED that the "Motion of Center City Communications Limited for Order Requesting Production of Documents" filed by Center City Communications Limited Partnership on May 17, 1988, IS GRANTED to the extent reflected above and IS DENIED IN ALL OTHER RESPECTS, and the documents required to be produced SHALL BE PRODUCED for inspection and/or copying at the offices of counsel for CBS within ten (10) days of the release of this Order or at such other time and place as may be mutually convenient to counsel.

FEDERAL COMMUNICATIONS COMMISSION


Joseph Stirner
Administrative Law Judge

⁵ The Presiding Judge does not interpret the footnote relied upon by Center City as providing authorization for a comparative challenger to engage in general and unlimited discovery into possible rule violations on the part of a renewal applicant.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88M-2622

5281

In re Applications of	)	MM DOCKET NO. 88-69
CBS, INC.	)	File No. BRCT-870803KX
For Renewal of License of)	
Station WBBM-TV)	
Chicago, Illinois)	
CENTER CITY COMMUNICATIONS)	
LIMITED PARTNERSHIP	)	File No. BPCT-871028KF
For Construction Permit for a New)	
Television Station on Channel 2,)	
Chicago, Illinois)	

MEMORANDUM OPINION AND ORDER

Issued: August 11, 1988 ; Released: August 12, 1988

1. Under consideration are a "Joint Petition for Approval of Settlement Agreement, for Dismissal with Prejudice of the Center City Limited Partnership Application, and for Grant of the CBS Inc. Application" filed by CBS Inc. (CBS) and Center City Communications Limited Partnership (Center City) on July 14, 1988; "Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement" filed by the Bureau on July 25, 1988; and the "Reply of CBS Inc. to Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement" filed by CBS on August 4, 1988.

2. The applicants in this proceeding have entered into a settlement agreement and have submitted such agreement for approval. Pursuant thereto, CBS has agreed to pay Center City \$187,500, which is represented to be the costs incurred by Center City in the prosecution of its application and the pursuit of this settlement agreement, in consideration of the dismissal of Center City's application. In addition, Section 2.2 of the agreement provides that the general and limited partners of Center City shall not file or participate in the filing of any other competing application involving CBS broadcast licenses for a period of five years.

3. In support of their settlement agreement, the applicants have submitted affidavits demonstrating why approval of the agreement will serve the public interest, and each has stated that its respective application was not filed for the purpose of reaching or carrying out a settlement agreement. The

Bureau, in its comments, supports approval of the agreement but interposes an objection to that aspect of the agreement restricting Center City's partners from filing any competing applications against CBS broadcast licenses for a period of five years. In the Bureau's view, such clause is too restrictive and should not be approved.

4. The Presiding Judge is in agreement with the views expressed by the Bureau. Specifically, the covenant restricting Center City's partners from filing future applications against any CBS broadcast license is contrary to well established Commission precedent. In James S. Rivers, 26 FCC 4 (1959), the Commission held that it was "contrary to the public interest for participants in a proceeding to preclude by a private agreement the future filing of applications which might involve improvement in service to the public. . . ." The precedent established in Rivers was followed in subsequent cases. See, S.R., Dayton Telecasting, Inc., 96 FCC 2d 214 (Rev. Bd. 1983); Faith Tabernacle, Inc., 69 FCC 2d 30 (Rev. Bd. 1977); Radiofone, 33 RR 2d 910 (ALJ 1975); Central Coast Broadcasters, Inc., 29 FCC 2d 465 (1971); Viking Television, Inc., 16 RR 2d 862 (Rev. Bd. 1969); Romac Baton Rouge Corp., 8 FCC 2d 304 (Rev. Bd. 1967); Augusta Telecasters, Inc., 10 FCC 2d 594 (Rev. Bd. 1967); North Atlanta Broadcasting Co., 25 RR 715 (Rev. Bd. 1963). While covenants not to compete are generally approved in sales of stations where they are "reasonably ancillary" to the legitimate purpose of the agreement, such provisions have to be reasonably limited in duration, and geographic extent and necessary to protect the good will of the station being sold. This same reasoning was applied in Intercontinental Radio, Inc., 62 RR 1565 (1985) where the Commission departed from Rivers and approved a covenant not to compete which prevented a dismissing applicant from "turning right around" and beginning a new comparative renewal proceeding. In so doing, however, the Commission rejected the parties' restrictive covenant which contained no time limitations. Instead, the Commission noted that when approving covenants not to compete, it follows the common law rule that such covenants must be limited in scope, including duration, to the extent reasonably necessary to avoid undue injury to the public. In summary, while the Commission has recognized that restrictive covenants have potentially adverse public interest ramifications, they have nevertheless permitted such covenants, provided they are limited in scope, duration and geographic extent to avoid undue injury to the public. (See, Raul Santiago Roman, 38 FCC 619 (Rev. Bd. 1965).)

5. While CBS in its reply pleading attempts to justify the restrictive covenant in its totality, it nevertheless notes that the settlement agreement contains a severability clause that would allow the provision to be severed from the agreement should it be found invalid. In line with previous Commission precedent, the Presiding Judge rules that the covenant contained in Section 2.2 of the settlement agreement is too broad in scope and must be limited to competing applications against WBBM-TV in Chicago, Illinois. To the extent the agreement goes beyond this, it is invalid, disapproved, and severed from the agreement. In all other respects, the applicants have complied with the applicable statute and Commission regulation governing agreements of this nature. Approval of the agreement will serve the public interest.

- 3 -

Accordingly, IT IS ORDERED that the "Joint Petition for Approval of Settlement Agreement, for Dismissal with Prejudice of the Center City Limited Partnership Application, and for Grant of the CBS Inc. Application" filed by CBS Inc. and Center City Communications Limited Partnership on July 14, 1988, IS GRANTED; the agreement, except for Section 2.2, IS APPROVED¹; the application of Center City Communications Limited Partnership IS DISMISSED, with prejudice; the application of CBS Inc. for renewal of license for Station WBBM-TV, Chicago, Illinois, IS GRANTED²; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Before the
Federal Communications Commission FCC 85R-83
Washington, D. C. 20554

0217

In re Applications of)	
)	
UNITED BROADCASTING COMPANY OF	)	BC Docket No. 82-336
EASTERN MARYLAND, INC.	)	File Nos. BRH-1148 and
	)	BRH-810602UW
For Renewal of License of Station)	
WYST (FM), Baltimore, Maryland)	
)	
SRW, INC.	)	BC Docket No. 82-337
Baltimore, Maryland	)	File No. BPH-810723AD
)	
For Construction Permit)	

ORDER

Adopted: October 8, 1985

Released: October 10, 1985

By the Review Board:

1. This proceeding involves the license renewal application of United Broadcasting Company of Eastern Maryland, Inc. (United) for Station WYST (FM), Baltimore, Maryland, and the mutually exclusive application of SRW, Inc. (SRW) to operate in Baltimore on the same frequency. By Initial Decision, FCC 85D-2, released January 11, 1985, Administrative Law Judge (ALJ) Frederic J. Coufal granted SRW's application on comparative grounds. Exceptions were filed with the Review Board on February 19, 1985, by United and the Mass Media Bureau, and protective exceptions were filed by SRW. In addition on January 28, 1985, SRW filed with the Board a contingent petition, seeking new issues against United. Both United and the Mass Media Bureau filed oppositions. Oral argument was held before the Board on June 14, 1985. Shortly thereafter, the parties orally notified the Board that they had reached a settlement agreement, and the proceeding was therefore held in abeyance pending the filing of such agreement.

2. United and SRW filed their Joint Petition for Approval of Agreement and Dismissal of Application on August 29, 1985, and modified it on September 27, 1985. The settlement agreement attached to the joint petition provides for the dismissal of SRW's application in return for United's agreement to pay SRW the sum of \$400,000, subject to the grant of the renewal of United's license. The applicants state that approval of the agreement will serve the public interest by eliminating further proceedings thereby conserving the resources of the Commission and the applicants.

3. We shall grant the request and approve the agreement. The documentation submitted by the parties fully satisfies the requirements of Section 73.3525(a)(1) and (a)(2) of the Commission's Rules, 47 CFR §73.3525(a)(1) and (a)(2), which provisions in turn implement Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. §311(c). The joint

request is accompanied by a copy of the agreement and a statement executed under penalty of perjury by a principal of each applicant that sets forth the reasons why the agreement is in the public interest, see 47 CFR §73.3525 (a)(1), and asserts that neither application was filed for the purposes of reaching or carrying out such agreement, see 47 CFR §73.3525(a)(2).

4. Furthermore, a finding that the agreement is consistent with the public interest as required by 47 U.S.C. §311(c) of the Act is not impeded by the earlier filed contingent petition that seeks abuse of process and misrepresentation issues against United. The abuse of process issue is predicated on allegations first raised before the presiding ALJ in a request for a similar issue: that an investigative and consulting firm hired by United in connection with a financial issue then pending against SRW violated the Federal and Maryland Fair Credit Reporting Acts in obtaining credit reports on SRW's principals. By Order, FCC 84M-3905, released September 14, 1984, the ALJ had denied the previously requested issue. SRW's contingent petition now claims that it has new evidence demonstrating that the credit reports were obtained by the investigative firm under false pretenses. The ALJ, however, correctly denied the earlier requested issue since, as noted by the Bureau

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

FCC 85R-81
0112

In re Applications of

UNITED BROADCASTING COMPANY OF
NEW YORK, INC.

For Renewal of License of Station
WBNX(AM), New York, New York

OSBORNE COMMUNICATIONS CORPORATION
New York, New York

For Construction Permit

BC DOCKET NO. 82-343
File No. BR-250

BC DOCKET NO. 82-344
File No. BP-810403AG

ORDER

Adopted: October 3, 1985; Released: October 7, 1985.

By the Review Board:

1. The Review Board has before it a "Joint Petition for Approval of Agreement and Dismissal of Application," filed on July 26, 1985, by the two mutually exclusive applicants in this proceeding. Comments on the proposed settlement were filed by the Mass Media Bureau on August 5, 1985, and a reply to the Bureau's comments was filed by the applicants on August 15, 1985. On September 3, 1985, the applicants filed a "Supplement to Reply to Mass Media Bureau's Comments on Joint Petition" which informed the Board that certain provisions of the settlement agreement had been modified. A "Statement in Clarification of Settlement Agreement" was submitted by the applicants on September 26, 1985. 1/

1/ By an Initial Decision, FCC 85D-1, released January 11, 1985, Administrative Law Judge Frederic J. Coufal granted the application of United Broadcasting Company of New York, Inc., for renewal of its license for Station WKDM(AM), formerly WBNX(AM). Exceptions were filed by both applicants on March 29, 1985. Oral argument before the Review Board was scheduled for July 19, 1985, but was postponed indefinitely upon the receipt of a letter from both applicants notifying the Board that an agreement to settle this proceeding had been reached in principle.

2. The applicants request that the settlement agreement between them be approved, that the application of United Broadcasting Company of New York, Inc. (United) for renewal of its license for Station WKDM(AM) (formerly WBNX(AM)) be granted, and that the application of Osborne Communications Corporation (Osborne) be dismissed with prejudice. The agreement provides that United will pay Osborne \$240,000 in return for the dismissal of its application. 2/ As originally submitted, the settlement agreement contained the following provision:

. . . neither Osborne nor its present officers, directors or stockholders shall thereafter seek through judicial or administrative means, or otherwise, to reinstate its application rights or to pursue the right to construct an AM station on the WBNX frequency for so long as UBNY, or any corporation owned by United or its subsidiaries, is the licensee of WBNX.

In its comments, the Mass Media Bureau objected to this restriction, claiming that it was violative of Commission policy regarding covenants not to compete.

3. Subsequent to the filing of the Bureau's comments, the Commission acted on a petition for approval of a settlement agreement containing essentially the same provision in the San Mateo, California, comparative broadcast renewal proceeding involving an applicant affiliated with United. There the Commission found objectionable the lack of any time limit on the restriction and held that the provision should not apply after expiration of the license term following the current one. Intercontinental Radio, Inc., FCC 85-451, released August 12, 1985. In response to that ruling, the applicants in this proceeding amended the agreement now before us to limit the effectiveness of the above-quoted provision to the period ending June 1, 1998, the date of the end of the next renewal period specified in Section 73.1020(a)(17) of the Commission's Rules for radio broadcast stations in the State of New York. The restrictive provision is now consistent with the Commission's holding in Intercontinental Radio. 3/

2/ The applicants recognize that the renewal of United's license could be affected by the ultimate outcome of the WOOK(FM) broadcast proceeding, (BC Docket Nos. 80-479, 480, and 481), see United Broadcasting Company, Inc., 57 RR 2d 885 (1984), appeal pending sub nom. District Broadcasting Co. v. FCC, No. 85-1081 (D.C. Cir. February 7, 1985).

3/ There was some ambiguity in the modified contract provision filed September 3, 1985. Consequently, the September 26, 1985 Statement of Clarification was submitted. It contains a statement executed by principals of both applicants stating specifically that the restrictive provision does not apply to any license term beginning on or after June 1, 1998, and that under the terms of the agreement Osborne would be able to file a competing application for the license term beginning in 1998, as well as for terms following thereafter.

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

FCC 85I-134
7502

In re Applications of)

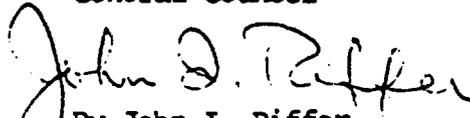
TELE-BROADCASTERS OF CALIFORNIA, INC.)

BC DOCKET NO. 82-18

Act of 1934, as amended, and Section 72.3525 of the Commission's Rules which govern settlement agreements and approval of this settlement agreement will serve the public interest convenience and necessity. 1/

4. ACCORDINGLY, IT IS ORDERED, That pursuant to authority delegated under Section 0.251(f) of the Commission's Rules, the above-described joint requests ARE GRANTED, the attached settlement agreement IS APPROVED, the application of Life Broadcasting Company, Inc. (File No. BP-801103AG) IS DISMISSED, the application of Tele-Broadcasters of California, Inc. (File No. BR-800801WH) IS GRANTED and this proceeding IS TERMINATED.

Jack D. Smith
General Counsel


By John I. Riffer
Associate General Counsel

Before the
Federal Communications Commission FCC 82M-3095
Washington, D. C. 20554

000046

In re Applications of)	
)	
MONTGOMERY COUNTY BROADCASTING	)	BC DOCKET NO. 82-245
COMPANY, INC.	)	File No. BR-81060109
)	
For Renewal of License of Station)	
WINX, Rockville, Maryland)	
)	
COMMUNITY AIRWAVES, INC.	)	BC DOCKET NO. 82-246
Rockville, Maryland	)	File No. BP-810724AI
)	
For Construction Permit)	

O R D E R

Issued October 5, 1982; Released October 6, 1982

This will consider the joint petition for approval of
~~renewal of license of station filed by Montgomery County Broadcasting~~

IT IS FURTHER ORDERED that the petition by Community Airwaves, Inc. to dismiss its application IS GRANTED and that its application IS DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Frederic J. Coufal".

Frederic J. Coufal
Administrative Law Judge

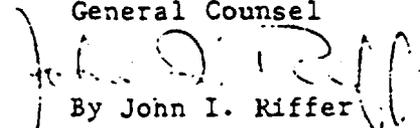
the Commission's Rules. 3/ We will therefore approve the Settlement Agreements.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under Section 0.251(f)(11) of the Commission's Rules, that the Joint Petition for Approval of Agreements and Dismissal of Applications filed April 16, 1986 by United Broadcasting Company, Inc., District Broadcasting Company, and Hispanic Broadcasting Corporation IS GRANTED, and the attached Settlement Agreements ARE APPROVED.

6. IT IS FURTHER ORDERED, That the applications of District Broadcasting Company (File No. BPH-780831AY) and Hispanic Broadcasting Corporation (File No. BPH-780901AB) for construction permits ARE DISMISSED with prejudice.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

Jack D. Smith
General Counsel


By John I. Riffer
Associate General Counsel

3/ The Settlement Agreements contain a provision which prohibits District, Hispanic, and their principals from seeking the WDJY(FM) frequency prior to October 1, 1995 so long as United is the licensee on that frequency. As the Bureau points out, the parties have appropriately limited the duration of this provision in accordance with Intercontinental Radio, Inc., FCC 85-451, released August 12, 1985.

CERTIFICATE OF SERVICE

I, Barbara Frank, a legal secretary in the law offices of Koteen & Naftalin, hereby certify that true copies of the foregoing "Petition To Dismiss Or Deny" have been served upon the following by first-class United States mail this 6th day of December, 1991:

Lewis I. Cohen, Esquire
Morton L. Berfield, Esquire
Cohen & Berfield
1129-20th Street, N.W.
Washington, D.C. 20036



Barbara Frank