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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-156
)	
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC., d/b/a TRINITY BROADCASTING NETWORK)	File No. BRCT-911129KR
)	
For Renewal of License of Television Station WHSG(TV) Monroe, Georgia)	
)	
GLENDALE BROADCASTING COMPANY)	File No. BPCT-920228KE
)	
For Construction Permit Monroe, Georgia)	

To: Administrative Law Judge
Joseph Chachkin

**MASS MEDIA BUREAU'S OPPOSITION TO
MOTION FOR SUMMARY DECISION**

1. On July 9, 1993, Glendale Broadcasting Company (Glendale), filed a motion for summary decision of the short-spacing issue specified in the Hearing Designation Order, 8 FCC Rcd 4038 (1993) (HDO), in this proceeding. The Mass Media Bureau hereby files its opposition to Glendale's Motion.

2. The HDO specified the short-spacing issue because Glendale's proposed site is short-spaced by 18.4 km to the reference point for the vacant allotment at Channel 63, Montgomery, Alabama. WHSG(TV) is currently operating from a location which is short-spaced to the same reference point by 18.14 km. Glendale claims that it is entitled to a short-

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spacing waiver¹ because a grant of its application would result in only a minimal increase of .26 km over the current short-spacing between WHSG and the Channel 63 reference point. Moreover, Glendale contends that its site is only one-half mile from the existing WHSG site and that short-spacing of less than 1.6 kilometers is de minimis. Citing, Kenter Broadcasting Co., 62 RR 2d 1573, 1577 n. 9. (1986). Given this precedent, Glendale argues that a change in short-spacing of only .26 km is also de minimis. Glendale also relies on the Mass Media Bureau's holding in EZ Communications, Inc., 8 FCC Rcd 2448 (MMB 1993) that a renewal challenger has the right to be subjected to the same standards as the incumbent licensee. Finally, Glendale cites Royce International Broadcasting, 2 FCC Rcd 1368 (MMB 1987) which held that when an incumbent licensee was short-spaced, a challenger could also specify a short-spaced site as long as the short-spacing was not increased and there was no increase in cognizable interference.

3. Glendale is correct that it is entitled to be treated the same as the incumbent licensee. In EZ Communications, however, the competing application was designated for hearing despite the fact that it did not provide protection to an existing station. The Bureau explained that, "[w]here a grant would not increase cognizable interference above and beyond that

¹ Glendale's reasoning is fallacious because the short-spacing is not .26km, rather it would be 18.40km, which clearly is not de minimis.

caused by the present licensee the Commission will not dismiss or deny the challenger's application. See, Royce International Broadcasting, 2 FCC Rcd 1368 (1987)." 8 FCC Rcd at 2451.

Although the instant case concerns short spacing and not radiation, the principle is the same. Glendale's proposal would result in an increase in the short-spacing over that of WHSG by .26 km. Glendale claims that this increase is de minimis, but provides no authority for that proposition.² Moreover, the fact that the Commission granted WHSG(TV) a waiver, does not mean that the Commission is treating Glendale differently if it denies Glendale's request for a waiver because Glendale's proposal would increase the short-spacing to Channel 63.

4. Glendale also claims that a waiver should be granted because its proposal would cause less interference to a station operating on Channel 63 than a fully spaced station operating with maximum facilities. Glendale contends that in Sarkes Tarzian, Inc., 6 FCC Rcd 2465 (1991), the Commission relied on the fact that the potential interference from a short-spaced station would be no greater than it would be from a fully spaced site using maximum facilities, in granting a waiver of its short-spacing rules. Additionally, Glendale claims its waiver request is warranted because there will still be a more than adequate

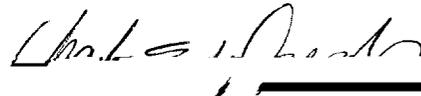
² "The Commission has consistently refused to waive the spacing rules without 'concrete support, preferably documentary, that suitable non-short-spaced sites are not available.'" Kenter Broadcasting Co., 62 RR 2d 1573, 1577 (1986), aff'd, 816 F.2d 8 (D.C. Cir. 1987)(table).

area within which a potential applicant for Channel 63 could locate a transmitter and be fully spaced with Glendale's proposal.

5. The Bureau does not agree that these additional claims are sufficient to warrant a waiver of the Commission's short-spacing rule. In Sarkes Tarzian, the applicant's claim that it would provide protection equivalent to that provided by a fully spaced station operating at maximum power was only one part of the applicant's public interest showing in support of a waiver. In addition to demonstrating that it would provide equivalent protection, the applicant showed that a grant of the waiver would result in the provision of significant gains in service, including additional television service to underserved areas. Suffice it to say, Glendale has made no showing that such public interest benefits will accrue as a result of a grant of its waiver request. Finally, the fact that there may be a geographical area in which a fully spaced Channel 63 station could be placed, does not warrant a waiver.

6. In sum, Glendale has failed to demonstrate that there is no genuine issue of material fact remaining for determination at the hearing relative to the short-spacing issue. See, Big Country Radio Inc., 50 FCC 2d 967 (Rev. Bd. 1975); Section 1.251 of the Commission's Rules. Consequently, the Bureau opposes summary decision of the short-spacing issue specified against Glendale in the HDO.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 3rd day of August 1992, sent by regular United States mail, U.S. Government frank copies of the foregoing "**Mass Media Bureau's Opposition to Motion for Summary Decision**" to:

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