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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of)	MM Docket No. <u>92-316</u>
)	
RIVERTOWN COMMUNICATIONS CO., INC.)	File No. BPH-911008ME
)	
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BPH-911010MA
)	
For Construction Permit)	
for a new FM Station on)	
Channel 282C3 in Eldon, Iowa)	

To: Administrative Law Judge
John M. Frysiak

REPLY FINDINGS OF SAMPLE BROADCASTING COMPANY, L.P.

Respectfully Submitted,

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P.O. Box 33003
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September 8, 1993

SUMMARY

Rivertown has searched desperately for evidence with which to discredit the ownership structure of Sample Broadcasting Company, L.P., and attempts to show that O-Town Communications and Bruce Linder are secretly controlling Sample and trying to delay Rivertown from obtaining a construction permit for Eldon. The record fails to support the adverse conclusions drawn by Rivertown on the standard and basic issues against Sample.

Rivertown's speculative conclusions are built upon misinterpretation and disregard for important record evidence. Under a fair reading of the record, it is clear that Bruce Linder and O-Town Communications have had no involvement in the Sample application. Ms. Sample-Day has and will continue to conduct the affairs of the partnership in accordance with its limited partnership agreement and the structure set forth in Sample's application. There is no evidence that Sample has filed a strike application against Rivertown or will jointly program its station with KKSI; Mark McVey testified that he has no knowledge of Sample's program format intentions for its station.

In the comparative evaluation, Rivertown fails to acknowledge David Brown's diversification demerit; that David Bowen is an unintegrated owner of Rivertown due to his mutual ownership stake in applicant with his wife; and, that Ms. Bowen does not propose the type of managerial and supervisory duties needed to qualify for integration credit under the Commission's 1965 Policy Statement on comparative hearings. Sample receives no diversification demerit and is the only applicant meriting 100% integration credit.

Sample is fully qualified to receive a grant and is the comparatively-favored applicant. Its application must be granted.

REPLY FINDINGS OF SAMPLE BROADCASTING COMPANY, L.P.

1. Sample Broadcasting Company, L.P., ("Sample"), by its attorney, respectfully files its Reply to the Findings of Fact and Conclusions of Law filed by Rivertown Communications Co., Inc. ("Rivertown"), on August 18, 1993, in the above-captioned proceeding. Herein, Sample reviews Rivertown's Findings and demonstrates that Rivertown has misinterpreted the record in vital areas, and has ignored pertinent record evidence in others.

2. In paragraph 5 of its Findings, Rivertown claims a "Pioneer's Preference" for having petitioned for the Eldon allotment. There is no such preference at the present time, merely a proposal to establish one in the future. See, Reexamination of the Policy Statement on Comparative Broadcast Hearings 7 FCC Rcd 2664 (1992). Moreover, the Commission proposes to grant a preference only to those entities first proposing a new allotment after the finalization of the rule making. For these reasons, no Pioneer's Preference may be given Rivertown.¹

3. Rivertown includes a listing of civic activities for David Brown in paragraph 10. However, as Sample demonstrated in its Findings, Rivertown may not receive credit for Brown's civic activities, as they were not described in its appli-

¹ In addition, Rivertown, the corporation, was not the entity which petitioned for the allotment. The corporation was established on August 21, 1991. Rivertown Ex. 1. The petition for Eldon was filed in January 1991, when there was no Rivertown Communications Co., Inc., in existence.

cation. It is clear from the Commission's discussion of the revised Form 301, that anything not provided in the application by the amendment-as-of-right date may not be credited at hearing. (Sample Proposed Findings, ¶ 151), *and see*, Linda U. Kulisky (Review Board), Released August 31, 1993, FCC 93R-43, at ¶ 6-7 (applicants required to disclose all claims for qualitative credit under the enhancement factors by the amendment-as-of-right date).

4. Furthermore, Rivertown did not provide sufficient information about Brown's civic activities to warrant credit, even if the failure to describe them in the application is not deemed fatal to their crediting. No details appear in the record for what Mr. Brown actually did. The record fails to indicate whether Brown devoted any time or effort whatsoever to any of his claimed activities. It is well established that mere membership without showing active participation, does not warrant civic credit. Broadcast Associates of Colorado, Inc. 100 FCC 2d 616 (Rev. Bd. 1985) *rev'd on other grounds* 105 FCC 2d 16 (1986). The Commission gives credit for civic activities, as part of the local residence enhancement to integration, because involvement in such activities increases a person's knowledge of the community's problems and concerns and leads to a more issue responsive broadcast station. There is nothing in Rivertown's showing of Brown's civic activities to demonstrate that they engendered any knowledge of Eldon or the service area.

5. With respect to Ellen Bowen's proposed integration (§ 13), Rivertown completely omits any reference to her cross-examination testimony regarding her duties at the Eldon station. (TR 64-65). Her duties, as she herself described them, are not managerial in nature but are totally those of a mere employee. Even Rivertown's own Findings fail to show that Ms. Bowen will make any policy or supervise any employees. As Sample amply proved in its Findings, the Commission goes beyond the title of a position in determining whether integration credit is warranted. The duties and responsibilities must be managerial in nature; it is well established that mere employee-type duties do not qualify for integration credit. Bradley, Hand, and Triplett, 89 FCC 2d 657 (Rev. Bd. 1982). Bowen's lack of involvement in the preparation and prosecution of Rivertown's application is fully presented in Sample's Findings (paragraphs 33-35, 152-154), but ignored by Rivertown. Her minimal participation in Rivertown's affairs supports Sample's position that Ms. Bowen will not be a manager of the station.

6. Also, Sample demonstrated in its Findings (paragraph 36) that, should Ms. Bowen be considered for integration credit, her ownership in Rivertown must be deemed to be held jointly with her husband, David Bowen. Rivertown's Findings omit any discussion of Mr. Bowen's involvement. It parenthetically references his co-ownership of Brown's residence in Eldon, yet totally ignores Mr. Bowen's financial commitment to

Rivertown and his personal involvement in both the application process and in the radio station's studio building. These matters are decisionally significant in determining whether Ms. Bowen is entitled to integration credit; Rivertown's neglect thereof reduces substantially the value of its Findings.

7. Also, Ms. Bowen's single civic activity, church membership, was not listed in Rivertown's construction permit application at all; moreover, as with Brown, the record information is insufficient to warrant any credit. In sum, Rivertown's Findings on its own application do not justify the award of full integration credit to Ms. Bowen. Sample's Findings reflect the evidentiary record with greater accuracy and its Conclusions have greater merit.

8. In its conclusions on the standard comparative issue, beginning at its ¶ 65, Rivertown fails to acknowledge the diversification demerit it will receive for Brown's managerial position at the Galesburg, Illinois, radio stations for which divestiture was not timely proposed. (Sample's Proposed Findings, ¶ 139-142) Thus, its conclusion in ¶ 68, that it has no diversification demerit is incorrect. Sample is favored under this criterion; the applicants are not equal as Rivertown concludes.

9. In footnote 26 and page 33 of its Findings, Rivertown disparages Sample's proposal to install an auxiliary power generator, asserting that credit is given only when two

generators, one at the transmitter, and another at the studio, are proposed. As is typical throughout its conclusions, Rivertown cites no authority for this novel approach. Clearly, one generator will permit the station to remain on the air when power to that facility is lost. Rivertown apparently assumes that when power is lost at the studio it will also be out at the transmitter. However, such is not necessarily the case. It is common that commercial power to one area may be out while power continues to be supplied to other areas. In addition, if the generator is at the transmitter and the studio loses power, it may be possible to transmit directly from the transmitter site. Rivertown does not propose even one such generator; its that two are necessary to maintain station operation is without merit.

10. The Commission has credited proposals for just one auxiliary power generator. See, e. g., WVOC, Inc., 45 FCC 2d 420, 423 (Rev. Bd. 1974), "... (Applicant) is also entitled to some credit for proposing an auxiliary power source..." (Emphasis added.). Accordingly, Sample receives a slight credit for its auxiliary power proposal.

11. In comparing the qualitative enhancements to integration of the applicants, Rivertown misstates the facts and misapplies Commission policy.² With respect to Brown's local

² Qualitative enhancements are considered only when the applicants are quantitatively equal in the amount of ownership receiving integration credit. Kenelwood Broadcasting Co., 6 FCC Rcd 1350 (Rev. Bd. 1991). Should Bowen's integration credit be denied or diminished, as asserted by Sample, any

residence credit, most of his past residence occurred during his youth, prior to age 22. Since then, from September 1983 onward, Brown receives credit for roughly three years, eight months service area residence before Rivertown's application was filed and three months service area residence after the application was filed. (Sample Proposed Findings ¶ 150-151) Brown was not living in the service area in October 1991, when Rivertown's application was filed, having moved away nearly a year earlier. Moreover, his civic activities, if they are credited (see infra, paragraphs 3, 4), were predominantly in 1982-1983 and ceased altogether in 1989, two years before Rivertown's application was filed. Thus, while Brown's integration receives some enhancement for his past service area residence, it is not nearly as much as Rivertown claims. In contrast, Sample-Day has lived continuously in the service area since 1988. Her recent full time service area residence gives her a knowledge of the area at least equal to Brown's dated knowledge.

12. Rivertown grudgingly concedes Sample-Day's Hispanic background, based on her mother's heritage, but attempts to minimize its credit. Once again, Rivertown cites no authority for such reduction. A copy of Sample-Day's birth certificate is attached hereto as Exhibit 1, and was provided to Rivertown

discussion of enhancements is superfluous, for Sample's quantitative advantage will be unassailable.

in the discovery phase of this proceeding.³ The certificate shows clearly that Sample-Day's mother was born in Mexico and has a Hispanic name. Minority credit, which is equal to long-term local residence credit, is either given or it is not. In this case, Sample-Day clearly warrants minority credit.⁴ (Sample Proposed Findings ¶ 159-160).

13. Similarly, Rivertown overstates the broadcast experience credit due Ms. Bowen. Her work at a radio station lasted for only three years and was in a non-managerial capacity. This is significantly less than Sample-Day whose broadcast experience extends back to 1982, and includes several years in the managerial position of news director at station KCSI. Sample-Day's script and audio production experience for radio and television from 1982 to 1988 is worthy of full broadcast experience credit. James and Sharon Deon Sepulveda 3 FCC Rcd 9 (Rev. Bd. 1988) (television production experience credited). In any event, broadcast experience is of only minor significance. Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 396 (1965).

14. In sum, Sample, with 100% integration, enhanced by the minority status, and local residence and broadcast

³ Official notice of this birth certificate is requested as it is an official governmental record. Radio Lake Geneva Corp. 7 FCC Rcd. 5586 ¶ 17 (Rev. Bd. 1992). As it was distributed to Rivertown in discovery, there is no surprise.

⁴ The KOIA-TV annual employment form is of no evidentiary value, for the record has no testimony from the person who signed the form. Hence, the basis for not including any Hispanics on the list of station employees was not presented.

experience of its general partner, overcomes Rivertown, even should Rivertown receive 100% integration credit. Rivertown lacks any minority credit, and has at best only a slight residence advantage over Sample. When Sample's additional advantages for diversification and auxiliary power are considered, Sample is the clear comparative winner, whether Bowen receives integration credit or not.

15. With respect to Sample's basic qualifying issues, Rivertown goes to great extremes to try to show that Bruce Linder is in position to control the partnership. These efforts do not avail, however, as they are purely speculative and without foundation in the record.

16. For example, in its discussion of Sample's formation, Rivertown emphasizes at its ¶ 16 that Sample-Day has no obligation to contribute capital to Sample and has not done so. However, at ¶ 20 Rivertown acknowledges that Sample-Day has contributed her pro-rata share of capital to the partnership in the form of services. The breadth and depth of Sample-Day's services to Sample support fully that she is a bona-fide principal.

17. Rivertown speculates in footnote 7 that Sample-Day "may well" become insolvent, should the venture prove unprofitable for she is fully liable for partnership debts. As insolvency of the general partner would cause the partnership to terminate under the limited partnership agreement, Rivertown implies that Sample's structure was devised in this way

to give Linder a means of control. Rivertown cited no precedent for such conjecture.

18. Rivertown (paragraph 28) finds an apparent discrepancy between the testimony of Linder and Mark McVey concerning the possibility of locating a transmitter site for the Eldon station so as to avoid city-grade overlap with KKSI, the Eddyville, Iowa, station partially owned by Linder. In truth, there is no inconsistency. Linder could not recall whether he raised the subject with McVey or with Garrett Lysiak, a consulting engineer. The record shows that McVey obtained an area to locate map, showing where an Eldon transmitter site might be placed to avoid overlap with KKSI, from Lysiak on his own, before speaking to Linder about the Eldon allotment. There is nothing in the record to show that it was Linder's query of McVey which triggered McVey's request to Lysiak for the area to locate map. Rivertown's Findings do not show that Linder's question to McVey about avoiding KKSI contour overlap came prior to McVey's request to Lysiak for such a study. Also, Rivertown does not demonstrate that there was any time interval between Linder's question to McVey and his response, for Linder's question could have come after McVey had been advised by Lysiak that overlap could be avoided.

19. Rivertown relies on its misinterpretation in drawing conclusions adverse to Sample in footnote 22. Rivertown fails to understand that McVey ordered the Lysiak site study on his own, before he spoke to Linder. That is the reason why McVey

paid Lysiak for the work, and why it was not billed to Linder. This is merely one example of McVey's interest in seeing O-Town expand beyond KKSI, even if the Linders did not share such interest.

20. Rivertown mischaracterizes the record in paragraph 32, stating that Sample-Day "discussed her proposed equipment list with Bruce Linder, but he made no suggestions to her." There was no "discussion;" Sample-Day testified that she merely recited various budget items to Linder and told him the total amount of the budget, a number he would need in order to secure adequate financing. (TR 204).

21. Rivertown's conclusions on Sample's qualifying issues are full of conjecture and speculation. Rivertown dismisses without comment the pertinent record facts that the limited partnership agreement fully complies with Commission requirements for non-attribution of the limited partner, and that Linder has observed and completely honored his obligations thereunder. Rivertown states a number of facts in paragraph 54, which it claims lead to the conclusion it favors. These facts neither jointly nor severally demonstrate that there is anything amiss with Sample's application.

22. Rivertown, despite having full opportunity for discovery and examination, has submitted not even one piece of hard evidence to go along with its speculative, circumstantial approach to Sample's structure. There is not one document, not one statement by anyone with personal knowledge, nor any

other demonstrative support for Rivertown's view. Rivertown cites no case supporting its conclusions.⁵

23. Rivertown is incorrect in some of its conclusions. It asserts that "Ms. Sample-Day's broadcast experience has been limited, and does not include any management experience." (paragraph 54). This statement is clearly erroneous, as she has been News Director at KKSI for over two years.

24. Many of Rivertown's other statements in paragraph 54 are incomplete. For example, in discussing the drafting of the Sample partnership agreement, Rivertown does not mention that Sample-Day retained local counsel without input from Linder. Rivertown also fails to acknowledge that she contacted a number of different communications attorneys and engineering consultants, before selecting Miller and Lysiak, respectively. Further, the decision to have McVey assist her was strictly Sample-Day's decision. The record demonstrates that Linder had no involvement in the selection of any consultant used by Sample.

25. Rivertown mischaracterizes the record to read that "Sample-Day has no business experience." There is no record support for such a conclusion. Sample-Day was not questioned

⁵ It is not until page 42 (out of 45 total pages) that Rivertown cites any case. Even then it does not demonstrate that there are factual similarities between its cited cases and the record here. Sample does not dispute that many allegedly passive principals in two-tiered applicants have been shown to be active. However, the record evidence in each such case supported such a finding. The record evidence here supports a finding that Sample's structure is bona fide.

about her business experience. The only reference in Rivertown's proposed findings appears at its ¶ 26 where it misquotes Linder to have said at TR 301 that he does not know of any business experience Sample-Day might have. In fact, in response to a question as to whether she ever mentioned any business she had ever run, Linder responded that he vaguely remembered that she had some responsibilities, but he could not remember the details. Moreover, regardless of whether Sample-Day has "run" a business, the Commission does not require such experience as a prerequisite to the grant of a construction permit.

26. With respect to the selection of the transmitter site, Rivertown neglects to state that McVey did not know what transmitter site Sample ultimately selected; that Sample-Day did not seek the approval of her selected tower site from Linder or any principal of O-Town; that she negotiated the terms of a potential lease without assistance from anyone; and, that she again secured reasonable assurance of the use of the transmitter site when it was later sold. McVey's assistance was limited to technical matters, such as looking for proper site elevation and dimensions. (Sample Proposed Findings ¶ 65-68). As to Sample's budget, McVey merely made recommendations for Sample-Day's consideration. (TR 270, 274). McVey made no recommendations as to whether Sample's Eldon station should be live or automated and does not know about Sample's format intentions. (TR 275). McVey did not review or

see Sample's final budget before the hearing. (TR 276).

27. McVey was paid by Sample for his efforts on its behalf; neither O-Town nor Linder paid him. McVey testified that he was not aware of all of the aspects of Sample's proposal and was not privy to any final decision made by Sample-Day. There is no basis to find McVey was a surrogate for Linder or O-Town in any way, nor that Sample will utilize McVey's services in the future. Hence, Rivertown's assertion that McVey gave Sample-Day "detailed guidance in the preparation of the Sample application" (Rivertown Findings, page 44) is an incomplete and misleading statement.

28. Also on page 44 of its Findings, Rivertown seeks to draw adverse conclusions from the fact that Sample-Day is an employee of O-Town. It neglects to mention that she is committed to resign her position upon grant of the Eldon application, and thereafter will have no connection with KKSI. Linder's control over Sample-Day extends only to her employment at KKSI. There has been no showing of any control by Linder or O-Town, vis-a-vis the employment relationship, over the Sample application. Rivertown cites no case where such employment was held to pierce the passivity of the applicant.⁶

29. Rivertown notes on page 44 of its Findings that Sample is represented by the same communications counsel who

⁶ In Harry S. McMurray 8 FCC Rcd 3168 (Rev. Bd. 1993), Campos, the general partner, received 100% integration credit notwithstanding that he was supervised by his limited partners at his current job.

represents Linder in other matters. It does not recognize that Sample-Day retained this firm only after interviewing several firms; the decision was entirely her own. (TR 112, Sample Ex. 2) Potential conflicts between Sample and the Linders is a matter with which the law firm must deal. It is not of interest to the Commission.

30. Rivertown's Findings at paragraphs 55 and 56 acknowledge that Sample-Day had no motivation to delay Rivertown's application. However, it seeks to demonstrate that Linder had such desire. Its analysis is woefully inaccurate.

31. It is true, as Rivertown states, that any station in Eldon would compete with KKSI in Ottumwa. However, that, standing alone, does not demonstrate that Linder became involved in the Sample application to delay grant of Rivertown's. Had there been concern about the effect of an Eldon station on KKSI, Linder or O-Town could have filed comments during the rule making proceeding opposing the Eldon allotment. They did not do so.

32. The record shows that the Commission was allotting FM channels to a number of other communities in southeastern Iowa at about the same time as the Eldon allotment. These stations would also compete in Ottumwa, yet there was no action to retard their grant and there is no evidence that Eldon would create any different market impact than other new radio stations entering the area.

33. Rivertown seeks to find something sinister about

Linder's change of mind regarding the value of an Eldon station. The record is that he changed his mind after thinking it over for some time (but only if he could be a passive investor). In addition, Sample-Day approached Linder about forming a joint venture, not vice-versa. There is no contrary fact in evidence. This demonstrates lack of an ulterior motive, for if Linder had been concerned about competition from an Eldon station, he would have set about preparing a competing application from the start. That he delayed until convinced that the Eldon station presented a worthwhile opportunity demonstrates that Linder did not get involved to delay Rivertown from getting a grant.

34. In its Findings, Sample reviewed Commission precedent on "strike" applications, and demonstrated that Sample's application is not such. Rivertown cites no case to support its purely speculative conclusions.

35. Beginning on paragraph 57, Rivertown states its conclusions on the issue of whether O-Town is a real-party-in-interest in Sample's application. Once again, Rivertown deigns to cite no case authority as to what constitutes a real-party-in-interest. Whereas Sample's Findings carefully reviewed relevant case law on this subject, Rivertown acts as if there were no precedent whatsoever. It totally ignores the guiding principle that a real-party-in-interest is one who controls or will be in a position to control the applicant. See, e.g., Sound Broadcasting Co. 6 FCC Rcd 6903 (1991).

Rivertown has failed to show that O-Town has controlled Sample, or will be in a position to do so in the future.

36. The sole area pointed to by Rivertown to show control by O-Town is the selection of Sample's transmitter site. Rivertown asserts that McVey's statement to Brown, that the site was selected to avoid overlap with KKSI, was the truth. However, the record shows that while McVey may have guessed such to be the motivation,⁷ Sample-Day had a different motivation entirely. She recognized that the area to the southeast of Eldon lacked radio service, and wanted to aim more of her station's signal in that direction, while maintaining a presence in Ottumwa, Fairfield and Bloomfield. (Sample Ex. 2.) Rivertown totally ignores this testimony.⁸ Rivertown also fails to consider that Linder had no input into the site selection, and did not even know where it was when the application was filed. (Sample Ex. 2, 3.) Simply put, Sample-Day selected the transmitter site on her own, for her own reasons. Neither Linder nor O-Town was involved in that selection or decision.

37. Rivertown tries to bootstrap its argument by referring to events connected with the Linder family's involvement with KKSI in 1989. Rivertown asserts that "the owners of O-

⁷ David Collins did not consider McVey's statements to be serious.

⁸ Sample-Day's remark about potential interference between an Eldon station and KKSI, appearing at TR 210, was clearly the result of confusion and must be discounted.

Town engaged in a deception of the Commission that its application for what is now KKSI was granted in December 1991..." (Rivertown Findings, paragraph 60). However, there is no issue regarding the grant of the initial KKSI permit, and there has been no adjudication of wrongdoing in connection therewith. Thus, it is improper for Rivertown to rely on matters involving the KKSI grant.

38. Moreover, there are other reasons why the history of KKSI is irrelevant to the present issues. First, the evidence in the record is not sufficient to demonstrate that any violation of Commission rules or policy occurred with respect to KKSI's initial grant. The only evidence on this matter is McVey's testimony on cross-examination of events which occurred a number of years ago. It has been established that his memory is not precise. The record is simply not clear that McVey had reached a definitive agreement with Donald and John Linder for their acquisition of control of O-Town prior to Commission grant of the Eddyville application. Absent such agreement, there would have been nothing to report to the Commission.

39. Secondly, Bruce Linder, the only member of the Linder family involved in Sample, was not involved with O-Town until much later. There is no showing that the Linder family acts in concert. Bruce Linder has broadcast interests separate and apart from other members of his family, i.e. St. James,

Minnesota, and Pelican Rapids, Minnesota.⁹ There is no showing in the record that any other member of the Linder family has had anything to do with the Sample application.

40. Finally, any reporting requirements which might have been the responsibility of O-Town prior to grant of the Eddyville application fell on McVey. There is nothing to show that any member of the Linder family had control of O-Town at that time, or influenced McVey to refrain from reporting something to the Commission. Without conceding that there was a reporting violation in connection with the Eddyville grant, even if there were such a violation, it would not demonstrate control of the Sample application. Accordingly, for all these reasons, the events concerning the grant of the initial construction permit for KKSI at Eddyville, Iowa, are of no moment here.

41. At its paragraph 62, Rivertown speculates that Sample's staffing proposal requires at least partial duplication of KKSI. There is nothing in the record to indicate that such is the case. There are many sources of programming other than KKSI. Rivertown has unearthed no evidence of planned duplication, other than McVey's admitted speculative statements. McVey testified under oath at hearing that he did not know Sample's program format intentions. (TR 275) As Sample-Day has denied having any plans to duplicate KKSI, and as she

⁹ The items described by Rivertown in its footnote 25 are insufficient to establish a concert of action.

never discussed this subject with Linder or with anyone involved with KKSI, Rivertown's conclusion does not stand.

42. Rivertown further misstates Samples' staffing possibilities. The program director likely will have an on-air role, as most program directors do. Rivertown ignores this likelihood in assuming that only the part time employees will be announcers. If the Program Director is on the air for 30 hours per week, a not unreasonable assumption,¹⁰ the part time employees would have to cover only 96 hours of broadcasting a week, or an average of 24 hours per week each. This schedule is quite reasonable, and does not require the rebroadcasting of any other station.¹¹

43. Rivertown accepts Sample-Day's testimony that she honestly filed the application to obtain a construction permit, without any other purpose (paragraph 64). However, Rivertown concludes that she has been used by Bruce Linder and O-Town, and that they are grievous wrongdoers. Rivertown's logic is flawed, for it has been unable to point to any evidence of control by these parties. It relies on the statements McVey allegedly made to Brown. Even assuming McVey's statements were as reported by Brown, they do not

¹⁰ This could mean a 6-hour shift, five days a week, or a 5-hour shift, six days a week.

¹¹ Moreover, Sample's station would require an operator on duty whenever it is broadcasting. Duplicating another station would not relieve it of that requirement, so no conclusion about duplicating KKSI may be drawn from Sample's staffing plans.

prove wrongdoing on the part of Sample, Linder, or O-Town. By his own admission, McVey was clearly speculating; he had no actual knowledge of Sample-Day's or Linder's motivations. The Commission may not accept McVey's statements as reflecting reality.

44. As fully set forth by Sample's Findings, there is no link between Bruce Linder and McVey or O-Town with regard to Sample's application. McVey provided private consulting services to Sample-Day and was paid for those services. McVey could not link his unfounded comments to David Brown to any document he had ever seen or any discussion he may have had with Sample-Day, Bruce Linder or any principal of O-Town. (TR 257). Bruce Linder's testimony is that Donald Linder, the majority shareholder of O-Town, determined that O-Town would not pursue the Eldon station and that the decision was not reconsidered nor challenged.

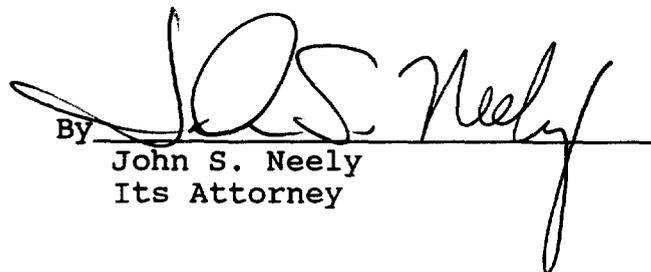
45. In Cannon Communications Corp. 5 FCC Rcd 2695 (Rev. Bd. 1990) *rev. denied*, 6 FCC Rcd 570 (1991), an issue was added against an applicant to determine whether he offered equity interests in his station to others in conflict with his representations that he would be the sole owner of the station. This issue was added on the basis of an affidavit from a party who was allegedly offered an equity stake. The Presiding Judge and the Review Board held that "there is no demonstrative evidence to support the claim" that the applicant had agreed to transfer any equity and resolved the

issue in the applicant's favor.

46. Similarly, there is no demonstrative evidence to support any of the issues added against Sample. The record is clear that Sample's application was filed for the purpose of acquiring the Eldon station and that Sample is a bona fide applicant which will operate its radio station as set forth in its application. Sample is fully qualified to be a Commission permittee/licensee and is superior to Rivertown under the standard comparative issues. Sample's application must be granted and Rivertown's denied.

Respectfully submitted,

SAMPLE BROADCASTING COMPANY, L.P.

By 
John S. Neely
Its Attorney

September 8, 1993

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CERTIFICATE OF LIVE BIRTH
STATE OF IOWA

IOWA STATE DEPARTMENT OF HEALTH
Division of Vital Statistics

Birth No. **114** - **62-52436**

1. PLACE OF BIRTH DAVIS	2. USUAL RESIDENCE OF BIRTH (When different from 1st) IOWA	3. CITY, TOWN, OR LOCATION BLAKESBURG	4. STREET ADDRESS R # 1
5. CITY, TOWN, OR LOCATION BLOOMFIELD	6. CITY, TOWN, OR LOCATION BLAKESBURG	7. STREET ADDRESS R # 1	8. IS RESIDENCE WITHIN CITY LIMITS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
9. VALUE OF REAL ESTATE (If not in hospital, give street address) DAVIS COUNTY HOSPITAL	10. IS RESIDENCE WITHIN CITY LIMITS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	11. IS RESIDENCE ON A FARM? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	12. IS RESIDENCE ON A FARM? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
13. PLACE OF BIRTH WITHIN CITY LIMITS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			

1. SEX Female	2. RACE White	3. DATE OF BIRTH November 29, 1962	4. TIME OF BIRTH 8:57 AM
5. NAME OF CHILD SUE	6. NAME OF CHILD SAMPLE	7. NAME OF CHILD SAMPLE	8. NAME OF CHILD SAMPLE
9. NAME OF FATHER DELBERT	10. NAME OF FATHER DELBERT	11. NAME OF FATHER DELBERT	12. NAME OF FATHER DELBERT
13. NAME OF MOTHER ESPERANZA	14. NAME OF MOTHER ESPERANZA	15. NAME OF MOTHER ESPERANZA	16. NAME OF MOTHER ESPERANZA
17. NAME OF MOTHER ESPERANZA	18. NAME OF MOTHER ESPERANZA	19. NAME OF MOTHER ESPERANZA	20. NAME OF MOTHER ESPERANZA

17. SIGNATURE OF REGISTRAR
Mrs. Delbert E. Sample

18. SIGNATURE OF ATTORNEY AT BIRTH
R # 1, Blakesburg, Iowa

19. SIGNATURE OF REGISTRAR
State Registrar

20. SIGNATURE OF REGISTRAR
State Registrar

21. SIGNATURE OF REGISTRAR
State Registrar

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State Registrar

I hereby certify that this is a true and correct copy, made of the original certificate on file in this office in accordance with the law of Iowa requiring filing of Vital Records.

State Registrar
M.D., Dr. P.H.

Date **APR 21 64** **L. E. Chancellor**
DIRECTOR, DIVISION OF VITAL STATISTICS

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of September, 1993, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Norman Goldstein, Esq.
Mass Media Bureau, Hearing Branch
Federal Communications Commission
Washington, DC 20554

Donald E. Ward, Esq.
Law Offices of Donald E. Ward, P.C.
1201 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Robin Zuer