

Before the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. <u>93-264</u>
)	
FRANK B. DUROSS)	File No. BPH-920512MC
)	
NEW HORIZONS BROADCASTING PARTNERSHIP)	File No. BPH-920513MF
)	
KENNETH F. ROSER, JR.)	File No. BPH-920513MI
)	
KEVIN O'KANE)	File No. BPH-920514MK
)	
For a Construction Permit for a New FM Station on Channel 250A, at Whitesboro, New York)	

RECEIVED

NOV 18 1993

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO STRIKE

Frank B. DuRoss ("DuRoss"), by and through counsel, hereby submits a Motion To Strike certain portions of the "Integration Statement" of Kevin O'Kane ("O'Kane"), submitted on November 15, 1993, in the above-referenced comparative proceeding. In support whereof, the following is shown:

1. Under §1.325(c)(1) of the Commission's Rules (and pursuant to the Presiding Judge's Order Prior To Prehearing Conference, FCC 93M-679, released October 27, 1993), all parties in this proceeding were required to exchange those documents responsive to the Commission's Standard Document Production ("SDP"). On November 15, 1993, Mr. O'Kane exchanged his documents with the other parties. See Exhibit 1. Under the category "representative documents relating to enhancement credits and preferences sought by the applicant's principals...", Mr. O'Kane produce some documents concerning his claim for prior

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civic involvement but no documents concerning past local residences. Id.

2. In his "Integration Statement" submitted on the same day, Mr. O'Kane claims credit for his current residence in Vernon, New York, which he claims to have maintained since May, 1990 and his past local residence in Munnsville, New York, from 1987 to 1990. See Exhibit 2. However, Mr. O'Kane has failed to produce any documents to demonstrate this claim. See Exhibit 1. At the very least, Mr. O'Kane could have produced some documentation, such as a copy of his current driver's license (if he has one), a voter's registration card or a copy of a bill or invoice that would show his current or past addresses.¹ His failure to produce any documentation completely undermines his claim for past local residence credit.

3. In both the Hearing Designation Order, DA 93-1074, released October 18, 1993, and the Presiding Judge's Order Prior To Prehearing Conference, all parties were given ample notice that they must produce those documents responsive to the

¹ Compare this to the fact that Mr. DuRoss produced at least one document to demonstrate all of his past local residences, except for 1559 Taylor Avenue, Utica, New York, where he resided from his birth in 1950 to 1971. For example, Mr. DuRoss exchanged a copy of his current New York driver's license and voter's registration card showing his current address as 22 Stonebridge Road, New Hartford, New York; he exchanged copies of two bills showing his past residences as 36 Nob Rd., Utica, New York, and 609 Plymouth Place, Utica, New York; and Mr. DuRoss even exchanged a copy of his 1971 federal tax return to show his past local residence as 506 James Street, Utica, New York. Therefore, Mr. DuRoss produced documents that show his past local residences dating back over twenty years, while Mr. O'Kane did not produce a single document to show even his current residence.

Commission's Standard Document Production by November 15, 1993. Therefore, Mr. O'Kane had an affirmative obligation to gather together and exchanged those documents that would demonstrate his claim for past local residence credit. Rather than fulfill his obligation, Mr. O'Kane chose not to produce any documents to support his claim. Without such documentation, Mr. O'Kane has delayed the discovery stage of this proceeding and has made it impossible for the opposing parties to test the accuracy of his claim for enhancement credit. Given his cavalier attitude towards discovery, Mr. O'Kane should be barred from any future attempt to produce documents related to his claim for local residence credit.

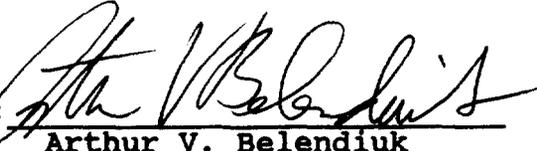
4. More importantly, Mr. O'Kane bears the burden of proof with respect to any claim for enhancement credit that he makes in this proceeding. See Beach Broadcasting Limited Partnership, 6 FCC Rcd 885, 886 (Rev. Bd. 1991), aff'd, 6 FCC Rcd 4485 (1991). Since he will be barred from producing any evidence of his local residences, it will be impossible for Mr. O'Kane to meet his burden of proof for an award of enhancement credit. Therefore, in order to facilitate the resolution of this matter, the appropriate action at this time would be to strike those relevant portions of Mr. O'Kane's Integration Statement and bar him from introducing any evidence at hearing related to his claim for past and present local residence credit.

WHEREFORE, the above-premises considered, Frank B. DuRoss hereby respectfully requests that his Motion To Strike be

GRANTED, as outlined herein.

Respectfully submitted,

FRANK B. DUROSS

By: 

Arthur V. Belendiuk
Shaun A. Maher

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

November 18, 1993

lpd/whitesboro/1117.str

EXHIBIT 1

THEY OVERCAME BY THE WORD
OF THEIR TESTIMONY

LAW OFFICES
JAMES L. OYSTER
RT 1, BOX 201A
CASTLETON, VIRGINIA 22710
(703) 937-4800

FACSIMILE
(703) 937-2148

November 15, 1993

J. Richard Carr, Esq.
Law Office of J. Richard Carr
5528 Trent Street
Chevy Chase, MD 20815

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036

VIA FAX

Re: Whitesboro, NY, Document Production

The following documents are herewith produced:

Document Request:

- (A) Not applicable. Individual Applicant.
- (B) Not applicable. Individual Applicant.
- (C) No documents exist which are known to Applicant.
- (D) No documents exist which are known to Applicant.
- (E) Attached.
- (F) No such documents exist which are known to Applicant.
- (G) No such documents exist which are known to Applicant.
- (H) Applicant has no such documents. Such documents may exist in Commission files.
- (I) Not applicable. Individual Applicant.
- (J) Attached.
- (K) Only document known to exist are those filed in this proceeding.
- (L) Attached. No other documents exist which are known to Applicant.

Sincerely,

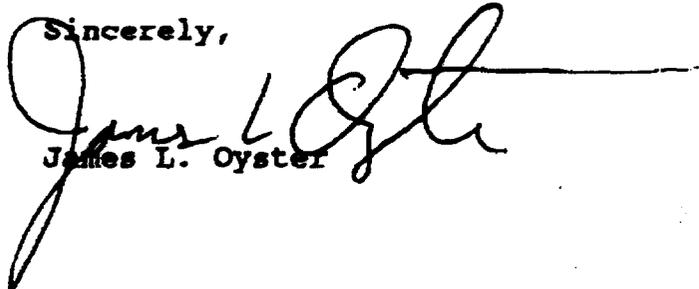

James L. Oyster



EXHIBIT A

ASSOCIATION FOR RETARDED CITIZENS

14 Arnold Avenue • P.O. Box 4759 • Utica, New York 13504-4759
 Telephone: 315/735-6477 • Fax: 315/735-4800

Ruth J. Ridgway
 President

Angela Z. VanDerKort
 Executive Director

Richard W. Miskowicz
 Immediate Past President

July 1, 1992

Kevin O'Kane
 Fox TV 33
 Greenfield Road
 Rome, New York 13440

Dear Mr. O'Kane:

I am sorry you were not able to be with us on June 20th at the Oneida County Association for Retarded Citizens Recognition Dinner.

Enclosed, please find a plaque as our way of showing our appreciation for all of your hard work on our behalf.

Sincerely,

Pearl Benson
 Chair, Awards &
 Recognition Committee





American Diabetes Association

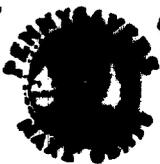
Central New York Chapter

presents:

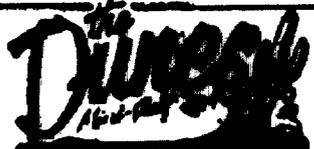
MINI-GOLF CLASSIC "FUN" RAISER PUTT PUTT FOR THE "FUND" OF IT



SATURDAY JUNE 15 1991



ONEIDA-MADISON PENNSAVER, INC.



COMMERCIAL DRIVE, NEW HARTFORD

Golf Holes Sponsorship

1. Lions Club of Deerfield
2. In Memory of the 35th Year for the Lions Club of Deerfield
3. Joseph M. Asselta Charitable Trust
4. St. Basil "Tiny Tot" Nursery School
5. Dick Hough Plumbing and Heating
6. Knights of Columbus 4th Degree, [illegible]
7. Knights of Columbus 4th Degree, [illegible]

"Putt Putt For The Fund Of It"

On Saturday, June 15th the American Diabetes Association, Central New York Chapter, will hold its first annual Miniature Golf Tournament "Putt Putt For The Fund Of It" in being co-sponsored by FOX TV33, the Oneida-Madison Pennysaver Inc., and the Dunes Mini Golf.

This year's "Mini Golf Classic "Fun" Raiser - Putt Putt For The Fund Of It" is being co-sponsored by FOX TV33, the Oneida-Madison Pennysaver Inc., and the Dunes Mini Golf.

Trophies will be awarded to the winners!! Prizes will be awarded for the most donations turned in at the event!!! The more a golfer puts in, the better his/her chances of winning a terrific prize.

The American Diabetes Association, Central New York Chapter depends on funds raised to provide local life-saving programs and services to the children and adults with diabetes and their families. These funds also support nationally funded diabetes research and education programs in which top diabetes experts are working for the cause and cure of this widespread disease, and working to make the latest treatment advances available to the diabetes community.

Ernest Martin, Fund Raising Chairman for the local Chapter, announced the chairperson for the Mini Golf Classic is Dan Turzanski.

Mr. Turzanski is co-owner of "Back To Nature" located on Truxton Road in North Utica. He is a member of the American Diabetes Association, Central New York Chapter's Board of Directors and serves on numerous fund raising committees.

Other committee members include: Donald Luzzaro, Donald Yeaton, representing FOX TV33 are Dennis Baranowicz and Doug [illegible], and representing the Oneida-Madison Pennysaver Inc. is Charles Mahaffy. So come out on Saturday, June 15th and "Putt Putt For The Fund Of It!"

For additional information or to receive an entry form and/or pre-register for the Mini Golf Classic contact the American Diabetes Association at (315) 735-0591.



Call or write for the official entry form today

American Diabetes Association Central New York Chapter 1404 Geneva St., Utica, NY 13502

**NEW HARTFORD CENTRAL SCHOOL DISTRICT
NEW HARTFORD, NEW YORK 13413
TELEPHONE 315/738-9283**

DON ALBERICO
Phys. Ed. and Athletic Chairman

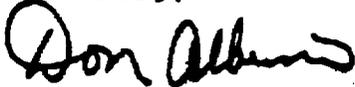
October 21, 1992

Dear Kevin,

I am writing to you in response to your letter of July 2, 1992. The New Hartford school community would feel very proud to have WPXV-TV33 televise our football game on November 7, 1992. We will have space for you in our press box. I would suggest that you get in touch with Mr. Richard Lee, Supervisor of building and grounds here at New Hartford to touch base with any needs you may have for that day. He can be reached at 738-9233.

The starting time for the game on Saturday November 7, 1992 is 2:30 p.m. in the afternoon. If I can be of further assistance, please contact my office at the above number.

Sincerely,



Don Alberico
Athletic Director

kmp

cc: Richard Lee

Greenfield Road
Rome, New York 13440



Phone (315) 337-3300
Local (315) 794-3300
FAX (315) 337-1882

1993 FALL SPORTS SCHEDULE

Game	School	Sport	Air Date
09 - 11	Camden at Holland Patent	Football	Sun Noon 09 - 12
09 - 16	New Hartford at Whitesboro	Soccer	Sat 2:00pm 09 - 18
09 - 17	Auburn at RFA	Football	Sat Noon 09 - 18
09 - 18	VVS at Oneida; Oneida at J.D. at Mt. Mariah; at at Mohawk Patent; at J.D. at Mt. Mariah; at Frankfort; Adirondack at Hamilton; Sauquoit at Little Falls; Canastota at Hamilton or Clinton at Delgoville	Football	Sun Noon 09 - 19
09 - 24	USA at RFA	Football	Sat Noon 09 - 25
09 - 25	Mohawk at Sauquoit	Football	Sun 9:00am 09 - 26
10 - 01	VVS at Notre Dame	Football	Sat Noon 10 - 02
10 - 02	Girls H.S. Soccer Tournament	Soccer	Sun 9:00am 10 - 03
10 - 02	Boys H.S. Soccer Tournament	Soccer	Sun Noon 10 - 03
10 - 05	Whitesboro at Clinton	Soccer	Sat 2:00pm 10 - 09
10 - 08	Liverpool at RFA	Football	Sat Noon 10 - 09
10 - 09	Camden at Oneida; J.D. at VVS; Holland Patent at Mohawk; Mohawk at Frankfort; Little Falls at Delgoville; Hamilton at Adirondack; Mt. Mariah at Sauquoit; or Clinton at Canastota	Football	Sun 9:00am 10 - 10
10 - 16	Whitesboro at New Hartford	Football	Sun 9:00am 10 - 17
10 - 16	RCH at Hamilton	Football	Sun Noon 10 - 17
10 - 23	Adirondack at Canastota	Football	Sun 9:00am 10 - 24

WFXV TV-33 1992/93 WINTER SPORTS SCHEDULE

BASKETBALL AND HOCKEY

DATE	TEAMS	TYPE	AIR DATE & TIME
12/22	RFA at Whitesboro	hockey	12/23 6 P
1/5	SU vs. Georgetown	b-ball	1/5 8 P live
1/5	Cazenovia at USA	hockey	1/6 5:30 P
1/8	Adirondack at Old Forge	b-ball	1/9 12 P
1/9	Cazenovia at Clinton	hockey	1/10 9 A
1/12	Notre Dame at Camden	b-ball	1/13 6 P
1/13	Hamilton at New Hartford	hockey	1/14 5:30 P
1/14	Hamilton at Mohawk	b-ball	1/16 12 P
1/16	SU vs. Providence	b-ball	1/16 8 P live
1/16	VVS at New Hartford	b-ball	1/17 9 A
1/20	Westmorland at Madison	b-ball	1/21 6 P
1/22	Dolgeville at Rome	b-ball	1/23 12 P
1/23	New Hartford at USA	hockey	1/24 9 A
1/30	Colgate vs. Cornell	hockey	1/30 7 P live
2/2	SU vs. U. Connecticut	b-ball	2/2 8 P live
2/2	Whitesboro at RFA	hockey	2/3 6 P
2/5	Little Falls v M. Arkham	b-ball	2/6 12 P
2/6	SU vs. Miami	b-ball	2/6 7:30 P live
2/9	Holland Patent at Oneida	b-ball	2/10 6 P
2/12	RFA at USA	b-ball	2/13 12 P
2/13	Clinton at New Hartford	hockey	2/14 2 P
2/13	Clarkson at Colgate	hockey	2/14 12 P
2/20	SU vs. Boston College	b-ball	2/20 8 P live
2/23	SU vs. Villanova	b-ball	2/23 8 P live
3/11	Big East Tournament	b-ball	3/11 7 P live
3/11	Big East Tournament	b-ball	3/11 9 P live
3/12	Big East Tournament	b-ball	3/12 12 P live
3/12	Big East Tournament	b-ball	3/12 2 P live
3/12	Big East Tournament	b-ball	3/12 7 P live
3/12	Big East Tournament	b-ball	3/12 9 P live

FAX 5/30/92

Re: Whitesboro

Kevin,

This has to run twice this week (like Wed. & Thurs. or Thurs. & Fri.) and twice next week (total of four times. You need to get proof of publication (affidavit) from the newspaper after it runs. The library is listed in the yellow pages as: Durham Public Library, 78 Main St., Whitesboro, 736-9734. You must call them and ask if you can put the application there for public inspection in the reference dept. or wherever they think is most appropriate, but it should not be where anyone can just grab it and walk away with it. It is a good idea to put it in a manila envelope with spaces (lines) on the envelope so whoever wants to look at it must sign or give their name to the librarian.

NOTICE

On May 14, 1992, Kevin O'Kane filed an application with the Federal Communications Commission for a new FM broadcast station to operate on Channel 250 at Whitesboro, NY, with a power of 2.482 kW ERP, transmitter location at 269 Grace Rd., Deerfield, NY, and antenna height 154 meters above average terrain. A copy of the application and related materials is available for public inspection at Durham Public Library, 78 Main St., Whitesboro, during regular library hours.

April 1, 1992

Kevin O'Kane
Vernon, N.Y.

Upon FCC grant of Construction Permit to you to build an FM broadcasting station in Whitesboro, N.Y., we will lend you necessary financing up to the sum of \$100,000.00 to be used in connection with the construction of the FM station. The loan will bear an interest rate of ten per cent (10%) per annum, compounded annually. The terms of payment will be interest only for the first year; commencing thereafter monthly payments to amortize the loan plus interest over a period of ten years.

Robert J. Kane

Thomas E. Kane

Financial Statement
 Roger J. and Marian E. O'Kane
 114 23rd Street
 Surf City, N. J.

April 1, 1992

CASH - Checking Account	\$ 3143.00
MLP Cash Mgmt. Acct.	13539.00
COMMON STOCK (Market Value)	119,000.00
MUTUAL FUNDS	90,000.00
ANNUITIES (Cash value)	241,000.00
INSURANCE (Death benefits) (Cash value \$60,000.)	135,000.00
RESIDENCE (Market value - no liens)	240,000.00
	<u>\$ 841,682.00</u>

There are no outstanding liabilities
 except for current living expenses.

CERTIFIED CORRECT:

Roger J. O'Kane

Marian E. O'Kane

Shares or Bonds	Name of Security	In Name of	Name of Stock Exch.	Present Market Value	If Plans Same to VA
37.5	WFSX-TV UTICA, NY	HOWARD VALLEY BANK/STOCK INC		750,000	

Schedule C REAL ESTATE OWNED AND MORTGAGES

Parcel No.	Location	Type of Property	Title in Name of	Cost	Amount Applied	Out Acct
1	WESTMORELAND	HOME	KEVIN O'KANE	125,000	125,000	1979
2						

Are there any liens against any of the above property? _____
 Are there any mortgage payments, interest or taxes overdue? _____
 What are the annual real property taxes, if not included in the monthly payment? _____

SCHEDULE OF MORTGAGES ON REAL ESTATE

Parcel No.	Mortgage	Amount	Held By	Int. Rate	Maturity Date	Terms of Payment	Amount Overdue
1	1st	75,000	FAIRBANKS BANK	7.5%	2006	MONTHLY	
	2nd		BANK OF AMERICA				
2	1st		NY				
	2nd						

Schedule D LIFE INSURANCE

Face Amount	Name of Company	Beneficiary	Type of Policy	Cash Value	Loans Against

Are any of the above policies assigned except for loans as shown? _____

Schedule E OTHER NOTES AND LOANS PAYABLE

Nature of Debt	Lender	Original Amount	Present Amount	Maturity	Monthly Payment

Are you behind in any principal payments, interest or taxes? **NO**

STATEMENT TO BANK:

I/We make this statement (which includes any attachments) with the intent that you rely upon it in granting any credit at my/our request, or warrant that it is a complete and true statement as of today's date. I/We agree that all credit shall become due and payable immediately without or demand, if you discover any material misstatement or omission in this statement. You are authorized to obtain financial information from any or other sources you seek. Each source of financial information is authorized to provide you with the requested information.

The bank may request a consumer report in connection with my application or for a review or renewal of my account. If I request it, the bank inform me if a consumer report was requested, and will give me the name and address of the consumer reporting agency that furnished it.

Dated: **15 April 97**

Signature: **Kevin O'Kane**

X mixer used	\$ 15,000
ant, 2 bay used	2,500
line (new)	2,250
conn (new)	350
STL used	3,000
ant STL	800
line	1,000
conn	160
remote cont	1,500
console	1,000
2 turntable	600
2 cart mech	2,000
2 CD players	600
mic	200
carts	300
reel to reel	(owns)
bulk eraser	50
	<hr/>
	31,310

mixer	200
mic	200
turntable	300
cart mech	1,000
reel to reel	(owns)
	<hr/>
	1,700

staff + comm
 sales (T) ~~\$2400~~ 1200
 on air (S)
 full (SA) ~~4000~~ 4800
 pt time (S) 2880
 mainteng (self)
 mang (self)
 recap. ~~2400~~

~~7,288~~ 8880
 + 15% ~~2,592~~ 1332

~~19,872~~ 10,212

56,230 from other page

dish (own) ~~76,102~~ 66,442
 automation / 5,000
 emerg gas. 4,000
 600

\$ 80,702

@ 8%
 interest \$ 1520

\$76,042
 1520
\$77,562

EXHIBIT 2

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

FM Docket No. 93-264

In re Applications of)	
FRANK B. DUROSS)	File No. BPH-920512MC
NEW HORIZONS BROADCASTING PARTNERSHIP)	File No. BPH-920513MF
KENNETH F. ROSER, JR.)	File No. BPH-920513MI
KEVIN O'KANE)	File No. BPH-920514MK
For Construction Permit)	
for a New FM Station on Channel 250A)	
in Whitesboro, New York)	

To: Administrative Law Judge Joseph P. Gonzalez

INTEGRATION STATEMENT

Kevin O' Kane, applicant in the above-captioned proceeding, by his counsel, hereby submits his integration statement as required by the Commission's Rules.

The applicant is an individual. The 100% owner is Kevin O'Kane. Mr. O'Kane will be employed full-time as General Manager of the proposed station, devoting a minimum of 40 hours per week to his duties at the station. As General Manager, Mr. O'Kane will be responsible for day-to-day operations and supervision of all phases of the station, including all financial matters. Mr. O'Kane will terminate his present employment so as to permit him to devote full-time to operation of the station.

Mr. O' Kane is the 37.5% owner, President and General Manager of Mohawk Valley Broadcasting, Inc., licensee of WFXV-TV, Utica, NY. He is an applicant for a new TV station (BPCT-890629KE) in Ilion, NY. He is the licensee of several low-power

TV stations in the area, including: W11BS, W13BR, W28AQ, W53AM, the permittee of W12BZ, and an applicant for a new LPTV (Ch. 31) in Oneonta, NY. Mr. O'Kane will divest himself of all of the above interests (and any subsequently acquired interests) if he is the successful applicant in this proceeding.

Since May, 1990, Mr. O'Kane has resided at 3353 Jenkins Rd., Vernon, NY 13476, which is in a town contiguous to the town of the proposed community of license. From 1987 to 1990, he lived on Burleson Rd. in Munnsville, NY, which is within the 1 mv/m contour of the proposed station. Mr. O'Kane will seek credit for residence within a community contiguous to the community of license and residence within the service area. Further, Mr. O'Kane will move to Whitesboro should his application be granted.

Mr. O'Kane has devoted extensive amounts of his own time to civic activities within the service area and community of license. From 1987 to the present, he has produced local high school soccer, hockey, football & basketball games on television as a public service to the community. This included the Whitesboro high school team. These games were broadcast over WFXV-TV, Utica, NY. Mr. O'Kane devoted approximately 4 hrs. per week of his own time to this activity. Mr. O'Kane has also been involved with local charitable associations. In 1992, he produced a live telethon for the Association for Retarded Citizens in Utica, New York. He personally devoted approximately 6 hours to this activity. As an owner and General Manager of WFXV-TV, which operates within the service area of the proposed radio station, Mr. O'Kane has developed a keen awareness of the needs of the service area for which he seeks credit in this proceeding. His involvement in

the community through the management of a local television station dates from 1987 to the present. Projects include sponsorship of a fundraiser for the American Diabetes Association.

The past broadcast experience of Kevin O'Kane is as follows:

WCVM* - State University of NY at Morrisville
Program Director, 1973-1976
WOCC* - Onondaga Community College, Syracuse, NY
Announcer, 1976-1977
WJPS* - Syracuse University, Syracuse, NY
Announcer, 1978-1979
WABR-FM- Syracuse, University, Syracuse, NY
Announcer & Engineer, 1977-1981
WAQX-FM - Manlius, New York
Announcer & Tech. Asst. 1979-1982
WOLF - Syracuse, New York
Program Director, 1982-1984
Operations Director, 1984-1986
WFXV-TV - Utica, New York
President & General Manager, 1986-present

*carrier current

Mr. O'Kane holds the following degrees pertinent to owning and operating the proposed station:

A.A.S. in Business Administration
State University of New York at Morrisville

B.S. in Radio & Television
S.I. Newhouse School of Public Communications
Syracuse University, Syracuse, New York

The applicant also proposes to install auxiliary power generators at both the studio and transmitter sites and will participate as an active station in the Emergency Broadcast System.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

KEVIN O'KANE

/s/ James L. Oyster
By _____
James L. Oyster
Counsel

November 15, 1993

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing INTEGRATION STATEMENT by fax, on or before the 15th day of November, 1993, to the following:

J. Richard Carr, Esq.
Law Office of J. Richard Carr
5528 Trent Street
Chevy Chase, MD 20815
Counsel for Kenneth F. Roser, Jr.

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
Counsel for Frank B. Duross

/s/ James L. Oyster

James L. Oyster