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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of)	MM Docket No. 93-88
EZ COMMUNICATIONS, INC.)	File No. BRH-910401C2
For Renewal of License of FM Radio)	
Station WBZZ(FM) on Channel 229B)	
at Pittsburgh, Pennsylvania)	
ALLEGHENY COMMUNICATIONS GROUP,)	File No. BPH-910628MC
INC.)	
For Construction Permit for)	
a New FM Broadcast Station on)	
Channel 229B at Pittsburgh,)	
Pennsylvania)	

RECEIVED

DEC 21 1993

To: Honorable Edward Luton
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION TO ENLARGE ISSUES RE RENEWAL EXPECTANCY

Allegheny Communications Group, Inc. (Allegheny), by
counsel, hereby petitions for addition of the following
issues:

1. To determine whether EZ Communications, Inc. abused the Commission's processes and/or violated Sections 73.3588 and Section 73.3589 of the Commission's Rules in connection with the settlement of Cases No. GD88-02730 and GD89-22010, Court of Common Pleas, Allegheny County of Pennsylvania.
2. To determine in light of the evidence adduced pursuant to the foregoing issue the impact on the renewal expectancy of EZ Communications, Inc. for FM station WBZZ, Pittsburgh, PA.

In support whereof the following is shown.

This Petition arises from the Memorandum Opinion and Order (FCC 93-513) released herein by the Commission on

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December 6, 1993, and is filed within fifteen days of such ruling. In that ruling the Commission had before it an Application For Review filed by Allegheny, which, inter alia, sought a basic disqualifying issue against EZ Communications, Inc. for abuse of process. Such an issue had been denied in the subject Hearing Designation Order (HDO), EZ Communications, Inc., 8 FCC Rcd 2448 (Mass Media Bur. 1993). The Commission declined to review at this time the merits of whether an abuse of process issue should be added. However, the Commission (Opinion and Order, Par. 3) made clear that upon a prima facie showing, the Presiding Administrative Law Judge could consider such matters in the context of the renewal expectancy comparative criterion. The Commission stated:

"Thus, despite the HDO's finding that no basic qualifying issues are warranted concerning the allegations against EZ, we wish to emphasize that the ALJ has discretion to add issues, based on a prima facie showing by Allegheny that EZ has violated the Communications Act, or the Commission's rules or policy, for consideration in conjunction with the renewal expectancy determination to be made in this proceeding." (Citation omitted.)

Allegheny attempted to raise the matter with the proffer of its Hearing exhibits 11 and 12. At that time, (October 13, 1993) these Exhibits were rejected in part because of the staff ruling in the HDO, see Tr. 131-132. There is now the more recent ruling, not by the Mass Media Bureau but by the

Commission itself, holding that the HDO ruling was not dispositive as to renewal expectancy and specifically providing Allegheny an opportunity to make the requisite prima facie showing. This Petition, it is respectfully submitted, presents such a showing.

The abuse of process arose as the culmination of EZ conduct with respect to Ms. Liz Randolph, a former employee at WBZZ. As set forth in Allegheny Hearing Exhibits 3 and 4, it has been adjudicated that Ms. Randolph was subjected to sexual harassment and discrimination at WBZZ beginning in February 1986 and continuing until January 22, 1988, when she left the station. Ms. Randolph filed a grievance and an Arbitrator found in her favor, awarding her severance benefits, which opinion was upheld in Federal Court.

Ms. Randolph also instituted other actions. She filed a letter (attachment A hereto and Allegheny Hearing Ex. 11) dated April 27, 1989, to the Commission in which letter she stated would:

"...serve as formal notice regarding various acts of sex discrimination practiced by EZ Communications, Inc., the owner and operator of WBZZ-FM (Pgh., PA). I am also requesting that this letter be made part of the formal record in WBZZ's Applications Renewal Request."

Ms. Randolph also sued EZ Communications and its employees in the Court of Common Pleas, County of Allegheny,

Pennsylvania for defamation, intentional infliction of emotion distress, and invasion of privacy (Case No. GD88-02730). On February 14, 1990, the jury hearing the case entered a verdict in favor of Ms. Randolph and against EZ on the defamation and invasion of privacy counts and against Jefferson and Quinn on all three counts.¹ The jury awarded damages of \$694,204, which was slightly reduced by the Judge.

Ms. Randolph also filed a complaint with the Pennsylvania Human Relations Commission alleging violations of Pennsylvania law prohibiting sex discrimination. After receiving a right to sue letter from that agency, she commenced a second action in Pennsylvania state court (Case No. GD89-22010).

On May 24, 1991, EZ and Ms. Randolph entered into a settlement with respect to the state court actions - the first action, which was on appeal, and the sex discrimination case, which was still pending before the trial court. Attachment B (Allegheny Hearing Ex. 12) to this petition is a declaration from Lewis I. Cohen explaining his attempts to obtain information about the settlement with excerpts from the transcript of a hearing concerning the settlement.

At the hearing, the Judge noted:

"that this settlement encompasses the plaintiff withdrawing their letter of inquiry with the FCC.

¹ The Court entered a compulsory nonsuit on the intentional infliction of emotional distress count with respect to EZ.

"Further, the plaintiff agrees that she will not file a complaint with the FCC. She will not assist anybody in filing a complaint with the FCC. She will in no way directly or indirectly assist anybody in filing a complaint.

"Further, should she be subpoenaed, in the unlikely event some party that we don't know about files a complaint, she will refuse to testify on the grounds that the Court Order in this present case prohibits her; and, it is understood that if that Order doesn't prevent her, that that will not be a violation of this agreement.

"In other words, she will go as far as refusing to testify and saying that you'll have to get approval from Judge Musmanno who will not give approval. If somehow I'm overruled by some higher court, then understand that that's not a breach of the agreement. She has given her assurance that she will not do anything voluntarily in any way to cause you a problem with the FCC. I mean I don't know how much broader I can make it other than that."

EZ never submitted the settlement agreement to the Commission for its approval. It should be noted that settlement occurred May 24, 1991, just a few weeks before the deadline (July 1, 1991) for the filing of Petitions To Deny or complaints against the then-pending WBZZ renewal application. EZ's conduct raises a serious question as to whether EZ has violated Sections 73.3588 and 73.3589 of the Commission's Rules since the settlement agreement was never submitted to the Commission. In Section 73.3588 the Commission must pass upon any agreement for withdrawal of a petition to deny or an informal objection to a renewal application. Here, Ms. Randolph had filed a letter which she referred to as "formal notice" and "requesting that this letter be made part of the

formal record in WBZZ's Application Renewal Request." The transcript of the settlement conference makes clear that Ms. Randolph was to withdraw the objection.² Section 73.3589 of the Rules requires approval of agreements wherein one party agrees to refrain from filing a petition to deny or informal objection. Again, the settlement transcript makes clear that the agreement obligated Ms. Randolph from pursuing any such petition or objection. There was thus ample evidence in the specific words of the presiding Judge that the monetary settlement specifically and unequivocally required Ms. Randolph to withdraw her objection and not to file any further objection or challenge to the WBZZ renewal. There is thus a prima facie case of Rule violation.

It is also apparent that EZ intentionally structured a settlement designed to silence Ms. Randolph and to conceal information from the Commission. Thus, EZ paid Ms. Randolph to (1) withdraw her pending complaint with the Commission, (2) refrain from filing further pleading challenging EZ's qualifications, and (3) preclude her from testifying before the Commission, even in the face of a valid subpoena issued by

² As set forth in Attachment B, the Judge at the settlement conference stated:

"that this settlement encompasses the plaintiff withdrawing their letter of inquiry with the FCC."

"Further, the plaintiff agrees that she will not file a complaint with the FCC..."

the Commission. EZ was understandably concerned that if the sexual harassment and related matters were fully considered by an informed Commission it would jeopardize the WBZZ renewal.

It in fact is obvious that a principal if not primary purpose of the settlement was to obviate potential adverse impact of the adjudication on EZ's renewal application. Thus, the jury verdict was entered on February 14, 1990. No settlement occurred for over a year until shortly prior to the July 1, 1991 deadline for filing competing applications and petitions to deny. Moreover, the settlement occurred only shortly after the release of public notice of the adoption of Character IV which at least served to create uncertainty as to whether the Commission would view the defamation adjudication as irrelevant non-FCC misconduct. Report No. GN-73, released May 9, 1991 (Attachment C hereto).

The actions of EZ in obstructing the ability of both interested parties and the Commission to obtain information potentially relevant to its pending renewal application constitutes a clear abuse of the Commission's processes. The Commission's ability to assess whether the grant of an application would be consistent with the public interest standard prescribed by Section 309(a) of the Act is necessarily dependent on its ability to receive information from interested members of the public or to obtain information through its own investigative and hearing processes. There can be no more fundamental abuse of the Commission's processes

that for an applicant to attempt to obstruct both sources of information.

It is well-settled that it is an abuse of process for a party to attempt to induce, entice, coerce or otherwise improperly influence a witness or prospective witness in a Commission proceeding. Chronicle Broadcasting Co., 19 FCC 2d 240, 16 RR 2d 1014 rev. denied 23 FCC 2d 162, 19 RR 2d 204 (1970) (Chronicle); Harvit Broadcasting Corp., 35 FCC 2d 94, 24 RR 2d 352, 356-57 (Rev. Bd. 1972); Kaye-Smith Enterprises, 98 FCC 2d 675, 56 RR 2d 252, 258 (Rev. Bd. 1984). It is clear that EZ has both induced and coerced Ms. Randolph in an egregious manner. Thus, she has been paid not to testify even if subpoenaed by the Commission, subject to enforcement by the contempt power of a state court.

This abusive tactic is compounded by EZ's action in procuring the sealing of the record concerning the litigation. This tactic could have no purpose other than obstructing Commission and public inquiry into this matter. Thus, as reflected in Mr. Cohen's Declaration, the record was previously publicly available. Indeed, the sealing occurred well over a year after the trial. The sealing accordingly does not serve to maintain the confidentiality of matters that were never public knowledge. It merely operates to obstruct documentation at this juncture of matters long known to the public.

The foregoing actions are further abusive in that they unreasonably interfere with the rights of petitioners to deny or competing applicants with respect to EZ's pending renewal application. As reflected in Chronicle, a party has a right to reasonably investigate the qualifications of its opponent. 16 RR 2d at 1019. That right, however, becomes meaningless if an opponent has taken affirmative legal action to obstruct access to essential information, including public records. Actions which hinder public participation in the Commission's processes are contrary to the purpose of the Act to encourage such participation. Chronicle, supra; Fort Collins Broadcasting Co., Inc., 38 FCC 2d 707, 26 RR 2d 220, 225 (1972). Further, the settlement of the civil litigation between Ms. Randolph and EZ can provide no justification for erecting obstacles that are not designed to deter Ms. Randolph but are rather directed at other possible participants in Commission proceedings concerning EZ. Indeed, it is questionable whether a restriction even on Ms. Randolph's right to bring pertinent information to the Commission's attention could be squared with the public interest. WWOR-TV, Inc., 6 FCC Rcd 131 (ALJ 1991) at para. 64. It is wholly objectionable and abusive for a party to create obstructions under the guise of settling private litigation that are clearly intended to hinder participation in Commission proceedings by members of the public unrelated to the litigation.

All the foregoing amply demonstrates the need for this matter to be fully explored and considered in the context of renewal expectancy.

Respectfully submitted,

ALLEGHENY COMMUNICATIONS GROUP, INC.

By


Morton L. Berfield

Cohen and Berfield, P.C.
1129 20th Street, NW, #507
Washington, DC 20036
(202) 466-8565

Its Attorney

Date: December 21, 1993

LIZ RANDOLPH
314 Pennsview Court
Pittsburgh, PA 15205

April 27, 1989

EEO Branch
FCC
1919 M. Street N.W.
Room 7218
Washington, D.C. 20544

ATTENTION: Glenn Wolfe

Dear Mr. Wolfe:

Please allow this letter serve as formal notice regarding various acts of sex discrimination practiced by EZ Communications, Inc., the owner and operator of WBZZ-FM (Pgh., PA). I am also requesting that this letter be made part of the formal record in WBZZ's Application Renewal Request.

I am a newscaster with eleven (11) years experience. To make my story brief, I worked for WBZZ for two (2) years, eight (8) months. During the last two years of my tenure I was subjected, at various times to sexist, degrading on air comments by two male disc jockeys with whom I worked in the capacity of News Director.

These "humorous" statements implied that I am promiscuous, have sexually transmitted diseases, and have engaged in oral sex with large numbers of persons.

I complained about these attacks to the jocks involved, Jim Quinn and "Banana" Don Jefferson. I also complained at various times to the management of WBZZ but to no avail. They, meaning management and the jocks, were fully aware that these comments were affecting my ability to do my job by inducing panic attacks on the air; yet, the statements continued. In fact, after being hospitalized for this condition, when I returned to work, not only did the sexual comments continue, but Quinn and Banana (with the knowledge of management) started referring to my treatment on the air.

April 27, 1989

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Quinn and Banana's comments were often prerecorded - meaning the "jokes" which named me specifically were premeditated. Sworn testimony, which is enclosed, indicates that management and the jocks thought these comments "fair". The enclosed evidence also shows that they targeted me because I am a single woman. I must stress that these comments were clearly directed at me because of my sex (female), and would not have been considered "humorous" if directed at a man. Several listeners who heard these themes have written to me in disgust. One woman says, "It's difficult to imagine a man in a similar situation", with men adding that they found the comments misogynistic, sexist, and degrading.

The final straw in this series of ongoing discriminatory attacks came January 22, 1988. On that date, Quinn and Banana aired a pre-taped segment which named me specifically. The comment sought to convey the idea that I engage in so much oral sex and was so proficient in that regard, that I have a tattoo on my head which reads, "Don't pull on my ears, I know what I'm doing". Jim Quinn told me in advance on that day that something about me was about to be aired. I did not hear the comment air, but when it was played back to me afterwards, I became terribly upset, so much that I was unable to complete my final two newscasts. The station fired me a week later for alleged flagrant neglect of duty. I filed and won a union grievance for severance pay. The Arbitrator's Decision is enclosed for reference and I ask you to incorporate it in the renewal proceedings. WBZZ has appealed the ruling to Federal Court. A decision is due soon.

In addition, I have filed civil litigation against EZ Communications, Inc. alleging defamation, wrongful discharge, intentional and negligent infliction of emotional distress, and invasion of privacy. I have also filed a charge with the Human Relations Commission alleging sex discrimination under Pennsylvania law. Copies of the Complaint and charge are also enclosed.

In defense of their misconduct, WBZZ has alleged that I am trying to control their programming. This is not true - I am simply trying to stand up for my rights. No one, male or female, should be subjected to, and fired for, such blatant discrimination. The facts are that I was subjected to premeditated, outrageous attacks which named me specifically, and which were directed at me because I am a woman. When I protested and said that I would not tolerate being the target of such abuse, I was fired.

April 27, 1989
Page 3

What action can I now take to have WBZZ's License Renewal Application put on hold until this matter is resolved? In my opinion and the opinion of knowledgeable persons in this business, these comments have nothing to do with programming in the public's interest, convenience and necessity. Not only are the comments discriminatory against women, but one wonders whether they belong in "morning drive", a time when many children are listening. WBZZ is the station of choice for a majority of teenagers in the Greater Pittsburgh Market. The ratings show this. Many parents have told me that they have written the station and the FCC about this situation. I assume these letters are a part of the public file and will be taken into consideration during the FCC's license renewal process.

Again, please advise as to what further action I might take. I have enclosed the following documents for your files, which are not for further dissemination without my prior written authorization:

<u>Exhibit</u>	<u>Reference</u>
"A"	January 22, 1988 letter from Samuel P. Kamin to EZ Communication's President Alan Box and WBZZ General Manager, Tex Meyer
"B"	Amended Civil Complaint
"C"	Pennsylvania Human Relations Commission Complaint
"D"	Depositions: Quinn pages 38-39, 75-88, 93-93; Jefferson pages 44-70; Meyer page 21; Mallinger pages 140-145
"E"	Arbitrator's Decision
"F"	Press articles and letters

Thank you very much for your time and consideration.

Very truly yours,

LIZ RANDOLPE

LR:msb
Encs.

DECLARATION

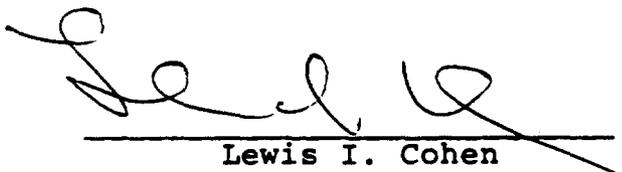
Lewis I. Cohen hereby declares under penalty of perjury that the following is true:

On June 7, 1991 I attempted to review the files in the Office of the Prothonotary in the Court of Common Pleas in Pittsburgh, Pennsylvania of the following two actions: G.D. 88-02730 and G.D. 89-22010. As part of the file there was included an envelope which was sealed. I asked an employee of the Clerk's Office named Terry Sands whether I could review the contents of the envelope. Mr. Sands checked with another person, and then opened the envelope for me and handed me the transcript of the May 24, 1991 hearing before Judge John L. Musmanno. I asked Mr. Sands if I could xerox the transcript. He told me that was not permitted, but that I could make whatever notes I wanted of the transcript. I then copied the transcript verbatim except for that portion dealing with mutual releases. Attached hereto is a typewritten copy of the text from those verbatim notes.

Prior to the sealing of the record ordered at the settlement conference, I had inspected the record and obtained copies of a number of documents, including the Amended Complaint in GD88-02730; the Complaint and Amended Complaint in GD89-22010; the jury verdict in GD88-02730 and accompanying Interrogatories; the Court's August 17, 1990 Order disposing of Defendants' Motion For

Post Trial Relief; the transcript of a February 13, 1990 trial session in which jury charges were given; and a portion of the trial transcript indexing the testimony and exhibits contained in the record. I did not obtain copies of such testimony or exhibits since I assumed that they were part of a public record that would still be available at such time as any documents became necessary.

26 JUNE 1991
DATE


Lewis I. Cohen

Transcript of May 24, 1991 11:30 a.m.
Hearing in Chambers

The Court:

Let the record reflect that we are in Chambers, that we have been discussing settlement, and the case has been resolved.

Present in Court are the plaintiff, with her counsel Howard Louik, the defendant's counsel, Terrance Murphy, Allan Andrascik, Edward Meyers, General Manager of WBZZ and Allan Box, President of EZ Communications.

Both sides have agreed that the amount of settlement will be absolutely confidential. It will not be discussed in any sort of range, whether it be one figure, two figures or 50 figures.

There will be no inkling whatsoever of the range of the settlement other than the parties are permitted to say to anybody that the case was amicably resolved. Both parties are pleased with the settlement. It ends many years of potential litigation. Other than that they will say nothing about it.

The plaintiffs will settle and discontinue the present action G.D. 89-22010.

The plaintiff will also settle and discontinue the prior action G.D. 88-02730.

Further, that this settlement encompasses the plaintiff withdrawing their letter of inquiry with the FCC.

Further, the plaintiff agrees that she will not file a complaint with the FCC. She will not assist

anybody in filing a complaint with the FCC. She will in no way directly or indirectly assist anybody in filing a complaint.

Further, should she be subpoenaed, in the unlikely event some party that we don't know about files a complaint, she will refuse to testify on the grounds that the Court Order in this present case prohibits her; and, it is understood that if that Order doesn't prevent her, that that will not be a violation of this agreement.

In other words, she will go as far as refusing to testify and saying that you'll have to get approval from Judge Musmanno who will not give approval. If somehow I'm overruled by some higher court, then understand that that's not a breach of the agreement. She has given her assurance that she will not do anything voluntarily in any way to cause you a problem with the FCC. I mean I don't know how much broader I can make it other than that.

The Court:

Further, the parties agree that the record on appeal at G.D. 88-02730, the parties agree that the entire record will be sealed by Court Order, including transcripts of testimony, any pleadings, documents filed, any briefs, letters that were attached as exhibits to those briefs or records. All will be sealed by Court Order.

[There follows a discussion concerning the Court's Order concerning mutual releases.]

The Court:

The parties further agree that as part of the agreement they intend to execute, that there will be a mutual non-disparagement clause and.....

Mr. Kamin:

A statement in the release that the objected to conduct by Ms. Randolph was not that of management but that of co-workers or co-employees.

The Court:

An essential consideration of this settlement agreement is the need for confidentiality on both sides. Accordingly, it's to be understood by both parties should there be any breach of the confidentiality provisions, that the Court will then entertain a contempt action against the breaching party. In other words, any breach of this agreement will involve a contempt citation.

Mr. Kamin:

Defendants will pay record costs.

The Court:

All the parties were present during the discussion of the terms, and for the record Ms. Randolph, do you agree to the settlement?

Ms. Randolph:

Yes, I do.

The Court:

Mr. Louik?

Mr. Louik:

I do.

The Court:

Mr. Kamin?

Mr. Kamin:

Yes sir.

The Court:

On behalf of the defendant Mr. Box, the President,
do you agree?

Mr. Box:

Yes, I do.

The Court:

Mr. Meyer, do you agree?

Mr. Meyer:

Yes.

The Court:

Mr. Murphy?

Mr. Murphy:

I do.

The Court:

Mr. Andrascik?

Mr. Andrascik:

I do.



NEWS

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

ATTACHMENT C

News media information 202 / 632-5050
Recorded listing of releases and texts
202 / 632-0802

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v FCC 515 F 2d 385 (D.C. Cir. 1975)

13022

Report No. GN-73

GENERAL ACTION

May 9, 1991

FCC MODIFIES 1990 POLICY STATEMENT AND ORDER CONCERNING CHARACTER QUALIFICATIONS OF BROADCAST LICENSEES/PERMITTEES

The Commission has modified its 1990 Policy Statement and Order regarding character qualifications of broadcast licensees and permittees by easing the reporting burden imposed on licensees, and clarifying the reporting requirement.

Under the amended rules, all broadcast permittees and licensees must report to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with any application for renewal. Such reports must be filed within 90 days of the date the permittee or licensee becomes aware of any such reportable adverse findings or adverse final actions not previously reported to the Commission. Currently, licensees are required to file such reports within 30 days of the relevant adjudication. The Commission stated that permittees and licensees bear the obligation to make reasonable, good faith efforts to become knowledgeable of any such reportable adjudicated misconduct.

The Media Access Project (MAP) and Telecommunications Research and Action Center (TRAC) asked the Commission to further expand the range of relevant misconduct and the scope of matters that must be reported to include all civil judgments involving misrepresentation, whether or not the misrepresentation is made to a governmental unit. They also asked that the Commission consider convictions for non-serious as well as serious misdemeanors.

Additionally, Chronicle Broadcasting Co., Post-Newsweek Stations, Inc., The Providence Journal Company, Shenandoah Valley Educational Television Corporation, and the Spartan Radiocasting Company (Joint Petitioners) asked the Commission to ease the reporting burden imposed on licensees and to clarify the reporting requirements. Its request was granted, in part.

With respect to MAP and TRAC, the Commission declined to expand the reporting requirements of licensees. As to civil matters, the Commission expressed continued belief that judgments relating to fraudulent representations to a governmental unit or mass media related violations of antitrust or anticompetitive laws bear most directly on an applicant's qualification to be a broadcast licensee.

(over)

The Commission recognized that some civil misrepresentations not involving governmental units may be relevant to a broadcaster's character qualifications. However, the Commission said that based on its experience, the category of civil misrepresentation is too broad to be presumptively relevant to a broadcaster's qualifications. It may, however, consider such matters on a case-by-case-basis.

Action by the Commission May 1, 1991, by Memorandum Opinion and Order (FCC 91-146). Commissioners Sikes (Chairman), Quello, Marshall, Barrett, and Duggan.

-FCC-

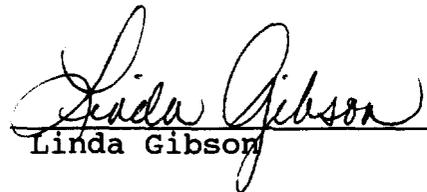
News Media contact: Patricia A. Chew at (202) 632-5050.

CERTIFICATE OF SERVICE

I, Linda Gibson, do hereby certify that on the 21st day of December 1993, a copy of the foregoing "Petition To Enlarge Issues Re Renewal Expectancy" was sent first-class mail, postage prepaid to the following:

Paulette Y. Laden, Esq.*
Robert A. Zauner, Esq.
Hearing Branch
Federal Communications Commission
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Counsel for EZ Communications, Inc.


Linda Gibson

*HAND-DELIVERED