

cc received November 8, 1993 at
1000 10th Street

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

RECEIVED

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

NOV 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

EZ COMMUNICATIONS, INC.
and

MM DOCKET NO. 93-88

ALLEGHENY COMMUNICATIONS GROUP, INC.

Pittsburgh, Pennsylvania

DATE OF HEARING: October 27, 1993

VOLUME: 5

PLACE OF HEARING: Washington, D.C.

PAGES: 293-349

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap (410) 974-0947

NOV 18 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In re Applications of:
EZ COMMUNICATIONS, INC.
and
ALLEGHENY COMMUNICATIONS GROUP, INC.
Pittsburgh, Pennsylvania

MM DOCKET NO. 93-88

The above-entitled matter come on for hearing pursuant to Notice before Judge Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3 on Wednesday, October 27, 1993 at 9:30 a.m.

APPEARANCES:

On behalf of EZ Communications, Inc.:

HERBERT D. MILLER, JR., Esquire
RAYNER KRAUS, Esquire
Koteen & Naftalin
1150 Connecticut Avenue
Washington, D.C. 20036
(202) 467-5700

On behalf of Allegheny Communications Group, Inc.:

MORTON L. BERFIELD, Esquire
Cohen and Berfield, P.C.
Board of Trade Building
1129 20th Street, N.W.
Washington, D.C. 20036
(202) 466-8565

On behalf of the Mass Media Bureau:

ROBERT ZAUNER, Esquire
Y. PAULETTE LADEN, Esquire
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

		I N D E X			
	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
4	ALAN BOX				
5	By Mr. Kraus	295			
	By Mr. Berfield		307		
6	By Mr. Zauner		324		
7	ARTHUR KELLAR				
8	By Mr. Kraus	335			
	Mr. Berfield		336		
9	Mr. Kraus			344	
10					
11		<u>E X H I B I T S</u>			
12	<u>EZ Exhibits</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	
13	Exhibit No. 12A	305	305		
14					
15	<u>Allegheny Exhibits</u>				
16	Exhibit No. 26	320			
17	Exhibit No. 27	338	340		
18					
19					
20					
21					
22					
23					
24	Hearing Began: 9:30 p.m.		Hearing Ended: 1:40 p.m.		
25	Break Began: 10:35 a.m.		Break Ended: 1:15 p.m.		

P R O C E E D I N G S

1
2 JUDGE LUTON: -- preliminary matters today. I see a
3 Motion to Enlarge Issues.

4 MR. KRAUS: Yes, Your Honor. EZ is filing it that
5 morning.

6 JUDGE LUTON: All right. And we begin with Mr. Box
7 today.

8 MR. KRAUS: Yes, sir. Take the stand.
9 Whereupon,

10 ALAN BOX

11 was called as a witness and, after having first been duly
12 sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

13
14 BY MR. KRAUS:

15 Q Mr. Box, would you give your name and home address
16 for the record?

17 A It's Alan Box. The address is 5028 Oakcrest Drive
18 in Fairfax, Virginia.

19 Q Mr. Box, have you reviewed Exhibits 4, 6, 9 and 11
20 which have been previously submitted -- admitted and signed by
21 you and do they appear to be correct?

22 A Yes, I have and they are.

23 Q Have you reviewed what has been identified as WBZZ
24 Exhibit No. 12?

25 A Yes, I have.

1 Q Is that exhibit correct?

2 A Yes, it is.

3 MR. KRAUS: Your Honor, I move the admission into
4 evidence of Supplementary Exhibit 12 which was, in effect,
5 requested by Allegheny to back up No. 11.

6 JUDGE LUTON: Any objection?

7 MR. BERFIELD: I have voir dire first. Then I will
8 have objections, Your Honor.

9 JUDGE LUTON: All right.

10 BY MR. BERFIELD:

11 Q Mr. Box, with respect to Exhibit 12 on page 2 and
12 -- page 1 and 2 where you've listed the financial data there,
13 first of all, did you prepare that information?

14 A No, sir, I did not.

15 Q And that information was given to you by some other
16 party? Is that correct?

17 A That's correct.

18 Q And what other party gave you the information?

19 A It was Signature Broadcasting, the licensee of the
20 station.

21 Q Are you an accountant and a CPA?

22 A No, I'm not.

23 Q Do you know who personally prepared this -- these
24 financial figures on your pages 2 and 3?

25 A No, I do not.

1 Q Do you know -- well, do you know how long station
2 -- these financial figures relate to a station that operates
3 on 100.7 FM frequency in Pittsburgh? Is that correct?

4 A That's correct.

5 Q And at the top it says the call letter of WMXP? Is
6 that correct?

7 A Correct.

8 Q And have those call letters been changed?

9 A Yes, they have.

10 Q To what?

11 A WQKB.

12 Q All right.

13 MR. BERFIELD: Your Honor, I'm going to object to
14 this exhibit first -- on a number of grounds. First, on page
15 12 the reference on the first page to the financial
16 information and to the financial information --

17 JUDGE LUTON: Page 12. Which --

18 MR. BERFIELD: I'm sorry. Exhibit 12, page 1. In
19 paragraph 1 there's a reference to the financial information.
20 I'm objecting to that paragraph reference. And then, more
21 basically, I'm objecting to the next two pages which are
22 financial data that was not prepared by this witness, by Mr.
23 Box. It was prepared by some -- someone else, some unknown
24 parties, and I object that -- first of all, on the grounds of
25 competence. We don't have a competent witness to, to cross-

1 examine on these, on these figures. I mean, this was prepared
2 by some other licensee, some person we don't, we don't know.
3 And, furthermore, it -- I would note that it only pertains to
4 certain years, '92, '91. There's no indication of, of early
5 years. And I don't see the -- first of all, I don't see the
6 competence of it and I don't see the relevance or materiality
7 either. But I would object to it on that basis.

8 MR. KRAUS: Your Honor, may I respond?

9 JUDGE LUTON: Yes, sir.

10 MR. KRAUS: If every financial exhibit had to be
11 introduced solely by the accountant who prepared it, it would
12 certainly make -- reports throughout the country. Mr. Box
13 received this information in the ordinary course of business
14 in connection with EZ's proposed purchase of what is now WQKB.
15 EZ is -- and he is entirely competent to testify not
16 necessarily to the whole total accuracy of the figures, but to
17 testify that this is what he received and this is what he
18 understands to be accurate. And there is nothing in this
19 document which is incompetent. If Mr. Berfield thinks that
20 Mr. Box is an incompetent witness, let him demonstrate that
21 with cross-examination.

22 JUDGE LUTON: Well, the problem is in getting it in
23 in the first place. The burden isn't on Allegheny to do any
24 more than it's done and that is to object. My impression is
25 that Mr. Box, insofar as this exhibit is concerned, is simply

1 a conduit. He takes no responsibility for the accuracy of
2 anything in there. Mr. Kraus said something about Mr. Box has
3 the belief in the accuracy of what's submitted. Well, why?
4 On the basis of what? Simply because he received the paper?

5 MR. KRAUS: No. I wouldn't have said that he has a
6 total confidence in the accuracy of what was submitted. What
7 -- in this proceeding Mr. Berfield is the one who asked what
8 we had relied on in making the statement that WMXP was losing
9 money, and I can't give you anything except what we, in fact,
10 relied on which is this document. And if Mr. Berfield doesn't
11 like the document, I guess that's too bad. Your Honor
12 certainly isn't required to admit it, but we were simply
13 trying to respond to his request for an opportunity to test
14 --

15 JUDGE LUTON: Okay.

16 MR. KRAUS: -- the accuracy of, of Mr. Box's
17 statement in Exhibit 11.

18 JUDGE LUTON: All right. And Mr. Berfield, even
19 though he asked for it, as you say, he still doesn't like it.
20 He doesn't like it as, as part of the evidentiary record.

21 MR. BERFIELD: Let me explain, Your Honor. I don't
22 think it's competent and, depending on your ruling, I'm going
23 to then move that we strike. You know, when Exhibit 11 where
24 they made these broad statements were admitted we didn't have
25 a witness there and it was subject to their attempting to show

1 that those statements in Exhibit 11 were, were bolstered by
2 something other than their broad statements.

3 JUDGE LUTON: All right. I just don't think it's
4 enough to have a witness here who tells us only that this is
5 something that he received from some place. That isn't good
6 enough. In my estimation the witness is incompetent to give
7 this testimony. He's not been shown to be competent to give
8 this testimony. As I said at the outset, he seems to be
9 serving solely as a conduit for some information prepared by
10 someone else. He's not in a position to vouch for the
11 accuracy of what's stated or anything else concerning the
12 document other than the fact that he received it and he
13 believes it to be accurate. Presumably he believes it to be
14 accurate. I haven't heard the witness say this. I've heard
15 Mr. Kraus say this. In any event, I don't think that
16 sufficient basis for admissibility has been shown and I'm
17 rejecting 12.

18 MR. KRAUS: In toto?

19 JUDGE LUTON: Yes. Well, those portions --

20 MR. KRAUS: Including the --

21 JUDGE LUTON: Excuse me. Those portions only that
22 have been objected to specifically. That was the first
23 paragraph --

24 MR. KRAUS: Right.

25 JUDGE LUTON: -- on page 1 plus the following two

1 pages.

2 MR. BERFIELD: That's correct, Your Honor. Now I'm
3 going to object to the remainder of the exhibit.

4 JUDGE LUTON: Well now, you make this difficult.
5 I'm -- how do I, how do I rule here? 12 is offered as a
6 package and you objected only to a portion of it. You've
7 gotten a ruling with respect to that portion.

8 MR. BERFIELD: Well, no, well, no, I -- I'm sorry.
9 I didn't intend to be that -- I had voir dire. The next
10 questions don't relate to voir dire. I mean, they're --

11 JUDGE LUTON: I've gotten lost here. Go ahead.

12 MR. BERFIELD: Okay.

13 JUDGE LUTON: I'll clean it up afterwards.

14 MR. BERFIELD: Okay. Well, the voir dire related to
15 the financial information on which you ruled. The rest -- the
16 remainder of the exhibit is this engineering showing by the
17 consulting engineer and it purports to show the areas covered
18 by various FM broadcast stations in the Pittsburgh market,
19 including WQKB. Now, my objection here is not on the basis of
20 competence, and this witness isn't sponser, isn't sponsored on
21 the grounds of relevance and materiality. They are attempting
22 -- first of all, this relates only to area. There's no
23 population count and so you can't tell from this exhibit what
24 the pertinent population figures are. The areas of
25 differential appear to be in outlying areas. But beyond,

1 beyond that, it seems to me -- I object that there's no
2 relevance and materiality in nexus here. They're attempting
3 to claim, one, that QKB is a failing station and that --
4 they're also -- now they're attempting to claim it's failing
5 somehow because of this perceived coverage deficiency and
6 there's been no nexus shown. First of all, we don't have
7 information in the record as to a failing station but, more
8 importantly, there's no nexus shown between their coverage and
9 any perceived competitive disadvantage that they might have.
10 Again, it's, it's not coming from anyone connected with WQKB
11 or its prior operation, but from EZ, so I would object on
12 those grounds to the remainder of the exhibit which consists
13 of this engineer.

14 MR. KRAUS: Your Honor?

15 JUDGE LUTON: What is this -- no. Let me understand
16 here first, please. There's no nexus between what? Would you
17 state that nexus argument again for me?

18 MR. BERFIELD: There's no nexus between what they're
19 attempting to show, that this station is at a competitive
20 disadvantage because of a, of a perceived lack of coverage in
21 outlying areas. In other words, all this exhibit shows is
22 that some Pittsburgh stations have a 1 MVM contour that
23 extends out further than does QKB.

24 JUDGE LUTON: You mean the exhibit doesn't go far
25 enough or doesn't complete the circle, that way?

1 MR. BERFIELD: That's right. I think in that
2 respect it's irrelevant and immaterial, yes.

3 JUDGE LUTON: Well, must it? Does it have to be?
4 Are we not -- that might be a matter of argument?

5 MR. BERFIELD: You mean as a matter of weight?

6 JUDGE LUTON: Yeah, matter of -- yeah, about whether
7 -- yeah. I suppose.

8 MR. BERFIELD: Well, that obviously could be
9 possibly -- but really I'd like to preserve my position --

10 JUDGE LUTON: All right.

11 MR. BERFIELD: -- that's it so, so slight and so
12 tangential and collateral that it shouldn't be admitted into
13 the record.

14 JUDGE LUTON: All right. Now, please respond.

15 MR. KRAUS: Your Honor, this case is one of first
16 impression. It's the first time any judge or the Commission
17 has been faced with the question of what impact, if any, the
18 fact that a renewal applicant was filed against by a third
19 party who has taken advantage of the Commission's rules and
20 has in operation either a second FM or, in our case at the
21 present time -- since Mr. Berfield has filed a petition to
22 deny the assignment application, what impact that has on our
23 comparative qualifications and -- under the diversification
24 criteria. As I said again in an earlier session, we have
25 attempted to show with Mr. Box that at the very least WQKB

1 meets the Commission's goals for a duopoly to the extent that
2 the Commission was hopeful that allowing a stronger station in
3 the market to acquire a new station that was in poor condition
4 would preserve the service of that weak station. In fact,
5 WQKB is the only station in the -- FM station in the community
6 of New Kensington, Pennsylvania and, as our exhibit shows
7 dramatically, it has substantially inferior coverage to every
8 other FM station in the central Pittsburgh market which it
9 shares. That makes it, of course, difficult to compete, not
10 impossible, but very difficult. And we think that we are
11 entitled to show or attempt to show or at least have in the
12 record that the station is or has been competing with its
13 hands tied behind its back because of its technical
14 facilities.

15 JUDGE LUTON: Well, I'm going to receive what's left
16 of 12, that consisting of the statement of Herman Hurst.
17 That's the remainder of the document --

18 MR. KRAUS: Yes, Your Honor.

19 JUDGE LUTON: -- the maps -- including the maps and
20 the table, Table 1. You might want to say that 12 is received
21 in part and rejected in part. We're going to say that 12 is
22 rejected, as I already have, and then I'm going to renumber --
23 I'm going to separate the statement of Herman Hurst and the
24 associated materials and call it 12A, and 12A is received,
25 whereas 12 is rejected.

1 (The document that was referred
2 to as WBZZ Exhibit No. 12A was
3 marked for identification and
4 received into evidence.)

5 JUDGE LUTON: Okay, proceed.

6 BY MR. KRAUS

7 Q Mr. Box, were you responsible or did you participate
8 in the negotiation for the purchase of WQKB?

9 A Yes, I participated in that purchase.

10 Q And what position did you hold with respect to that
11 negotiation?

12 A I guess it would be best characterized as I was the
13 chief negotiator of that.

14 Q And in the course of that negotiation did you
15 receive information from any source, not including the
16 information which has been rejected as the original EZ Exhibit
17 12, about the financial condition of WQKB?

18 MR. BERFIELD: Objection, Your Honor. I mean, he
19 had an opportunity to present his direct case. He presented
20 it and now he's presented financial information which you've
21 ruled out, so he's now trying to get it in the back door.
22 Objection.

23 JUDGE LUTON: This question was just whether he
24 received -- I'm going to permit an answer to that. Did you
25 receive any such information? You can answer that.

1 WITNESS: Yes, I did receive information regarding
2 the financial condition of WMXP at the time.

3 MR. KRAUS: And from whom did you receive that
4 information?

5 MR. BERFIELD: Objection, Your Honor.

6 JUDGE LUTON: Understood. Overruled.

7 WITNESS: I received it from the licensee.

8 MR. KRAUS: And what was the gist -- what was the
9 substance of that information in terms of profitability of the
10 station?

11 MR. BERFIELD: Objection, Your Honor. Now he's
12 getting into --

13 JUDGE LUTON: All right.

14 MR. BERFIELD: -- the substance.

15 JUDGE LUTON: You certainly are. Why was -- is this
16 -- why was this information not offered instead of 12A which
17 was prepared by some unknown person?

18 MR. KRAUS: Your Honor, it was offered in Exhibit 11
19 and Mr. Berfield wanted backup material so we gave him backup
20 material. It has been offered. It's been offered and
21 accepted into evidence.

22 JUDGE LUTON: It's already in evidence, you say?

23 MR. KRAUS: Yes.

24 JUDGE LUTON: Well then, we don't need this again,
25 do we?

1 MR. KRAUS: No, sir. I withdraw the question. Mr.
2 Box is available for cross-examination.

3 MR. BERFIELD: Thank you.

4 CROSS-EXAMINATION

5 BY MR. BERFIELD:

6 Q Mr. Box, have you ever resided in Pittsburgh,
7 Pennsylvania?

8 A No, I have not.

9 Q Now, I wonder if you -- do you have a copy of your
10 exhibits in front of you? I'm particularly now turning my
11 attention to Exhibit No. 6.

12 A Yes, I do.

13 Q And with respect to this first station listed there,
14 KRAK-AM in Sacramento, do you know what the power of that
15 station is?

16 A Yes, sir. That's a 50 kW AM.

17 JUDGE LUTON: Excuse me. Tell me what -- which
18 exhibit are you examining?

19 MR. BERFIELD: I'm sorry. This is their -- WBZZ
20 Exhibit No. 6.

21 JUDGE LUTON: All right. Okay. Go ahead.

22 BY MR. BERFIELD:

23 Q Let's see. KRAK-AM in Sacramento is a 50 kilowatt
24 station?

25 A That's correct.

1 Q And does that operate full-time?

2 A Yes, it does.

3 Q And KRAK-FM, could you tell me what class FM station
4 that is?

5 A It's a Class B FM.

6 Q Then with respect to station KQBR-FM, Sacramento,
7 what class FM station is that?

8 A It's a Class A.

9 Q With respect to your next ownership there, KMPS-AM
10 in Seattle, could you tell me the power and whether or not
11 that's a full-time station?

12 A It is a full-time station and I believe it is a
13 Class C FM.

14 Q I'm sorry. On the AM?

15 A The AM is a, is a 5 kW AM and it is full-time.

16 Q And the FM is a Class C?

17 A I believe so.

18 Q And I'll ask the same question as to the
19 classification of KYKY, St. Louis.

20 A It's a Class C FM.

21 Q Of course we know about WBZZ-FM here. And then
22 WIOQ-FM, Philadelphia?

23 A It's a Class B.

24 Q WEZB-FM in New Orleans?

25 A It's a Class C.

- 1 Q Then WMXC? It's an FM station in Charlotte.
- 2 A That's correct. It's a Class C.
- 3 Q And then WSOC-FM?
- 4 A It's a Class C.
- 5 Q Thank you. Now, as of September 3, 1991, September
6 3, 1991, EZ owned other broadcast stations, did it not, that
7 do not appear on this list?
- 8 A That's correct.
- 9 Q And is it -- it's correct, is it not, that as of
10 September 3, 1991 EZ owned two stations in Phoenix, Arizona?
- 11 A Yes, sir.
- 12 Q And one of those stations was KMXV, an FM station?
- 13 A It was KMXX.
- 14 Q KMXX. And do you know what class station of FM that
15 was?
- 16 A That was a Class C.
- 17 Q And also as of September 3, 1991 EZ owned an AM in
18 Phoenix? Is that correct?
- 19 A That's correct.
- 20 Q Was that KISP?
- 21 A Correct.
- 22 Q And do you know what power that station was?
- 23 A I believe it is 5 kW.
- 24 Q Was it full-time?
- 25 A It's full-time.

1 Q And those Phoenix stations were sold by EZ on or
2 about June of 1992? Is that correct?

3 A That's correct.

4 Q Now, as of September 3, 1991 EZ also owned stations
5 in Jacksonville, Florida? Correct?

6 A Correct.

7 Q And as of that date there was an FM station, WKQL in
8 Jacksonville? Is that correct?

9 A Yes, that's correct.

10 Q Was that a -- do you know what class of FM that was?

11 A It was a Class C.

12 Q And there was ownership of an AM station in
13 Jacksonville, was there not, WOKV?

14 A Correct.

15 Q And what was the power of that station?

16 A My recollection is that it was 10 kW.

17 Q Was it full-time?

18 A It was full-time.

19 Q And those Jacksonville, Florida stations were sold
20 by EZ on or about August of 1992?

21 A Correct.

22 Q Then in -- as of September 3, 1991 EZ also owned a
23 station in the Miami, Florida area, did it not?

24 A It did.

25 Q And that was station WHQT?

1 A Correct.

2 Q Was that an AM or FM?

3 A It was an FM.

4 Q And what class was that?

5 A Class C.

6 Q And that was divested by EZ in about December of

7 '92?

8 A Correct.

9 Q Now, other than the stations listed in your Exhibit
10 6 and the ones that we've just discussed, Phoenix,
11 Jacksonville and Miami, as of September 3, 1991 did EZ have
12 any other broadcast properties, broadcast stations?

13 A No, it did not.

14 Q Now, in your Exhibit 6, paragraph 3, with reference
15 to the stations to be acquired, in St. Louis KUSA is an AM.
16 What power is that station?

17 A It's 5 kilo.

18 Q And is it full-time?

19 A Yes, it is.

20 Q And the St. Louis FM station to be acquired, KSD-FM,
21 what class FM is that?

22 A It's a Class C.

23 Q Now, also you indicate that EZ or an EZ subsidiary
24 proposes to sell KQBR in Davis. I assume that's the same one
25 as listed up there as being Sacramento. Is that correct?

1 A Correct.

2 Q And the purchase KNCI-FM in Sacramento, what class
3 FM station is KNCI?

4 A It's Class B.

5 Q With respect to KQBR, when was that station acquired
6 by EZ?

7 A It was acquired about June or July of this year?

8 Q June or July of '93?

9 A Correct.

10 Q Now, sir, in your exhibit you indicate that in
11 connection with these proposed acquisitions you just discussed
12 in St. Louis and Sacramento that -- first of all, that you
13 propose to enter into a Sales and Services Agreement with
14 respect to the Sacramento station, KNCI. Has that been
15 entered into yet?

16 A Yes, it has.

17 Q What was the effective date of that?

18 A I believe it was October 4th.

19 Q And you say a Sales and Services Agreement. Is that
20 the same as or different than the Local Marketing Agreement?

21 A It's different from a Local Marketing Agreement.

22 Q Could you explain? I'm just -- particular reference
23 to the one you have at KNCI?

24 A The agreement that we have for KNCI provides that we
25 are able to sell the majority of the inventory only, that we

1 don't provide or get involved in any way in the programming of
2 that radio station.

3 Q Okay. And then you indicate that, at least at the
4 time the exhibit was, was prepared, there was proposed to be a
5 Local Marketing Agreement with respect to the St. Louis
6 station, KUSA and KSD-FM. Has that agreement been entered
7 into?

8 A Yes, it has.

9 Q What's the effective date of that? Do you know?

10 A It was September 30th.

11 Q And under that Local Marketing Agreement for the St.
12 Louis stations you are providing the programming? Is that EZ
13 is providing the programming?

14 A Yes. We're providing the majority of the
15 programming, not all of the programming.

16 Q When you say the majority, how many hours a week?
17 Do you know?

18 A I don't know exactly. I don't know exactly.

19 Q Now, with respect to your Local Marketing Agreement
20 in the Pittsburgh area with station WQKB of New Kensington,
21 you've indicated that -- when did that Local Marketing
22 Agreement between EZ and the licensee of WQKB take effect?

23 A It took effect on January 1st of this year.

24 Q And at the time it took effect the call letters of
25 the station were WMXP?

1 A Correct.

2 Q And the prior format of -- the format of the station
3 before the Local Marketing Agreement was a contemporary hit
4 radio format?

5 A That's correct.

6 Q Then when the Local Marketing Agreement went into
7 effect January 1, 1993 the format of that New Kensington
8 station was changed to country? Is that correct?

9 A Yes, sir.

10 Q And the call letters were then changed to WQKB?

11 A That's correct.

12 Q And was the call letter change related to the change
13 of format and the Local Marketing Agreement?

14 A Yes, it was.

15 Q Now, at the time that you entered into the Local
16 Marketing Agreement with station WQKB you also entered into a
17 contract to purchase the station? Is that correct?

18 A That is correct.

19 Q And at the present time under the Local Marketing
20 Agreement do you make monthly payments to the licensee of QKB,
21 you, I mean EZ?

22 A Yes, we do.

23 Q And are those fixed monthly payments?

24 MR. KRAUS: Your Honor, I think I'll object at this
25 point for the purpose of noting that there is no issue on WKQB

1 (sic). There certainly is no issue about whether we're paying
2 the money and, if so, how much. There has been no direct
3 testimony about that subject or related subjects and Mr.
4 Berfield quizzed the manager of WBZZ, Mr. Meyer, endlessly
5 about that yesterday morning. There simply is no issue on
6 that point.

7 MR. BERFIELD: Well, Your Honor, I'm probing the
8 relationship. I'm not going over ground that we covered with
9 Mr. Meyer, but there are certain areas of the, of the business
10 relationship between EZ and the, the licensee of QKB that Mr.
11 Meyer indicated were outside his competence to testify about,
12 and that's only the areas that I'm -- those limited areas are
13 the only ones I'm going to be asking Mr. Box about.

14 MR. KRAUS: But how is that business relationship,
15 no matter what it is, more relevant or add relevance to the
16 only issue that's -- that the -- the fact of the LMA and the
17 fact of the proposed acquisition raises namely a possible
18 argument that we have a multiple ownership -- a heavier
19 multiple ownership burden to bear than whatever was be the
20 case? I mean, the mechanics of the relationship seem to be so
21 irrelevant.

22 JUDGE LUTON: Did Mr. Meyer tell us that there were
23 certain areas concerning the relationship between the stations
24 that --

25 MR. BERFIELD: Yes. He said there were certain

1 areas that were handled at the corporate level.

2 JUDGE LUTON: Corporate level.

3 MR. BERFIELD: I did quiz him about the day to day,
4 how it worked, and I don't intend to go over it.

5 JUDGE LUTON: Well, I know you did --

6 MR. BERFIELD: Yeah. I don't intend to go over it.

7 JUDGE LUTON: -- extensively, a long time.

8 MR. KRAUS: Mr. Meyer said there was one item that
9 he wasn't familiar with.

10 MR. BERFIELD: Well, my questioning I would say on
11 the, on the relationship is -- would, would complete the
12 picture and I think the financial, the financial relationship
13 is always considered important by the Commission in virtually
14 all of its analyses of applications and relationships. I
15 mean, the money -- follow the money. And we do have a Local
16 Marketing Agreement here and all I'm asking is whether it's a
17 fixed monthly payment and what the fixed monthly payment is,
18 and that's, that's the area that I'm after.

19 JUDGE LUTON: All right. Overruled.

20 BY MR. BERFIELD:

21 Q Under the Local Marketing Agreement does EZ make a
22 fixed monthly payment to the licensee of QKB?

23 A Yes, it does.

24 Q And could you tell me what the amount of that fixed
25 monthly payment is?