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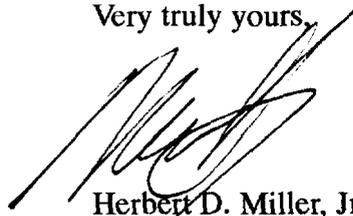
William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of EZ Communications, Inc., an applicant in MM Docket Number 93-88, is its Reply Findings in that proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

enc

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BEFORE THE  
**Federal Communications Commission**  
Washington, D. C. 20554

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In re Application of

**EZ Communications, Inc.**

For Renewal of the License of FM Radio Station  
WBZZ (FM) on Channel 229B at Pittsburgh,  
Pennsylvania

**Allegheny Communications Group, Inc.**

For a Construction Permit for a New FM Broadcast  
Station on Channel 229B at Pittsburgh, Pennsylvania

MM Docket Number  
93-88

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Honorable Edward Luton  
Administrative Law Judge

**REPLY FINDINGS**

*of*

**EZ COMMUNICATIONS, INC.**

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February 22, 1984

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### Summary

EZ's proposed findings and conclusions demonstrate that WBZZ is entitled to a strong and dispositive renewal expectancy. Allegheny's arguments to the contrary are based (a) on its own twisted efforts to convert the "Liz Randolph Matter" into a sex discrimination case (a position expressly rejected by the *Hearing Designation Order*) and to elevate the resultant fabrication into a dispositive factor here, and (b) on its equally misguided (and at least in part disingenuous) efforts to portray WBZZ's service to its community as inferior to that of a Chicago subscription television station, WSNS-TV, which devoted less than one percent of its broadcast week to local programming and otherwise engaged in the "wholesale abandonment of public service programming." WBZZ, in stark contrast, devoted more than 98 percent of its broadcast week to local programming, including substantial news and public affairs programming; broadcast more than 40,000 public service announcements during the license renewal period; and was repeatedly characterized by leaders in the community as having done an exemplary job in serving the area.

WBZZ is entitled to a strong and dispositive renewal expectancy, its license renewal application should be granted, and the mutually exclusive Allegheny application for a new station construction permit should be denied.

BEFORE THE  
**Federal Communications Commission**  
Washington, D. C. 20554

In re Application of

**EZ Communications, Inc.**

For Renewal of the License of FM Radio Station  
WBZZ (FM) on Channel 229B at Pittsburgh,  
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FEB 22 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Honorable Edward Luton  
Administrative Law Judge

## REPLY FINDINGS

EZ Communications, Inc., (EZ), the applicant for renewal of the license of radio station WBZZ(FM), in Pittsburgh, Pennsylvania, files herewith, by its attorneys, its Reply to the proposed findings of fact and conclusions submitted in the above captioned proceeding by the Mass Media Bureau (Bureau) and Allegheny Communications Group, Inc. (Allegheny).

### A. Bureau Findings and Conclusions

EZ concurs generally in the Bureau's proposed findings and conclusions, and offers only one minor quibble: The Bureau characterizes EZ Exhibits 1A - 1Q as "letters in support of its programming, and its activities on behalf of the community" (Bureau Findings, ¶7; Bureau Conclusions, ¶ 11). These seventeen exhibits were not "letters"; they were affidavits, constituting sworn testimony submitted as part of EZ's direct case. The affiants could have been (but were not) called as witnesses and

cross examined by the Bureau and/or by Allegheny. We note in this connection that the Bureau refers (correctly) to the Declaration of Robert L. Pitts (Allegheny Exhibit No. 9) and to the Declaration of Lois McDonald (Allegheny Exhibit No. 13) as the "testimony" of those individuals, even though they were not called as witnesses and did not testify in person, either. To the extent (if any) that greater credence may be given to hearing "testimony" than to "letters," EZ merely wishes to point out that its Exhibits 1A - 1Q are of no lesser stature than Allegheny Exhibits 9 and 13.

**B. Allegheny Findings and Conclusions**

**1. "The Liz Randolph Matter"**

Paragraphs 14 - 40 and 41 - 54 (pp. 10 - 32) of Allegheny's proposed findings present Allegheny Exhibits No. 3 and 4, verbatim. Those exhibits are (a) an arbitrator's award in *American Federation of Television and Radio Artists - Pittsburgh (AFTRA) v. EZ Communications, Inc., WBZZ* (Allegheny Exhibit No. 3) and (b) an opinion of the United States District Court for the Western District of Pennsylvania upholding the arbitrator's award in that proceeding (Allegheny Exhibit No. 4). Both involve a contract dispute between EZ on the one hand and AFTRA and a former WBZZ employee on the other, Ms. Liz Randolph, over whether by leaving her post at WBZZ without completing her assigned duties, Ms. Randolph had committed a "flagrant neglect of duty which authorized the Company to withhold payment of severance pay" under a collective bargaining agreement between EZ and AFTRA.

Ms. Randolph had been a member of the WBZZ "morning team," and in that capacity had engaged (for approximately two years) in banter with other on-air personalities during broadcasts of WBZZ's morning entertainment program. Some of their banter, and some of the jokes directed at her, had been risqué. One morning,

a joke had been told which Ms. Randolph had deemed offensive, and she had left the station upon hearing it, before finishing her air shift. She was subsequently terminated for doing so, and WBZZ withheld payment of severance pay pursuant to the WBZZ - AFTRA collective bargaining agreement. As the arbitrator noted,

"[T]he Collective Bargaining Agreement permits the 'termination' of announcers on a non-cause basis. In exchange for this ability to make personnel changes, the Employer has agreed to provide a minimum number of weeks of notice or the corresponding salary in lieu of such notice. However, an exception exists to this severance notice/pay in situations where the employee is guilty of flagrant neglect of duty. Under these circumstances, a staff announcer's employment may be terminated without the severance notice/pay." (Allegheny Exhibit No. 3, p. 13).

The arbitrator concluded that Ms. Randolph's conduct did not amount to a flagrant neglect of duty because the joke in question, and some of the jokes and banter preceding it, had been "lewd, offensive, sophomoric, in bad taste and beyond anything that an employee should have to be subjected to -- even if they are part of an 'entertainment vehicle.'"<sup>1</sup> (Allegheny Exhibit No. 3, p. 15). The arbitrator added, gratuitously, that "a parallel exists in this situation with circumstances that precipitated and are now governed by the Federal Government's Sexual Harassment Laws." (*Ibid.*)

The meaning of the arbitrator's gratuitous observation is unclear, as is the nature of the "parallel" to whatever unidentified "Sexual Harassment Laws" he may have had in mind. But whatever idea his words were intended to convey, they are by no stretch of the imagination an "adjudication" that WBZZ violated any of the "Federal Government's Sexual Harassment Laws" or any other laws.

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<sup>1</sup> There is no suggestion in Allegheny Exhibits No. 3 and 4, or elsewhere, that anyone mistook the banter or jokes for factual commentary on Ms. Randolph's conduct.

The United States District Court for the Western District of Pennsylvania concluded that the arbitrator had not exceed his authority by construing the collective bargaining agreement in favor of AFTRA. The court noted that in reviewing arbitration awards, it does "not sit to hear claims of factual or legal error . . . as an appellate court does in reviewing decisions of lower courts." (Allegheny Exhibit No. 4, p. 6) The court accordingly declined to review the merits of the award, and noted that "if we were to second guess his [the arbitrator's] reasonable construction, we would exceed our authority and scope of review." (*Ibid*).

Allegheny contends, with sole reference to Allegheny Exhibits 3 and 4, *supra*, that "there has been an adjudication of sexual harassment and discrimination against EZ involving employees and management at WBZZ during the license renewal period." (Allegheny Conclusions, ¶ 13). That is untrue. Allegheny Exhibits 3 and 4 are, at most, an "adjudication" that Ms. Randolph was entitled, under the AFTRA collective bargaining agreement, to severance pay.<sup>2</sup> They are not "adjudications" that WBZZ discriminated against Ms. Randolph in any way, that her termination by WBZZ was in any way unlawful or, indeed, that WBZZ did anything else unlawful.

When this proceeding was designated for hearing, the Commission had before it the two documents which later became Allegheny Exhibits No. 3 and 4, because they (along with other documents) had been attached to a petition to deny

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<sup>2</sup> Ms. Randolph also filed a complaint in the Court of Common Pleas of Allegheny County seeking damages for defamation, intentional infliction of emotional distress and invasion of privacy; a sex discrimination complaint with the Pennsylvania Human Relations Commission, and a second civil action with the Court of Common Pleas of Allegheny County. The discrimination complaint resulted in a "right to sue" letter, and the two civil suits were settled by the parties. The *Hearing Designation Order* observed, "these law suits have been settled while appeals were pending. Under this circumstance, we are disinclined to specify an issue." (DA 93-361, ¶ 11).

the WBZZ renewal, filed by Allegheny. The Commission specifically rejected Allegheny's allegations and attempts to show that EZ had engaged in discrimination, finding no evidence whatever in any of the materials presented by Allegheny that EZ had done so (DA 93-361, released on April 5, 1993).

If the *Hearing Designation Order* had found that the materials presented by Allegheny evidenced rule (or statute) violations, but of insufficient magnitude to warrant a qualifying issue, those rule violations could be considered here in evaluating WBZZ's claim to a renewal expectancy. *GAF Broadcasting Company, Inc.*, 8 FCC Rcd 5496 (1993) is clear on that. There, the Commission held:

"To the extent that there may be ambiguity about our policy, we wish to emphasize that in comparative renewal proceedings, allegations involving a licensee's **violation** of the Act, rules or policies can be relevant in the determination of the weight to be given to a licensee's claim to renewal expectancy." 8 FCC Rcd at 5499 (Emphasis added).

Accordingly, the Commission stated:

"From the above, it would appear that alleged **violations** of the Commission's EEO rules, for example, **if they raise a prima facie question about compliance with the rules**, might be pertinent to the ALJ's determination of GAF's entitlement to a renewal expectancy, even if no qualifying EEO issue were designated against GAF." *Id* at 5499 (emphasis added).

But Allegheny Exhibits No. 3 and 4 contain no evidence of rule or statute violations, as the *Hearing Designation Order* expressly held. Hence, under *GAF Broadcasting, supra*, they present nothing for consideration here.

*GAF Broadcasting Company, Inc., supra* provides no basis for consideration of licensee entertainment programming -- no matter how "lewd, offensive, sophomoric, [or] . . . bad taste" (Allegheny Exhibit No. 3, p. 15) some may view it -- if it does not violate any Commission rule or policy. To hold otherwise would turn comparative renewal proceedings into highly subjective, unmandated, and far ranging inquiries of dubious constitutionality into questions of the taste, sensibility

and political correctness of such programming.<sup>3</sup> The Commission has consistently rejected invitations to do that, and there is no basis for doing it here.<sup>4</sup>

All of the cases cited by Allegheny are inapposite. *Atlantic City Community Broadcasting, Inc.*, 8 FCC Rcd 4520 (1993), *affirming in part* 6 FCC Rcd 925 (Rev. Bd. 1991), held that a lawsuit resulting in a finding of sexual harassment constitutes a "discrimination suit" which must be reported by an applicant. There, an applicant for an FM construction permit had represented in response to an FCC Form 301 question that no adverse finding had been made that "related to employee discrimination." Contrary to that representation, there had been a judicial determination that his own conduct -- making unwelcome sexual overtures to a female employee and then firing her when she refused them -- (6 FCC Rcd at 926) constituted sexual harassment, in violation of "New Jersey Law Against Discrimination." The individual who had made the representation on the FCC Form 301 (the holder of all of the voting stock of the applicant) had been the very person who had committed

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<sup>3</sup> *Harris v. Forklift Systems, Inc.* (U.S. Sup. Ct. Case No 92-1168, decided November 9, 1993), relied upon by Allegheny, does not hold that banter and jokes of a risque nature **exchanged by performers during the course of a radio station's entertainment programming** amount to sex discrimination, even if as a result one of the performers leaves her employment in disgust. That case at no point even alludes to the serious First Amendment implications that such a holding would have, because such matters were not before the Court. The present renewal proceeding does not present a proper vehicle for further exploration of the subject, particularly in view of the determination, already made in the *Hearing Designation Order*, that the conduct in question did not amount to discrimination.

<sup>4</sup> Consideration for any purpose of the matters alluded to in Allegheny Exhibits 3 and 4 would produce the very situation the Commission's *Policy Statement on Character Qualification in Broadcast Licensing* (102 FCC 2d 1179) sought to avoid, the interminable consideration of "an incredible range of non-FCC behavior," to little purpose. (102 FCC 2d at 1194). It would provide nothing whatever on the basis of which to predict the nature of EZ's future performance as the licensee of WBZZ.

the offense in question (6 FCC Rcd at 925). At hearing, he denied that he had been a defendant in the suit and made other false statements as well (*Id.* at 926).

There are numerous differences between the situation in *Atlantic City Community Broadcasting, Inc., supra.* and that presented here. The most important of them is that *Atlantic City Broadcasting, Inc., supra* involved sex discrimination, while this proceeding does not.<sup>5</sup> The cases holding that firing an employee for refusing to have sexual relations with her employer constitutes sex discrimination are legion<sup>6</sup>; Allegheny cites no cases, and we have found none, holding that banter and jokes broadcast during a radio station's entertainment programming, which upset one of the station's on-air personalities, amount to sex discrimination. Judge Kuhlmann noted in his *Initial Decision* that

"The Commission has long had rules that prohibit broadcast stations from discriminating against female employees. . . . Thus, his illegal conduct under New Jersey law was also conduct specifically prohibited by the Commission and it was conduct which he personally engaged in. Mr. Hayes' ultimate fall back position was that he thought that the only discrimination that the Commission cared about was race discrimination. There is overwhelming evidence he knew that that was not the truth." (quoted at 6 FCC Rcd 925, 926)

Notwithstanding the fact that the Commission has long had the rules referred to by Judge Kuhlmann, those rules have never been interpreted to apply to anything even remotely resembling the "Liz Randolph situation." And, as specifically held by the *Hearing Designation Order* in this proceeding, the situation presented by Allegheny

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<sup>5</sup> *Catoctin Broadcasting Corp. of New York*, 4 FCC Rcd 2553 (1989), also cited by Allegheny, also involved a classic case of employment discrimination. There, the Commission found that the applicant had discriminated against a job applicant by "initially refraining from even considering her for employment because of her race. . . ." (4 FCC Rcd at 2556)

<sup>6</sup> There is no indication in Allegheny Exhibits 3 and 4 that anyone at WBZZ ever made unwelcome sexual overtures to Ms. Randolph, or that she was terminated for declining them.

Exhibits 3 and 4 involves no discrimination or other violation of rule, law or policy whatever. The Commission has never promulgated a rule, or announced a policy<sup>7</sup>, prohibiting a radio station from broadcasting allegedly offensive and risqué jokes in poor taste, not amounting to indecency or obscenity,<sup>8</sup> at the expense of the station's on-air personnel. The lawfulness under the Constitution of any such rule or policy would be highly dubious. So, obviously, would consideration of such protected speech in deciding whether to grant a license renewal application. Even if the single, isolated incident which is the subject of Allegheny Exhibits No. 3 and 4 were to be considered in connection with WBZZ's renewal expectancy, it would be so thoroughly overwhelmed by the otherwise unblemished WBZZ record and the station's exceptionally good performance during the past license term as to be *de minimis*.

## 2. **WBZZ Non Entertainment Programming**

*Video 44*, 5 FCC Rcd 6383 (1990), *recon. denied*, 6 FCC Rcd 4948 (1991) -- a television, not a radio, renewal case -- is the centerpiece of Allegheny's contention that WBZZ's non entertainment programming does not warrant a renewal expectancy. There, WSNS-TV, a television station which had converted, near the end of its license term in August, 1982, to subscription television (STV) operation, devoted 158 of its 163 hours of weekly operation to STV programming, leaving only 5 hours per week for conventional television programming (5 FCC Rcd at 6386). During the last year of the license term (November 30, 1981 - November 30, 1982, including approximately nine months of non-STV operation), it presented only 0.08

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<sup>7</sup> Much less a "specific" rule or policy, see 102 FCC 2d at 1232, fn. 125.

<sup>8</sup> The *Hearing Designation Order* also rejected Allegheny's allegations of indecency and obscenity.

percent news. Only 0.89 percent of its entire 163 hours of weekly programming was "local" during that one year period. Also during that last year, it broadcast 2.57 percent public affairs and 5.84 percent "other" non entertainment programming, all of it non-local. By the end of the renewal period, in November, 1982, WSNS-TV had slipped even further, by cancelling "most of its non entertainment programming, including all news and local programming." (5 FCC Rcd at 6383). This is the yardstick against Allegheny would measure WBZZ's performance.

According to Allegheny, WBZZ presented only 0.06% local programming<sup>9</sup>, less than that broadcast by WSNS-TV, and therefore falls far short even of the 0.89 percent that was found unacceptable in *Video 44* (Allegheny Conclusions, p. 57). Allegheny is wrong, by a substantial order of magnitude. **WBZZ broadcast 165 hours of local programming each week, amounting to 98.21 percent of its hours of operation.** It presented 11,035 percent **more** local programming than did WSNS-TV. WBZZ presented only three hours per week of **non** local programming, on Sunday mornings between 4:00 am and 7:00 am. Allegheny's suggestion that only 0.06% of WBZZ's programming was local is disingenuous, and Allegheny should know better.

In *Video 44, supra*, WSNS-TV broadcast only 0.08% news programming, which it ultimately eliminated completely (5 FCC Rcd at 6383). WBZZ's four hours and twelve minutes<sup>10</sup> weekly of local, regularly scheduled news programming

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<sup>9</sup> According to Allegheny, the only local program presented by WBZZ was Dialogue (Allegheny Proposed Conclusions, ¶ 23(c)). Even if this were WBZZ's only local programming, which it clearly was not, it amounts to 0.60%, not 0.06%, of WBZZ's 168 weekly hours of programming.

<sup>10</sup> According to Allegheny, WBZZ broadcasts "a total of one hundred twenty-nine minutes (three hours) per week of news. There was also seventy-two minutes of weather per week, for a total of news and weather of four hours and 12  
(continued...)

constituted 2.5 percent of WBZZ's weekly hours of programming, 3,125 percent more than broadcast by WSNS-TV in *Video 44, supra*. Nor did WSNS-TV broadcast **any** local public affairs or other local non entertainment programming (6 FCC Rcd at 4948). In contrast, WBZZ's local programming included, in addition to its local entertainment programming, Dialogue (60 minutes per week); Pittsburgh Opinion (68 minutes per week); and regularly scheduled news (252 minutes per week) (EZ Exhibit No. 2).

Also according to Allegheny, *Video 44, supra* stands for the proposition that a radio station which fails to present more than 6 percent non entertainment programming does not qualify for a renewal expectancy (Allegheny Proposed Conclusion ¶ 23(a)). The *Video 44* television case *supra*, obviously, stands for no such proposition and neither does any other Commission or judicial precedent and, in any event, WBZZ in fact presented more than 6 percent non entertainment programming, as shown in its proposed findings at paragraph 43.

Nor does stand *Video 44, supra* stand for the proposition, advanced by Allegheny, that WBZZ is not entitled to a renewal expectancy since four hours of its nine hours and twenty minutes of non entertainment programming (exclusive of public service announcements) were broadcast between 4:00 and 8:00 am on Sundays;<sup>11</sup> we are unaware of any case so holding or even so suggesting, and Allegheny has cited none.

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<sup>10</sup>(...continued)

minutes per week." (Allegheny Proposed Findings, p. 33). Allegheny is correct, with the exception that there were one hundred and **eighty** minutes (three hours) per week, not one hundred **twenty-nine** minutes (three hours) per week (Tr. 238 - 241, EZ Exhibit No. 2, p. iii).

<sup>11</sup> WBZZ's Dialogue, its primary public affairs offering, was broadcast between 7:00 and 8:00 am on Sundays (EZ Exhibit No. 2).

Clearly, the very substantial broadcast service presented by WBZZ, particularly viewed in light of the highly favorable testimony by community witnesses, entitles WBZZ to a strong and dispositive renewal expectancy, as shown in WBZZ's proposed findings and conclusions.

### 3. Other Matters

Allegheny gives short shrift in its proposed findings, and fails to mention at all in its proposed conclusions, WBZZ's efforts to ascertain community issues (WBZZ Proposed Findings, pp. 11 - 13; pp 36 - 37)<sup>12</sup>, the laudatory testimony of WBZZ's community witnesses (WBZZ Proposed Findings, pp. 6 - 11, pp. 15 - 19; pp 27 - 31; pp. 37 - 38)<sup>13</sup>, WBZZ's non-broadcast civic involvement (WBZZ

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<sup>12</sup> According to one of Allegheny's two community witness declarations, Wilkinsburgh Mayor David Pitts "had never been contacted by WBZZ with regard to news, public affairs or any type of programming." (Allegheny Proposed Findings, p. 36). To the contrary, Mayor Pitts was interviewed by WBZZ during its ascertainment efforts as recently as May 17, 1990 (EZ Exhibit No. 2, p. 310). Despite the plethora of WBZZ programming related to such matters as the problems of youth (EZ Exhibit No. 2, pp. 780-820), minority issues (EZ Exhibit No. 2, pp. 83 - 93; 498 - 508), drug abuse (EZ Exhibit No. 2, pp. 165 - 183), and unemployment (EZ Exhibit No. 2, pp. 749 - 795), Mayor Pitts also claimed that "I know of no effort or outreach by . . . WBZZ(FM) to address such issues." (Allegheny Exhibit No. 9). Allegheny also relies on the declaration of Ms. Lois McDonald for the proposition that "WBZZ has not offered programming of interest to the local African-American Community, and its programming does not cover issues of importance to such community." As noted in EZ's proposed findings, these broad conclusions, which are very much at odds with the detailed and specific evidence of issue coverage adduced by WBZZ, are of no probative value whatever (EZ Proposed Findings, p. 21).

<sup>13</sup> According to Allegheny's proposed findings, "EZ presented the declarations of several persons involved with various community organizations in Pittsburgh whose events and campaigns, primarily charitable or health related, were the subject of WBZZ PSA's and promotional announcements, and assistance by WBZZ staff members." (Allegheny Proposed Findings, p. 36). Allegheny does not mention the affidavit of Pittsburgh's Mayor, Sophie Masloff ("I have consistently been very favorably impressed with WBZZ's efforts to serve the needs of our local community" (EZ Exhibit No. 1-J); Pittsburgh City Council member Bob O'Connor (continued...)

Proposed Findings, pp. 27 - 31; p. 38), WBZZ's record of having broadcast more than 40,000 public service announcements during the past license renewal period (WBZZ Proposed Findings, pp. 23 - 25; p. 37), and WBZZ's record of successful efforts to ensure its own compliance with the Commission's rules (WBZZ Proposed Findings, pp. 31 - 33; p. 38). Allegheny's proposed conclusions do not even bother to cite, much less rely on, any Commission case (other than the inapposite *Video 44, supra*) analyzing renewal expectancy questions. As pointed out in EZ's proposed conclusions (pp. 35 - 39), *Fox Television Stations*, 7 FCC Rcd 2361 (Rev. Bd. 1993) and its progeny mandate the award of a strong and dispositive renewal expectancy here.

#### 4. Comparative Matters

In view of WBZZ's entitlement to a substantial renewal expectancy, there is no need for a comparative evaluation of EZ and Allegheny. In any event, as pointed out in EZ's proposed findings and conclusions, integration of ownership with management is no longer a cognizable comparative factor, see *Susan M. Bechtel v. Federal Communications Commission*, D.C. Cir. No. 92-1378, slip opinion,

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<sup>13</sup>(...continued)

(WBZZ has always been generous with its help") (EZ Exhibit No. 1-L). Nor does Allegheny mention the praises given to WBZZ program Dialogue by those who have appeared on it: "questions were intelligent, and she handled the interview with great sensitivity. . . ." (EZ Exhibit No. 1-P); "all 138 callers to our association offices said they were calling in response to the Dialogue program. We have never previously received anything approaching 138 calls in response to a single radio program; the most we have received in response to any other program was 25 calls." (EZ Exhibit No. 1-I); "Whenever WBZZ broadcasts a leukemia related program, we get calls from members of the public seeking additional information. One program done by Shelley Duffy generated 93 calls on the nature of leukemia and bone marrow transplantation." (EZ Exhibit No. 1-M).

December 17, 1993.<sup>14</sup> The only even arguable comparative preference for Allegheny is under the diversification criterion, which is inadequate to overcome EZ's substantial renewal expectancy, see *Fox Television Stations, Inc.*, 8 FCC Rcd at 2418 - 2419. The cases cited by Allegheny (Allegheny Proposed Conclusions, p. 41) do not even suggest, much less compel, a contrary result. *Hugh M. McBeath*, 59 RR 2d 1159 (Rev. Bd. 1986), *Hampshire County Broadcasting, Inc.*, 57 RR 2d 463 (Rev. Bd. 1989), and *Communications Properties, Inc.*, 52 RR 2d 981 (Rev. Bd. 1982) are not comparative renewal cases; they involve only applicants for new facilities. In the one comparative renewal case cited, *WIOO, Inc.*, 54 RR 2d 1291 (1983), the **incumbent** (which received no renewal expectancy) got a substantial diversity preference over the challenger, which had significant media interests.

### Conclusion

The proposed findings and conclusions of Allegheny focus primarily on the "Liz Randolph Matter" which, as the *Hearing Designation Order* conclusively establishes, did not involve any violation whatever of any Commission rule or policy. An independent analysis of Allegheny Exhibits No. 3 and 4 produces the same conclusion.

As to the rest, Allegheny's comparison of WBZZ to STV station WSNS-TV is at best ludicrous, and demonstrates only the extent to which Allegheny was forced to distort the records here and in *Video 44, supra* in order to present arguments in support of its thesis that WBZZ is entitled to no renewal expectancy.

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<sup>14</sup> Allegheny appears to concede as much, see Allegheny Proposed Conclusion, n. 7. Strangely, however, it devotes several pages of its proposed conclusions to the Hirschman-Herfindahl Index and other species of integration analysis, found by the Court of Appeals to be of no value.

WBZZ is entitled to a strong and dispositive renewal expectancy, its license renewal application should be granted, and the mutually exclusive Allegheny application should be denied.

Respectfully submitted,

**EZ Communications, Inc.**

By  /s/ Rainer K. Kraus  
Rainer K. Kraus 

By  /s/ Herbert D. Miller, Jr.  
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*Its attorneys*

February 22, 1984

## Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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/s/   
Richard Massie  
Richard Massie

February 22, 1984