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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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| In re Application of | ) | MM Docket No. 93-176 |
| | ) | |
| RICHARD RICHARDS | ) | File No. BRTTL-921116IG |
| | ) | |
| For Renewal of License of | ) | |
| Low Power Television | ) | |
| Station K33CG | ) | |
| Sierra Vista, Arizona | ) | |

To: Administrative Law Judge
Richard L. Sippel

**MASS MEDIA BUREAU'S REPLY**

1. On April 26, 1994, Richard Richards (Richards) filed his Proposed Findings of Facts and Conclusions of Law (PFCs). The Bureau hereby replies to Richards' PFCs. The Bureau's failure to reply to any particular finding or conclusion contained in Richards' PFCs should not be construed as a concession to its accuracy or completeness. The Bureau submits that its findings of fact are an accurate and complete presentation of the relevant record evidence and that its conclusions of law properly apply Commission precedent in light of the record.

Proposed Findings

2. At paragraph 18 of his proposed findings, Richards cites as evidence of his rehabilitation the fact that he has not used any illegal drugs since December 31, 1991. While it is true that he has not used drugs since that time, the motivation for his forbearance may be other than his rehabilitation. Since January 1992, Richards has been subject to random drug tests administered

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by his probation officer and the courts. (Tr. 105-08). Thus, the more likely explanation for Richards' not using illegal drugs since December 31, 1991, is his fear of incarceration. This conclusion is supported by the fact that Richards continued to use marijuana even after his arrest on July 25, 1991 (Tr. 114). As a consequence of his continued use, Richards tested positive for marijuana on February 10, 1992, and on March 5, 1992. (Tr. 108). In sum, the evidence here is that Richards did not give up his use of marijuana until compelled to do so under the threat of going to jail.

## Proposed Conclusions

3. At paragraph 93, et seq., of his conclusions, Richards contends that his conviction for possession with the intent to distribute less than 50 marijuana plants and cultivating marijuana on federal property does not establish that he was a "drug trafficker" whose license should be revoked. Richards contends that he was not engaged in a "systematic devotion to a criminal enterprise" which amounted to an "egregious crime against society." He claims all he did was grow a few marijuana plants for his own use and that of a friend.

4. It should be noted that Richards is not claiming that he did not engage in drug trafficking. His conviction is for possession with the intent to distribute. As part of his plea agreement, Richards agreed that he "was the owner of these

plants, he knew them to be marijuana plants and he intended to distribute the plants or the processed marijuana derived from the plants to another person or persons." (MMB Ex. 2, pp. 5 and 6). In effect, what Richards is arguing is that the Presiding Judge should distinguish between a large drug trafficker and a small drug trafficker. The Commission, however, does not make such a distinction. In its Public Notice of September 29, 1989, Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking, 4 FCC Rcd 7533, ("Public Notice"), the Commission stated that "absent extenuating or mitigating circumstances, the Commission intends promptly to take all appropriate steps, including initiation of license revocation proceedings, where information comes to our attention that FCC licensees or their principals have been convicted of drug trafficking." Richards' conviction, regardless of the number of plants involved or the number of persons to whom he intended to distribute his illegal drugs, standing alone, warrants his disqualification under this Public Notice.

5. Richards contends, at paragraph 96, that the Commission has never defined the term drug trafficking as used in the Public Notice and that his conviction, as seen against the larger statutory framework, cannot be termed "drug trafficking." This reasoning is not valid. The Commission did not define the term "drug trafficking" because it did not have to. The Commission is not in the business of trying drug cases. In determining the

qualifications of its licensees, the Commission considers only violations of law that have been adjudicated by a court with primary jurisdiction. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986) (1986 Policy Statement), recon. denied, 1 FCC Rcd 421 (1986), modified, 5 FCC Rcd 3252 (1990), recon. granted, 7 FCC Rcd 6564 (1992). Here, such an adjudication has occurred and Richards has pleaded guilty to possession of a controlled substance with the intent to distribute. As noted, supra, Commission policy does not distinguish between large traffickers in illegal drugs and small ones. Drug trafficking on the part of a licensee is not tolerated.

6. At paragraph 103, Richards contends that the record contains ample evidence of his rehabilitation. The Bureau disagrees. The factors the Commission will consider in weighing misconduct are the willfulness, frequency, currentness, and seriousness of the misconduct. 1986 Policy Statement, 102 FCC 2d at 1227-28. Here, there can be no dispute. Richards willfully cultivated marijuana with the intent to distribute it. Moreover, as noted supra, even after he was arrested, he persisted in violating the law by using marijuana until he was subjected to court-ordered random testing. It is also undisputed that Richards was a heavy user of marijuana (See paragraph 15 of Richards' proposed findings: "Mr. Richards consumed approximately four pounds of marijuana per year...He smoked only the best,

i.e., highest potency marijuana."). Every time Richards "lit-up" he knowingly violated the law. Furthermore, Richards' violations are current. He was arrested on July 25, 1991 and convicted in July 1992. Finally, it is clear that the Commission considers drug trafficking by its licensees to be a serious matter. Thus, Richards' conduct is found wanting on every element that the Commission has said it will consider in evaluating the likelihood of future misconduct.

## Conclusion

7. In conclusion, the Bureau recommends that the Presiding Judge adopt its proposed findings of fact and conclusions of law and deny Richard Richards' application for renewal of license to operate low power station K33CG, Sierra Vista, Arizona.

Respectfully submitted,
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May 17, 1994

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 17th day of May 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Reply"** to:

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