

ORIGINAL

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

DIRECTOR'S OFFICE

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 )

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MAY 17 1994

To: Administrative Law Judge  
Richard L. Sippel

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**RICHARD RICHARDS**  
**REPLY TO MASS MEDIA BUREAU'S**  
**PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

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DATE: May 17, 1994

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Richard Richards ("Richards"), licensee of low power television station K33CG, Sierra Vista, Arizona (the "Station"), by his attorneys, hereby submits his reply to the "Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" filed April 26, 1994 ("Bureau Findings").

1. The premise underlying the Bureau Findings is simple: the Bureau reasons, purportedly based upon the Commission's policy pronouncements and without any further analysis, that because Richards was convicted of what it calls "illicit drug trafficking," Richards necessarily does not possess the requisite qualifications to remain a Commission licensee. (Bureau Findings, ¶4.) The Bureau's position reflects a fundamental misunderstanding of the rationale underlying the Commission's policy with respect to drug felony convictions and wholly overlooks the vital role of mitigating evidence in assessing the impact of such a conviction on a licensee's qualifications.

2. As Richards demonstrated in detail in his Proposed Findings of Fact and Conclusions of Law ("Richards Findings"), the conduct underlying his conviction does not fit within the "drug trafficking" misconduct targeted by the Commission's policy pronouncements.<sup>1/</sup> (Richards Findings at ¶¶93-101.) The Bureau's superficial approach to this issue, which refuses even to consider the stipulated facts underlying the drug conviction, is contrary to long-standing Commission precedent requiring a careful analysis of the nature of the alleged misconduct and its bearing, if any, on a licensee's qualifications.<sup>2/</sup> See South Carolina Radio Fellowship, 6 FCC Rcd 4823, 4824 (1991).

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<sup>1/</sup> In its Findings, the Bureau notes that Richards had 18 scales, including a triple beam scale, two pagers and two mobile telephones, and that marijuana debris was found in a "partially hidden" room. (Bureau Findings, ¶4.) The Bureau fails to note in this context, however, that Richards collected scales, that he was an active farmer and scales were necessary for weighing produce for sale (Tr. 79-81, 146-147), and that the pagers and the mobile phones were owned by others, including a relative and Richards' girlfriend (Tr. 47-49). Moreover, the room in question was not hidden; it was boarded up pursuant to an agreement with his ex-wife to provide a safe environment for his children when they visited. (Tr. 51-52.) And the marijuana debris was from one plant only. (Tr. 53.)

<sup>2/</sup> The Bureau's attempt to lump Richards' conduct into the same category as the principal's in Williamsburg County Broadcasting Corp., 5 FCC Rcd 3034 (1990) is ill-founded. The Bureau misleadingly cites the Commission's statement that the principal's "drug conviction itself is sufficient basis for conviction ...." (Bureau Findings, ¶4.) A careful examination of the facts underlying such principal's conviction supports both the Commission's conclusion as to the egregiousness of the misconduct in that case and Richards' position herein that his misconduct is in a different, far less serious category. (Richards Findings, ¶¶99-100.) Moreover, the principal in Williamsburg offered no evidence in mitigation, unlike Richards. See paragraph 4, infra.

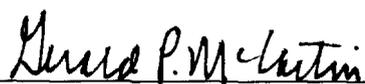
3. The Bureau's failure even to consider Richards' mitigating evidence is equally as troubling. Assuming a felony conviction presents a prima facie case for disqualification, the Commission specifically permits a licensee to present evidence of mitigating circumstances or rehabilitation to demonstrate renewal is warranted notwithstanding the conviction. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1228 (1986), recon. denied, 1 FCC Rcd 421 (1986), modified, 5 FCC Rcd 3252 (1990), recon. granted, 7 FCC Rcd 6564 (1992); RKO General, Inc. (WAXY-FM), 5 FCC Rcd 642, 644 (1990); South Carolina Radio Fellowship, 6 FCC Rcd at 4824. Richards' mitigation showing is compelling: his misconduct was a one-time occurrence; it was not nearly as serious as misconduct traditionally classified as drug trafficking; Richards has not been involved in wrongdoing since December 31, 1991; his low power television station has been FCC-violation free; and, based upon the uncontradicted testimony of 25 community witnesses, he enjoys an outstanding reputation for truthfulness and reliability in his community of license. This evidence stands in marked contrast to the egregious factual situation in Williamsburg (conviction of possession with intent to distribute at least 5 kilograms of cocaine, equivalent to 1,000 or more marijuana plants), where the Commission noted the conspicuous absence of mitigating evidence notwithstanding the opportunity to present it. South Carolina Radio Fellowship, 6 FCC Rcd at 4824. The significance attached

to the absence of mitigating evidence in Williamsburg belies the Bureau's indifference to such evidence in this case.<sup>3/</sup>

4. In sum, for the reasons set forth in Richards' Proposed Findings, Richards urges the Presiding Judge to grant his Renewal Application.<sup>4/</sup>

Respectfully submitted,

  
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<sup>3/</sup> Should the Bureau comment for the first time on Richards' mitigation evidence in its Reply, Richards serves notice of his intent to respond to such comments if necessary. In Richards' view, it would be unfair to be denied such an opportunity simply because the Bureau chose the expedient of addressing mitigation evidence in its Reply rather than its Findings.

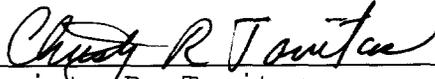
<sup>4/</sup> Pursuant to the Presiding Judge's request (Tr. 176), Joint Exhibit 1, which sets forth certain stipulated facts with respect to the marijuana grown by Richards, was prepared based on (1) consultation with experts at the Drug Enforcement Administration ("DEA"), (2) conversations with and review of testimony of Dr. Elsohly of the University of Mississippi's Research Institute of Pharmaceutical Sciences, Health Services Research Division, School of Pharmacy, an expert on marijuana cultivation who prepared a marijuana study for the DEA in 1992, (3) review of the study, (4) review of federal sentencing guidelines and statements therein with respect to the quantity of usable marijuana derivable from an average plant, and (5) review of pertinent treatises. The stipulation is the successful culmination of many hours of effort on the part of counsel for the Bureau and Richards designed to avoid the time and expense of direct and cross examination of experts for both parties. (Tr. 173-176.) The parties agree that the stipulated facts are applicable to this case only and are not intended to have general application.

**CERTIFICATE OF SERVICE**

I certify that the foregoing Richard Richards Reply to Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law was served on the 17th day of May, 1994, by hand delivery to the following:

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Christy R. Taviton