

other governmental bodies for Raystay's cable television systems and LPTV station. Id. Part of David Gardner's duties as contract manager is to prepare and to review various filings with the Commission. Glendale Ex. 209, P. 2. David Gardner is also a stockholder in Raystay. Tr. 4533-4534. He has been a full-time employee of Waymaker or Raystay since 1973. Tr. 4544.

351. Harold Etsell first became involved in a business relationship with George Gardner in 1987 when they formed GH Cable Company, a company which sought and acquired cable television properties. TBF Ex. 265, Pp. 5-6. George Gardner and Mr. Etsell served together on the Pennsylvania Cable Television Association board of directors for a number of years. TBF Ex. 265, P. 6. In 1988, Mr. Etsell became a full-time employee of Waymaker and assumed a direct management role in Raystay. TBF Ex. 265, P. 7. Mr. Etsell did not work out of Raystay's offices in Carlisle--he worked out of his house or an office in Boothwyn, PA. TBF Ex. 265, Pp. 4, 14-15. He was a Vice President of Waymaker until his termination date of October 1, 1993, and he was a Vice President of Raystay from 1989 until his termination. TBF Ex. 265, Pp. 7-8. Mr. Etsell's role began as overseeing various projects for Raystay and acting as Chief Operating Officer of GH Cable. TBF Ex. 265, Pp. 10-11. Mr. Etsell became the Chief Operating Officer of Raystay and Waymaker and stayed in that role until the end

of the first quarter of 1991. For most of 1991, he concentrated on the GH properties. He then became involved again in Raystay until October 1993. TBF Ex. 265, P. 11.

352. On March 9, 1989, Raystay filed five applications for construction permits for new low power television (LPTV) stations. TBF Exs. 203-207. Two of the applications specified Lancaster, PA as the community of license (Channels 23 and 31), two applications specified Lebanon, PA as the community of license (Channels 38 and 55), and the fifth application was for the community of Red Lion, PA (Channel 56). Id. On July 24, 1990, the Commission granted the applications and issued construction permits for the five stations. TBF Ex. 208. The call signs of the Lancaster stations were W23AW and W31AX. The call signs of the Lebanon stations were W38BE and W55BP. The call sign of the Red Lion station was W56CJ. Each of the construction permits were to expire on January 24, 1992, or eighteen months after the grant for each permit. Id.

2. Preparation and Filing of December 1991 Extension Applications

353. By December 1991, Raystay had not started any construction of the Lebanon or Lancaster LPTV stations. Tr. 5236. On December 9, 1991, David Gardner sent a note to Morton L. Berfield at Cohen and Berfield asking that firm to prepare extension applications for the Lebanon and Lancaster

construction permits. Glendale Ex. 209, Pp. 2-3, TBF Ex. 267, Tr. 4680. Mr. Sandifer knew prior to this time that extension applications were going to be prepared based upon a conversation with John Schauble of Cohen and Berfield. Tr. 5187. George Gardner was uncertain whether he was aware that extension applications were going to be filed prior to the time he reviewed the applications. Tr. 5334. He believes he was probably asked if an extension application should be filed prior to work beginning on those applications, but he does not recall being asked that question. Id.

354. Shortly after David Gardner sent that note, he had a telephone conversation with Mr. Schauble. They discussed the preparation of applications to extend the construction permits. Mr. Schauble asked David Gardner a series of questions about what actions Raystay had taken with respect to the construction of these stations. While David Gardner does not remember the specific questions asked by Mr. Schauble, he generally remembers the topics discussed. Glendale Ex. 209, P. 3.

355. After the telephone call, Mr. Schauble sent David Gardner a draft of what became Exhibit 1 of the extension applications. Id. The facsimile cover sheet transmitting the exhibit to David Gardner contained the following message:

David: Enclosed is an exhibit I have prepared in support of the applications to extend the four LPTV construction permits. Please review the exhibit carefully to make sure it is accurate, then call me to discuss.

TBF Ex. 242. David Gardner understood that Mr. Schauble wanted him to make sure the exhibit was accurate and that Mr. Schauble was inviting him to make changes. Tr. 4685. David Gardner reviewed the draft Exhibit 1 and found the exhibit to be accurate. Glendale Ex. 209, P. 3. He and Mr. Schauble then had a subsequent phone conversation in which he told Mr. Schauble the exhibit was correct and acceptable. Glendale Ex. 209, P. 7, Tr. 4685.

356. Mr. Schauble then prepared the remainder of the applications and sent them to David Gardner. Glendale Exhibit 209, P. 7, TBF Ex. 243. The applications used the same Exhibit 1 that David Gardner approved. Glendale Ex. 209, P. 7.

357. Once David Gardner received the applications, he reviewed the applications to ensure that they were accurate and that there were no spelling or typing errors. Tr. 4686. He then submitted the applications to Mr. Sandifer for his review. Tr. 5028-5029. The normal practice was for David Gardner to submit anything to be signed by George Gardner to Mr. Sandifer for his review and approval. Glendale Ex. 209, P. 7, Tr. 4686, 5030. That practice was established in the fall of 1990 when Mr. Sandifer became David Gardner's

supervisor. Tr. 5031. David Gardner sent the applications to Mr. Sandifer with a note explaining what the applications were. TBF Ex. 244. Mr. Sandifer reviewed the documents for accuracy, and there was nothing in the applications that gave him trouble or caused him to extend his review process. Tr. 5039.

358. After reviewing the applications, Mr. Sandifer transmitted the applications to George Gardner. Tr. 5039. He does not recall recommending any changes to George Gardner. Id. Mr. Sandifer does not recall discussing the contents of the applications with David Gardner, George Gardner, Mr. Etsell, or FCC counsel. Tr. 5038-5039. When George Gardner received the four applications, he reviewed the entire Exhibit 1 that was part of all four applications. Glendale Ex. 208, P. 3, Tr. 5246. He had personal knowledge of many of the statements in the exhibit, and he saw nothing he disagreed with. Tr. 5248. He signed all four extension applications on December 18, 1991. TBF Ex. 245, Pp. 2, 6, 10 and 14. George Gardner then returned the applications to David Gardner, who sent them to Mr. Schauble for filing. Tr. 4687-4688. The applications were filed with the Commission on December 20, 1991. TBF Ex. 245, Pp. 2, 6, 10 and 14. The Commission granted each of the extension applications on January 29, 1992. TBF Ex. 247, Pp. 1, 5, 9, 12. There is no evidence

that the Commission requested any additional information before granting the applications.

3. Analysis of Exhibit 1

359. Exhibit 1 of each extension application filed on December 20, 1991 read as follows:

"The permittee respectfully submits that a grant of the instant application would be in the public interest for the following reasons:

"Initially, it must be noted that Raystay Co. has built and is currently the licensee of LPTV station W40AF licensed to Dillsburg, PA. Raystay built the station pursuant to a construction permit issued to it by the Commission.

"At the present time, equipment for the station has not been ordered or delivered. Raystay, however, has had discussions with equipment suppliers concerning the types and prices of equipment that could be used at the site specified in the construction permit. It has entered into lease negotiations with representatives of the owners of the antenna site specified in the applications, although those negotiations have not been consummated. A representative of Raystay and an engineer have visited the antenna site and ascertained what site preparation work and modifications need to be done at the site.

"Raystay has undertaken research in an effort to determine the programming that would be offered on the station. It has had discussions with program suppliers to determine what programs could be available for broadcast on the station. It has also had continuing negotiations with local cable television franchises to ascertain what type of programming would enable the station to be carried on local cable systems.

"The denial of this extension request could eliminate any possibility of the proposed LPTV service being offered to the community. No

application mutually exclusive with Raystay's construction permit application was filed, so no other entity has expressed an interest in providing this service.

"Accordingly, Raystay requests that the Commission extend the date for construction for a period of six months from the date the current construction permit expires, which is later."

TBF Ex. 245, Pp. 3-4, 7-8, 11-12, 15-16.

- a. "Initially, it must be noted that Raystay Co. has built and is currently the licensee of LPTV station W40AF licensed to Dillsburg, PA. Raystay built the station pursuant to a construction permit issued to it by the Commission."

360. No evidence was offered challenging the truth of those statements. George Gardner knew that TV40 became operational on December 16, 1988. Tr. 5205.

- b. "At the present time, equipment for the station has not been ordered or delivered."

361. George Gardner knew that that statement was correct. Glendale Ex. 208, P. 3. David Gardner was unaware of any equipment having been ordered or delivered. Glendale Ex. 209, P. 3, Tr. 4836-4838. TBF has no evidence that the statement was inaccurate. Tr. 4837.

- c. "Raystay, however, has had discussions with equipment suppliers concerning the types and prices of equipment specified in the construction permit."

362. George Gardner had discussions with equipment suppliers concerning the types and prices of equipment specified in the construction permit. He had continuing discussions with Jaymar, a company that made solid state transmitters. Glendale Ex. 208, P. 3. The discussions began at an LPTV convention in the fall of 1989 and continued into the fall of 1990. Tr. 5271. Later, he had continuing discussions with Jaymar where they would send him information, and George Gardner would have telephone discussions with Jaymar concerning that information. Glendale Ex. 208, P. 4, Tr. 5271.

363. George Gardner also had discussions with two other transmitter manufacturers whose names he does not recall. He also had discussions with suppliers of studio and origination equipment, switching equipment, remote control equipment, and other equipment that would have been needed at the stations. George Gardner began such discussions at the LPTV convention in Las Vegas in the fall of 1990, and he periodically updated that information. Glendale Ex. 208, P. 4.

364. David Gardner knew that George Gardner had had discussions with equipment suppliers concerning equipment that could be used at the Lancaster and Lebanon stations. Glendale Ex. 209, P. 4, Tr. 4831. He knew that George Gardner was continuing to attend LPTV conventions, and from time to time he saw notes on equipment information which led him to believe

George Gardner was talking to equipment suppliers. Tr. 4831-4832.

365. David Gardner also had discussions with equipment suppliers in 1989, 1990, and 1991. Tr. 4826, 4828. David Gardner had discussions with Bogner (an antenna manufacturer), tower suppliers, two transmitter suppliers, and wire suppliers (including Andrew) or representatives of such suppliers concerning equipment that could be used to build the Lancaster and Lebanon LPTV stations. Glendale Ex. 209, Pp. 3-4. Some of his conversations were at the fall 1989 LPTV convention. Tr. 4827-4828. David Gardner became less active in talking with equipment suppliers after that convention. Tr. 4829. He was still having some discussions concerning studio equipment in 1991. Tr. 4830.

366. Mr. Sandifer understood from discussions between George Gardner and Mr. Richard Fenstermacher that George Gardner had discussions with equipment suppliers. Tr. 5148-5149. Mr. Sandifer also knew that George Gardner had a significant number of brochures for equipment relating to the LPTV permits. Tr. 5149.

- d. "It has entered into lease negotiations with representatives of the owners of the antenna site specified in the applications, although those negotiations have not been consummated."

367. This sentence refers to conversations between David Gardner and representatives of the Quality Inn, the

transmitter specified in the Lebanon construction permits, and the Ready Mixed Concrete Company, the transmitter site specified in the Lancaster construction permits. Glendale Ex. 209, P. 4.

368. In October 1991, David Gardner was having discussions with Trinity Broadcasting Network concerning Trinity's interest in acquiring TV40 and Raystay's LPTV construction permits. Glendale Ex. 209, P. 4. Someone from Trinity called and said that Tom Riley, a contract engineer, would be making an appointment to look at the TV40 site and the sites specified in the construction permits. Glendale Ex. 209, P. 5, see also Mass Media Bureau Ex. 519. Trinity, through Mr. Riley, asked David Gardner to determine if the sites were still available and if Mr. Riley could visit the sites to determine their suitability. Tr. 4707.

369. TBF Ex. 228 is an excerpt from a phone log showing calls made by David Gardner from the offices of Raystay or Waymaker. Tr. 4715. The log references two phone calls made on October 10, 1991--one to a number (717) 273-6771 in Lebanon, PA, and one to (717) 394-0637 in Lancaster, PA. TBF Ex. 228. These were the calls that David Gardner made to the Ready Mixed Concrete Company in Lancaster and the Quality Inn in Lebanon. Glendale Ex. 209, P. 4. The telephone numbers are listed in the site availability portions of each application. Tr. 4716-4717. Edward Rick, III, the Vice-

President and an owner of Ready Mixed Concrete Company, confirmed that (717) 394-0637 was one of the plant's numbers in October 1991. TBF/Glendale Joint Ex. 6, Pp. 81-82, 130. According to the phone log, each call was one minute long. TBF Ex. 228. David Gardner's independent recollection was that the calls seemed to be four or five minutes long. Tr. 4719. David Gardner found the phone log in the summer of 1993. Tr. 4719-4720.

370. When David Gardner called the Quality Inn in Lebanon, he asked to speak to the manager (he did not ask for a specific person). Glendale Ex. 209, P. 5. He does not recall the name of the person who he spoke to, but someone who he understood to be a manager came on the line. Id. David Gardner does not recall the specifics of the conversation. Tr. 4729-4730. At the end of the conversation, David Gardner believed that the site was still available, that the person he was speaking to was the person to have lease negotiations with, and that Mr. Riley could visit. Glendale Ex. 209, P. 5, Tr. 4730.

371. David Gardner then called the Ready Mixed Concrete Company. Glendale Ex. 209, P. 5. He spoke to somebody (he does not remember their name) who identified themselves as a manager. Id. He does not remember the specifics of the conversation. Tr. 4723. David Gardner believes this person communicated to him that the site was still available. Id.

He also understood that Mr. Riley could visit and that they could have further discussions about using the site as an antenna site. Glendale Ex. 209, P. 5.

372. Barry L. March has been the General Manager of the Quality Inn Hotel in Lebanon since June 3, 1985. TBF/Glendale Joint Ex. 5, P. 121. He has principal supervisory responsibility over all aspects of the hotel's operations, including the negotiation and approval of all lease agreements involving the hotel's facilities. TBF/Glendale Joint Ex. 5, P. 124. As a member of the hotel's board of directors, he is aware of all lease negotiations and agreements that may require board approval. Id. On May 7, 1993, he declared that to the best of his knowledge, the hotel had never had any lease negotiations with Raystay. TBF/Glendale Joint Ex. 5, Pp. 124-125. He recalled a phone call and a visit from someone in 1989. TBF/Glendale Joint Ex. 5, Pp. 121-122, 124. At deposition, he testified:

All right. The potential would exist that I had a short telephone conversation with somebody after the initial contact, after the visitation. I don't recall it, but I'm not denying the possibility doesn't exist.

TBF/Glendale Joint Ex. 5, P. 66.

373. Mr. Rick was senior manager of Ready Mixed Concrete Company since at least January 1989. TBF/Glendale Joint Ex. 6, P. 76. In a declaration dated April 19, 1993, Mr. Rick

stated, "To the best of my knowledge, Ready Mixed has had no lease negotiations with Raystay or any representative of that company at any time." TBF/Glendale Joint Ex. 6, Pp. 106, 108. Mr. Rick did not know what Raystay was before he was contacted by Christopher Holt (TBF's counsel). TBF/Glendale Joint Ex. 6, P. 49. On February 14, 1989, Mr. Rick wrote a letter stating his willingness and ability to lease space for a television antenna structure for a rental figure of \$350/month. TBF/Glendale Joint Ex. 6, P. 139. Mr. Rick testified that he never had lease negotiations with anyone concerning the use of the Ready Mixed site as a LPTV antenna site. TBF/Glendale Joint Ex. 6, P. 77. He did admit, however, that he had discussions concerning the willingness to negotiate a lease agreement, and he then referred to the letter he wrote. TBF/Glendale Joint Ex. 6, Pp. 77-78.

374. In a declaration, David Gardner stated that he thought his telephone calls with the site representatives could be considered preliminary lease negotiations because there was a general discussion of terms under which the sites might be made available. TBF Ex. 246, P. 2. The term that was discussed was the availability of the site. Tr. 4724, 4741. He does not recall discussing any other terms with the individuals. Tr. 4724-4726, 4731-4733. He believes his conversations were negotiations. Tr. 4739, 4906-4908. He defines a negotiation to be a discussion between individuals

who are trying to achieve a common goal and that a negotiation is not more than a discussion, at least until the papers are signed. Tr. 4740, 4906. He believes determining the availability of the sites constituted lease negotiations. Tr. 4908.

375. David Gardner told Lee Sandifer in the fall of 1991 that he was having discussions with representatives of the Lancaster and Lebanon property owners. Tr. 4734, 5155. Mr. Sandifer understood it to be David Gardner's responsibility to negotiate the terms and conditions of such leases. Tr. 5156. David Gardner has much more knowledge in negotiating such leases than Mr. Sandifer. Tr. 5157. Mr. Sandifer did not inquire as to what specific negotiations had taken place with the antenna site representatives. Tr. 5156-5157.

376. George Gardner accepted the statement as reasonable because part of David Gardner's job responsibility was to negotiate such leases for Raystay. Glendale Ex. 208, Pp. 4-5. George Gardner also knew that Mr. Sandifer had reviewed the exhibit and had passed the application on without raising any question. Glendale Ex. 208, P. 5. He did not have personal knowledge concerning the course or status of the lease negotiations. Tr. 5256-5257.

- e. "A representative of Raystay and an engineer have visited the antenna site and ascertained what site preparation work and modifications need to be done at this site."

377. The representative of Raystay referred to in this sentence is David Gardner. Glendale Ex. 209, P. 5. The visits by an engineer were Mr. Riley's visits to the Lebanon and Lancaster sites. Glendale Ex. 209, P. 6.

378. David Gardner visited the Lebanon site twice and the Lancaster site twice while the construction permits were outstanding. Glendale Ex. 209, Pp. 5-6. The first visit to each site took place in the period from July to December 1990, and the second visit to each site took place in October, November, or December 1991, after Mr. Riley's visit. Tr. 4889-4890, 4896.

379. In one or both of his visits to the Lebanon site (Tr. 4776, 4803-4804), David Gardner did not alert anyone at the Quality Inn to his visit, and he does not recall asking to speak to the manager. Tr. 4773. He saw that the building appeared to be one of the highest buildings in Lebanon, which made the site desirable. Tr. 4770. He saw that there was already an antenna on the roof. Id. He looked into the elevator mechanical room and saw there was plenty of room to place transmitters and an STL receiver. Tr. 4770, 4776. He thought it would be better to place the transmitters in the elevator mechanical room than on the roof. Tr. 4777, Glendale Ex. 209, P.6. David Gardner also saw that there was already an adequate electrical supply and that the least expensive way to provide power would be to provide a new electric drop. Tr.

4770, 4781. He looked at the roof and determined the tower would have to be anchored to the roof so that the wind loading would not affect the structure. Tr. 4770-4771. He had some ideas as to how that could be done, although he did not make an exact determination. Tr. 4771.

380. In his first visit to the Lancaster site, David Gardner did not alert anyone at Ready Mixed that he was coming. Tr. 4792-4793. He does not recall speaking to anyone at the site. Tr. 4793. The site was an open industrial site with a dead end paved street. Tr. 4791. He saw and looked at several open sheds and mechanical structures. Tr. 4793. In the first visit, he accepted the proposal in the application to place the transmitter, antenna, and tower on top of one of the tall structures. Tr. 4794. David Gardner visually inspected a large steel structure that appeared to be strong enough to support a tower. Tr. 4795. The site had big electric lines, and David Gardner felt that Raystay could put in its own electric meter and drop. Id.

381. After Mr. Riley visited the Lancaster and Lebanon sites, he talked to David Gardner. Mr. Riley told David Gardner he was favorably impressed with the Lebanon site. Tr. 4802. Mr. Riley felt he could not recommend the Lancaster site because of the dust at the site and because of his concerns that the structures were not enough to support a tower and antennas. Tr. 4800, 4805-4806. David Gardner then

visited the Lancaster site a second time to reacclimate himself with the site in light of Mr. Riley's comments. Tr. 4800. He also determined to look at the Lebanon site while he was driving out in that direction. Tr. 4801. In Lebanon, David Gardner determined during the second visit that there were no changes that would affect where equipment might be placed. Tr. 4803. In Lancaster, David Gardner thought that Mr. Riley's concerns could be addressed by putting up a self-supporting tower. Tr. 4807.

382. Mr. Sandifer understood that David Gardner and an engineer from Trinity had visited the sites. Tr. 5116-5117. When George Gardner reviewed the applications, he accepted that statement because David Gardner and counsel had worked on the application and the statement referred to David Gardner's job responsibility. Glendale Ex. 208, P. 5. George Gardner misinterpreted the reference to the engineer to be a reference to the original site location engineer employed when Raystay applied for the construction permit. Tr. 5340-5341.

- f. "Raystay has undertaken research in an effort to determine the programming that would be offered on the station. It has had discussions with program suppliers to determine what program could be available for broadcast on the station."

383. George Gardner knew that these statements were correct because he had had discussions with program suppliers at the LPTV conventions he attended concerning programming

that could be used on the Lancaster and Lebanon stations. Glendale Ex. 208, P. 5. He had discussions with Video Jukebox Network concerning use of their programming at the LPTV convention in the fall of 1990, over the telephone, and at a cable convention in May or June of 1991. Id. George Gardner abandoned the concept because it would have required the purchase of equipment that was not affordable. Tr. 5268. George Gardner also talked to a program supplier named RFD. Id. At the fall 1990 LPTV convention, he worked the floor to find out what programmers might be interested in working with Raystay. Id. He also recalled that David Gardner and Mr. Etsell had also discussed programming with program suppliers. Glendale Ex. 208, P. 5.

384. In the last quarter of 1990, Mr. Etsell began developing a programming concept for the LPTV permits. TBF Ex. 265, Pp. 21-23. The programming concept was link TV40 and the permits into a network to provide an alternative movie service, supplemental by local programming, that would be of interest to cable systems and their subscribers. TBF Ex. 265, Pp. 25-26. In late 1990 and early 1991, Mr. Etsell had discussions with George Strimmel, Harry Brooks, and Joe Sans about forming a joint venture to purchase programming and to package it to other LPTV stations. TBF Ex. 265, Pp. 61-62.

385. David Gardner had discussions with program suppliers from 1990 until the permits were turned in. Tr. 4833, 4885,

4888. These discussions related to both TV40 and programming for the Lancaster and Lebanon construction permits. Glendale Ex. 209, P. 6, Tr. 4833. Mr. Etsell and David Gardner discussed what types of programming could make the Lancaster and Lebanon stations viable, and Mr. Etsell asked David Gardner to talk to program suppliers. Glendale Ex. 209, P. 6, Tr. 4884-4885. Raystay looked at home shopping, music video, nostalgia, old movies, and news services. Tr. 4887-4888.

386. Mr. Sandifer understood that Mr. Etsell was looking for programming for the construction permits from February 1991 to May 1991 and also in the September 1991-December 1991 time period. Tr. 5125-5127, 5131. Mr. Sandifer was also making inquiries concerning programming. Tr. 5132. His efforts were directed toward finding programming for TV40, but since the idea was to link TV40 and the permits into a network, his efforts were relevant to the permits. Tr. 5132-5133.

- g. "It has also had continuing negotiations with local cable television franchises to ascertain what type of programming would enable the station to be carried on local cable systems."

387. Mr. Etsell had a meeting at some point before February 12, 1991 with the board of directors of Cable Adnet. TBF Ex. 265, Pp. 47-48. The board consisted of principals of the major cable companies in the area. TBF Ex. 265, P. 44. Prior to that meeting, Mr. Etsell talked to Doug Keppler, the

President of Cable Adnet. Id. After the board meeting, Mr. Etsell had additional meetings with senior members of the cable companies. TBF Ex. 265, P. 49. He met with John Scott of ATC, which operated cable systems in Lebanon, Reading, and other small systems in the area. TBF Ex. 265, Pp. 45, 52. Mr. Etsell also met with Harry Brooks of Suburban Cable, which operated systems in Lancaster and Chester County, as well as Jim Munchel of Susquehanna Broadcasting. TBF Ex. 265, Pp. 44, 52. He also met with Hank Lockheart of Sammons Communications. TBF Ex. 265, P. 53. Mr. Etsell had no specific recollection of when these meetings occurred in late 1990 and early 1991. TBF Ex. 265, P. 55-56.

388. George Gardner attended meetings occasionally with cable operators where he discussed with them some of the problems with Mr. Etsell's concept. He tried to assure the cable operators that the problems could be resolved. Tr. 5265. He considered the discussions to be a continuing effort. Id.

389. David Gardner had discussions with Ron Amick of the Elizabethtown/Marietta cable system, which was within the Lancaster service area. Tr. 4815. David Gardner would meet Mr. Amick at the Atlantic Cable Show and at Pennsylvania Cable Television Association meetings in Harrisburg, including one in January 1992. Id., Tr. 4926-4927. He would ask Mr. Amick about the possibility of carriage. Tr. 4815.

390. Mr. Etsell recalled that around the end of the first quarter of 1991, George Gardner asked him to devote all of his time to the GH Cable properties. TBF Ex. 265, Pp. 65-67. George Gardner recalled that there was a suspension of activity on Mr. Etsell's business plan once an agreement was reached with Quality Family Companies in May 1991. Tr. 5318-5319, see TBF Exs. 218-221. George Gardner never abandoned the basic business plan. Tr. 5318. George Gardner feels certain that he reassigned Mr. Etsell to work on the business plan after the Quality Family deal collapsed. Tr. 5321. Mr. Etsell had a continuing charge to develop the permits. Tr. 5323-5324. Mr. Sandifer recalls having a number of discussions with Mr. Etsell in 1991 and 1992 concerning the interest of cable operators in the permits. Tr. 4990-4991. Mr. Sandifer also recalls Mr. Etsell telling him he had discussions with cable operators at the Atlantic City Cable Show in October 1991. Tr. 5121-5122. David Gardner understood from his discussions with Mr. Etsell that Mr. Etsell was still discussing the LPTV permits with cable operators in 1991 and 1992. Tr. 4822-4823, 4931-4933. Mr. Etsell initially recalled that his "direct involvement" with LPTV project ended around the end of the first quarter of 1991. TBF Ex. 265, P. 66. After that time, he was still involved in management discussions concerning the LPTV permits. TBF Ex. 265, Pp. 66-67. Later, he testified that

while he did not specifically recall having any further discussions with cable operators concerning the LPTV permits:

I have a relationship with these people on a regular basis and it is quite possible that I entered into a brief discussion with them at some associated meeting which I don't recall.

TBF Ex. 265, P. 108.

- h. "The denial of this extension request could eliminate any possibility of the proposed LPTV service being offered to the community. No application mutually exclusive with Raystay's construction permit application was filed, so no other entity has expressed an interest on interest in providing this service."

391. No evidence was offered challenging the truth of that statement. See Tr. 4698-4700.

4. Preparation of the July 1992 Extension Applications

392. By July 1992, Raystay had not started any construction on the Lancaster or Lebanon construction permits. Tr. 5280. In June of 1992, David Gardner and Mr. Schauble discussed filing applications for additional extensions of the Lancaster and Lebanon construction permits. Glendale Ex. 209, P. 7. On June 29, 1992, Mr. Schauble wrote David Gardner. TBF Ex. 249. Mr. Schauble asked in the letter if Raystay had done additional planning in working to get the stations on the air. Id. He then wrote that he would modify the exhibits if there were new such facts, and that otherwise, the same

exhibit would be used. Id. In late June of 1992, they discussed what actions had been taken with respect to the permits. David Gardner does not recall the specifics of the conversation, although he generally recalls informing Mr. Schauble that Raystay was continuing to do what it had done previously, but that no additional measures were being taken. Mr. Schauble informed David Gardner that he believed the same Exhibit 1 that was used in the December 1991 extension applications should be used in the next set of extension applications. David Gardner accepted his advice. Glendale Ex. 209, Pp. 7-8.

393. On June 30, 1992, Mr. Schauble sent David Gardner four applications to extend the Lancaster and Lebanon construction permits. TBF Ex. 250. David Gardner reviewed the applications and believed the statements made in these applications were accurate. Glendale Ex. 209, P. 8. He was relying on Mr. Schauble to ensure that the applications were complete, and he did not see any statements missing from the applications which he thought belonged in the applications. Id. Mr. Sandifer did not review these applications because he was on vacation. Tr. 5039-5040, Glendale Ex. 208, P. 6. David Gardner sent the applications directly to George Gardner. Tr. 5288. When George Gardner signed the second set of extension applications, he had the knowledge he had when he signed the first set of extension applications. Glendale Ex.

208, P. 6. He still believed the statements contained in Exhibit 1 were accurate, so he signed all four applications. Id. George Gardner did not realize in July 1992 that the Exhibit 1 was the same as that filed with the December 1991 applications. Tr. 5284.

394. George Gardner signed the second set of extension applications on July 7, 1992. TBF Ex. 251, Pp. 2, 6, 10, 14. The four applications were filed with the Commission on July 9, 1992. TBF Ex. 251, Pp. 1, 5, 9, 13. The Exhibit 1 used in each of the second set of extension applications was the same Exhibit 1 used in each of the first set of extension applications. Compare TBF Exs. 245 and 251. The Commission granted those applications on September 23, 1992. TBF Ex. 252. There is no evidence that the Commission requested additional information before granting the applications.

395. The Exhibit 1 used in the second set of extension applications does not make any representation that any of the activities described therein took place between December 1991 and July 1992. TBF Ex. 251. The negotiations with cable television franchises are described as "continuing". TBF Ex. 251, Pp. 3, 7, 11, 15. With respect to the July 1992 extension applications, there were three ways in which David Gardner understood that the negotiations with cable television operators were continuing. First, he had had discussions with Mr. Amick and other cable operators at a Pennsylvania Cable

Television Association meeting in January 1992. Tr. 4927-4929. Second, he believed that Raystay's earlier discussions were still open because Raystay could still find a program service attractive to the cable operators. Tr. 4931. Third, he was under the impression that Mr. Etsell was continuing to discuss the LPTV permits when he met with cable operators. Tr. 4931-4932.

5. Matters not in the applications

396. This section will discuss various matters or facts that were not mentioned (or allegedly not mentioned) in either set of extension applications.

a. Why construction had not been completed

397. Question 7(a) of the FCC 307 used by Raystay states that if the application is for an extension of a construction permit, an exhibit should be submitted listing reasons why construction has not been completed. See, e.g., TBF Ex. 245, P. 2. All of the extension applications answered that question by referring to Exhibit 1. TBF Ex. 245, Pp. 2, 6, 10, 14, TBF Ex. 251, Pp. 2, 6, 10, 14.

398. The only reason construction had not been completed was that Raystay had not developed a viable business plan. Tr. 5236. David Gardner understood that construction had not been started because Raystay was trying to formulate a viable business plan. Tr. 4692.