

conceal the deficient performance of Phillip Aguilar. It also misrepresented the extent of E. V. Hill's involvement with Trinity Broadcasting Network by suggesting that he had made only "a few appearances" on Trinity Broadcasting Network programs, whereas he was in fact a regular Trinity Broadcasting Network programmer and paid promotional speaker. The Request otherwise continued the tactic of proclaiming NMTV's regularity as a licensee while withholding conflicting facts or failing to disclose that NMTV was able to operate only because of Trinity Broadcasting Network's involvement. As a result, it once again became necessary for the Commission to seek additional information from NMTV (which request came after the issue was also being raised in predesignation pleadings in this case). The Commission's request was narrowly focused and comprehensive so that NMTV was finally forced into disclosure of enough specific information to begin to assess the nature of the Trinity Broadcasting Network/NMTV relationship. The result was the specification of issues in this proceeding.

634. In this proceeding, TBF essentially rehashed the candorless prior submissions of NMTV in opposing predesignation questions as to the relationship between Trinity Broadcasting Network and NMTV. Once the issues were specified in this proceeding, the candor of TBF, Trinity Broadcasting Network and NMTV did not improve. Thus, much of

the testimony offered by the parties in this case has proven candorless. Indeed, the entirety of what appear to be the mainstays of Trinity Broadcasting Network/NMTV's defense in this case have proven to be candorless after-the-fact rationalizations, including: the claim that NMTV had a special purpose of assisting minorities; the claim that any mistakes were the product of reliance on counsel; and the claim that certain episodes relating to the Odessa station and a Houston low power station constituted exercises of control by minority directors Jane Duff and David Espinoza as against Paul Crouch. Thus, the problem is not merely that these defenses fail to warrant the conclusions that Trinity Broadcasting Network/NMTV no doubt hope will be reached. Rather, the record demonstrates that the claims themselves are devoid of any colorable basis in fact, as developed above.

635. TBF has also offered direct testimony from two witnesses -- David Espinoza and Norman Juggert -- that is particularly egregious. It is evident that counsel who drafted David Espinoza's testimony put words into his mouth that bore no relationship to what he actually knew. For instance, TBF Exhibit No. 105, para. 18 (which concerned David Espinoza purported opposition to the construction of the Houston low power station), had him testifying as to facts that were incorrect (i.e., that the construction of Odessa and Portland was proceeding simultaneously) or that David Espinoza

in fact had no knowledge about (e.g., the power of the Houston station). In the case of Norman Juggert's written testimony, he sought to minimize his involvement in NMTV by stating that he had only represented NMTV in connection with certain matters while simply omitting a number of other matters where he provided representation for NMTV. His excuse was that these services were in fact being performed in his capacity as counsel for Trinity Broadcasting Network; however, even if this were true, since they related to NMTV their disclosure in any exhibit purporting to address Norman Juggert's relationship to NMTV would have been necessary to achieve full candor. The candorless nature of Norman Juggert's direct testimony is particularly serious since Norman Juggert is himself an attorney who should be sensitive to the need for full candor with a government agency and, moreover, he is a director of Trinity Broadcasting Network.

636. Much of the cross-examination of Trinity Broadcasting Network/NMTV has also exhibited a candorless quality. This is particularly evident in explanations offered for the fact that certain NMTV functions were performed jointly with Trinity Broadcasting Network, which obviously reflected that no one at the time recognized any real distinction between the two. Yet we are offered such ridiculous testimony as the assertion that Colby May included NMTV in his bill to Trinity Broadcasting Network so that he

could pass on the cost saved to NMTV (a "cost saving" amounting to one piece of paper, one envelope and one stamp). We are also expected to believe that Jane Duff "negotiated" the Wilmington bank loan when in fact Trinity Broadcasting Network was set to provide cash equal to the entire amount of the loan as collateral, which would enable virtually anyone to have "negotiated" a loan. Perhaps most egregious were the attempts of Paul Crouch, Jane Duff and Colby May to evade the significance of the October 1, 1991 letter from Joseph Dunne concerning Phillip Aguilar. Joseph Dunne detailed Phillip Aguilar's inadequacies and suggested that a fourth director be elected, even naming E. V. Hill as a possible candidate. When asked about the letter, Paul Crouch, Jane Duff and Colby May sought to minimize the letter and to suggest that they had not agreed with it. This testimony was patently candorless, given that the recommendations of Joseph Dunne were adopted in their entirety the day after his letter was written.

637. A close competitor for the title of most egregious deception, however, is the attempt to palm off Ben Miller, Trinity Broadcasting Network's vice president of engineering, as merely a "consultant" to NMTV. This deception even pre-dates the instant proceeding. It suggests that Ben Miller's involvement in NMTV arose merely because of his operation of a separate consulting business and that he was paid for his services. In fact, Ben Miller's services to NMTV were clearly

an integral part of his duties as vice president of engineering for Trinity Broadcasting Network, for which he received no additional compensation. Moreover, he functioned effectively as NMTV's director of engineering (a position held by no other person). NMTV's heavy dependence on Trinity Broadcasting Network for engineering services -- indeed, a dependence that was total in the context of NMTV's low power stations -- is a particularly compelling indicator of Trinity Broadcasting Network's control of NMTV. The fact that Trinity Broadcasting Network/NMTV sought to disguise Ben Miller's role by calling him a "consultant" can only suggest that they were aware of the potentially damaging impact of NMTV's heavy reliance on Trinity Broadcasting Network in the engineering area.

638. In sum, the record amply demonstrates that Trinity Broadcasting Network/NMTV have consistently followed a policy of concealment and lack of candor on the issue of the true nature of their relationship. This in itself is compelling evidence that the purpose underlying that relationship was improper.

d. Resolution of the Abuse of Process Issue

639. It cannot be disputed that NMTV was created by Paul Crouch and Trinity Broadcasting Network in light of the Commission's proposal to create a low power service incorporating a minority preference. Trinity Broadcasting

Network/NMTV have failed to offer any explanation for the creation of NMTV in these circumstances other than the obvious one -- a desire on Trinity Broadcasting Network's part to enjoy the benefits of an anticipated Commission policy to which it was not entitled. Moreover, it pursued a course of conduct characterized by concealment and deceit to accomplish its purpose. In WWOR-TV, supra at para. 25, the Commission found an intent to file an application for an improper purpose where there was a lack of candor coupled with a failure of the remaining evidence to demonstrate a proper purpose. 70 RR 2d at 756. The circumstances here are even more compelling since WWOR-TV concerned the motive for filing an application. As the Commission noted in para. 24 of its discussion, the Commission at the time tolerated the filing of applications for a plethora of arguably less than noble reasons. Id. Here, however, Trinity Broadcasting Network did not merely file an application but it manufactured an applicant, which is obviously not an action that the Commission liberally tolerates. There is no other explanation that suggests itself for such an action but a desire to benefit from that applicant's ability to claim a preference that Trinity Broadcasting Network could not. It accordingly must be concluded that Paul Crouch and Trinity Broadcasting Network proceeded with the specific intent to abuse the Commission's processes by claiming unwarranted minority and diversification

preferences. Especially since this is the second time Paul Crouch and Trinity Broadcasting Network has been before the Commission in circumstances raising questions as to their character, it must be ultimately concluded that the Commission cannot rely on Paul Crouch and Trinity Broadcasting Network to ensure compliance with minimal Commission requirements, rendering Paul Crouch, Trinity Broadcasting Network and related companies unqualified to be Commission licensees. Accordingly, TBF must be found unqualified to be the licensee of WHFT, Miami, Florida.

640. The HDO at para. 52 also directs that consideration be given as to whether a forfeiture in an amount not to exceed \$250,000 should be assessed on TBF, Trinity Broadcasting Network and/or NMTV based on violations of Section 310(d) of the Act (which prohibits unauthorized control of broadcast licenses) and/or Section 73.3555(e) of the Rules (which includes the minority exception to the 12-station limit). Consideration of such forfeitures is "irrespective of whether the hearing record warrants an Order denying" TBF's application. Thus, the possibility of a forfeiture is a possible additional sanction, and not a possible alternative sanction, to action on the designated hearing issues. The Commission has in appropriate circumstances both denied an application and imposed a forfeiture. David R. Price, 7 FCC Rcd 6550 (1992). That is clearly the possibility contemplated

here. The record reflects that Trinity Broadcasting Network has willfully and repeatedly violated Section 310(d) of the Act and NMTV has willfully and repeatedly violated Section 73.3555(e) of the Rules. These violations are ongoing, and hence encompass the applicable statute of limitations period. Since these violations are exacerbated by abuse of process and lack of candor, the facts warrant imposition of the maximum forfeiture of \$250,000 on both Trinity Broadcasting Network and NMTV.²⁶ Since TBF is an admitted subsidiary of Trinity Broadcasting Network, there is no basis for a separate forfeiture on it.

B. Glendale-Lancaster/Lebanon Extension Applications Issue

1. Applicable Standards

641. Both of the qualifications issues specified against Glendale are misrepresentation/lack of candor issues. A misrepresentation is a false statement of fact made with an intent to deceive the Commission. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129, 53 RR 2d 44, 46 (1983). Lack of candor is a concealment, evasion or other failure to be fully

²⁶ Trinity Broadcasting Network and NMTV rely heavily on viewer donations as a source of revenue. They should carefully consider the applicable legal requirements concerning the permissible uses of public donations before employing any such funds to defray the forfeitures imposed. Paying the penalty for a party's egregious violations of Commission Rules is not a use that a prospective donor to a religious broadcaster could normally be expected to contemplate.

informative accompanied by an intent to deceive the Commission. Id. A necessary and essential element of both misrepresentation and lack of candor is intent to deceive. The mere existence of a mistake in an application, without any evidence that the licensee meant to deceive the Commission, does not equal misrepresentation. Cannon Communications Corp., 5 FCC Rcd 2695, 2700, 67 RR 2d 1159, 1166 (Rev. Bd. 1990), quoting from MCI Telecommunications Corp., 3 FCC Rcd 509, 512 (1988). Similarly, "[c]arelessness, exaggeration or slipshoddiness... do not constitute misrepresentation." F.B.C., Inc., 3 FCC Rcd 4595, 4597, 65 RR 2d 263, 267 (1988). As the Review Board noted in Cannon Communications Corp., supra:

Disqualification for misrepresentation is, in the words of Judge Mikva, 'a blunderbuss', WADECO, Inc. v. FCC, 628 F.2d 122, 133 (D.C. Cir. 1980) (dissenting statement), and not to be triggered unless substantial evidence reveals serious and deliberate falsehoods.

With respect to lack of candor, the Board has similarly held that the mere failure to provide a more complete explanation does not constitute a lack of candor. Cannon Communications Corp., supra, 5 FCC Rcd at 2705 n.18, 67 RR 2d at 1166 n.18.

642. Under the Fox River standards, a two step process must be undertaken to determine whether a misrepresentation or lack of candor exists. With respect to misrepresentation, it must first be determined whether a statement is false.

Obviously, a true statement cannot be a misrepresentation. When searching for lack of candor, there must be a duty to report the information or fact in question. Once either threshold is reached, it must be determined whether the false statement or nondisclosure was motivated by an intent to deceive or was the product of an error, misunderstanding, miscommunication, or some other factor.

643. Even if a misrepresentation or lack of candor is found, disqualification of Glendale is not automatic. The issues involve certain applications filed by Raystay Co. (Raystay). The issues relate to the conduct of four persons affiliated with Raystay: David Gardner (who provides management services to Raystay as an employee of Waymaker Co.), Lee Sandifer (Raystay's Vice President and Chief Financial Officer), Harold Etsell (a former Vice President of Raystay) and George Gardner (Raystay's President and sole voting stockholder). The first three individuals have no relationship to Glendale, while George Gardner is the President and majority stockholder of Glendale. Any misconduct by David Gardner, Mr. Sandifer, or Mr. Etsell would have no bearing on Glendale's qualifications because they are not stockholders, directors, officers or employees of Glendale. The Presiding Judge recognized at hearing that it was George Gardner's state of mind that was determinative under the issue. Tr. 4675. That ruling is fully consistent

with Commission precedent. In this case, Glendale, the applicant, is a separate corporate entity from Raystay. Even when misconduct takes place at one station owned by a licensee that owns multiple stations, the misconduct is not necessarily relevant to the licensee's qualifications to hold other licenses. One of the primary factors involved in determining the applicability of such misconduct to other stations is who was personally responsible for the misconduct. Faulkner Radio, Inc., 88 FCC 2d 612, 616, 50 RR 2d 814, 818 (1981). The Commission noted that while personal responsibility carried little weight with respect to the station immediately involved, it was an important factor when assessing the relevancy of misconduct to other stations. Id., 88 FCC 2d at 617 n.20, 50 RR 2d at 818 n.20. Here, where the applicant is a different entity from the entity whose actions are being challenged, nothing in the Commission's Character Policy Statement or the case law authorizes Glendale's disqualification in the absence of evidence that George Gardner intended to deceive the Commission. The ultimate question that must be decided is whether George Gardner acted with an intent to deceive the Commission.

2. Misrepresentation

644. In July 1990, Raystay acquired five LPTV construction permits. Two permits specified Lancaster, PA as the community of license, the community of license for two

other permits was Lebanon, PA, and the fifth permit was for Red Lion, PA. The purpose of the first issue is to determine whether Raystay misrepresented facts or lacked candor in applications to extend the Lancaster and Lebanon construction permits, and if it did, the effect on Glendale's qualifications. Two extension applications were filed for each of the four permits - one on December 20, 1991, and one on July 9, 1992. Each of the eight extension applications used the same Exhibit 1 prepared by John Schauble of Cohen and Berfield based upon a telephone conversation he had with David Gardner in December 1991.

645. Just about all of the statements in Exhibit 1 were true beyond doubt. Under Section 73.3534(b) of the Commission's rules, the most important factor to the Commission in evaluating an extension request is the status of construction. Each of the extension applications unambiguously stated that construction had not started by stating that equipment had not been ordered or delivered. The exhibit then went on to describe what steps had been taken toward building the stations. With respect to most of these statements, there is no real dispute as to their accuracy. For instance, Raystay informed the Commission that it had discussions with equipment suppliers concerning equipment that could be used at the station, and the record fully supports that contention. George Gardner (and to a lesser extent,

David Gardner) had a variety of discussions with equipment suppliers. The record fully supports Raystay's statement that its representative (David Gardner) and an engineer (Tom Riley) visited the sites and looked at such matters as the placement of equipment and the availability of electric power.²⁷ David Gardner visited each site twice while the permits were outstanding.

646. The record also clearly supports Raystay's statement that it undertook research to find programming for the stations. Raystay looked at a variety of programming formats, including everything from home shopping to music video to nostalgia to old movies to news channels. Raystay's concept was to find programming that would be attractive to cable subscribers and would convince cable operators to carry the stations. George Gardner, David Gardner, Mr. Etsell, and Mr. Sandifer²⁸ all talked to program suppliers in a search for acceptable programming. Mr. Etsell had extensive discussions with cable operators in the spring of 1991 concerning the LPTV

²⁷ For these purposes, it is irrelevant that Mr. Riley was not Raystay's engineer. What is significant is that David Gardner had the benefit of Mr. Riley's evaluation which could be used by Raystay. While the Exhibit 1 said that the representative was affiliated with Raystay, no such claim was made for the engineer.

²⁸ While Mr. Sandifer's efforts were directed towards TV40, Raystay's operating LPTV station, his efforts were relevant to the construction permits. Since the idea was to tie TV40 and the permits into a network, his efforts were relevant to the permits.

permits. To a lesser extent, David Gardner and George Gardner also talked to cable operators.

647. There are only two isolated statements in Exhibit 1 that require scrutiny to determine the truth or falsity of the statements. The first is the statement, "It [Raystay] 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." This issue was specified because TBF proffered affidavits from Edward Rick of Ready Mixed Concrete Company (the Lancaster site) and Barry March of the Quality Inn (the Lebanon site) stating that they were unaware of any lease negotiations with Raystay. Memorandum Opinion and Order, FCC 93M-469 (released July 15, 1993). The record shows that the sentence refers to telephone calls David Gardner made to the Ready Mixed Concrete Company and the Quality Inn in October 1991.

648. David Gardner did call both sites and confirmed the availability of both sites in October 1991. His telephone logs confirm that he called both sites. Moreover, upon closer examination, the testimony of Mr. March and Mr. Rick is consistent with David Gardner's testimony. In his declaration, Mr. March claimed he was unaware of any lease negotiations, but at deposition, he admitted he may have had a short telephone conversation which he forgot about. The telephone conversation in question was only one minute long.

It is, of course, equally probable that Mr. Rick forgot about a similar conversation. Moreover, Mr. Rick apparently defines lease negotiations to exclude discussions concerning the availability of a site and the price, since he did not consider the reasonable assurance letter he wrote to be lease negotiations. Neither Mr. March's nor Mr. Rick's testimony forecloses the possibility of a phone call confirming the continued availability of the sites. There is thus no record evidence contradicting David Gardner's testimony.

649. The remaining question concerning the statement is whether David Gardner's two one-minute phone calls could fairly be described as "lease negotiations". David Gardner believed the term, which came from counsel, was accurate because he considered "negotiations" to mean the same as "discussions". If Raystay had used the word "discussions" instead of "lease negotiations", the sentence would have read:

It has entered into discussions with representatives of the owners of the antenna site specified in the applications, although these discussions have not been consummated.

David Gardner made the phone calls to determine the continued availability of the sites. If Raystay had used the word "discussions" instead of "lease negotiations", the sentence clearly would have been accurate. The use of the word "negotiations" is neither so different from "discussions" nor so unreasonable as to constitute a misrepresentation.

650. There are several bases for that conclusion. First, one of the dictionary definitions of negotiate is "to arrange for or bring about through conference, discussion, and compromise." Webster's New Collegiate Dictionary, 1979 Edition, P. 762 (definition 1(b), emphasis added). David Gardner understood he had arranged for and brought about something in his telephone discussions: a belief that the sites were still available, and an understanding that Mr. Riley could visit the sites. Raystay also made clear in the exhibit that it had not reached a lease agreement with either Ready Mixed Concrete Company or The Quality Inn. It made no representation that it was close to reaching an agreement. While David Gardner apparently did not discuss matters such as price or length of the lease, the most fundamental term of any potential lease agreement is whether the property will be leased. Finally, there is no reason why "lease negotiations" has to mean extensive meetings involving lawyers and rounds of draft documents. If a tenant calls a landlord and offers to pay \$500 a month for an apartment, and the landlord says \$600 a month is acceptable, that conversation would be lease negotiations.

651. The fact that the conversations were each one minute long does not make Raystay's statement a misrepresentation. It was David Gardner's independent recollection that the calls were each four or five minutes long. The telephone logs were

not researched until after the issue was added in this proceeding. No evidence shows that David Gardner or counsel were aware when preparing Exhibit 1 that the phone calls were only one minute long. Moreover, Raystay never made any representation that the lease negotiations were extensive or drawn out.

652. A comparison of this case with Broadcast Associates of Colorado, 104 FCC 2d 16, 60 RR 2d 721 (1986) shows that the use of the phrase "lease negotiations" cannot be considered a disqualifying misrepresentation. In Broadcast Associates, the Commission refused to disqualify an applicant who had admittedly given clearly false testimony as to how she retained counsel and who falsely certified her application. Despite the clearly false nature of the testimony and the certification, the Commission found no evidence of "deliberately misleading behavior" and concluded that "disqualification is entirely unwarranted". 60 RR 2d at 724. Any argument for disqualification in this case is far weaker than the facts presented in Broadcast Associates. David Gardner did have discussions with representatives of each site. He received assurances that the sites were still available. His discussions gave Raystay the opportunity to have further discussions. Raystay specifically told the Commission that it did not have a lease in hand, and it did not tell the Commission it was close to having a lease. Under

these circumstances, any difference between the term "discussions" and term "lease negotiations" is largely semantic, and no misrepresentation can be found.

653. Even if a misrepresentation could be found on David Gardner's part, disqualification of Glendale would be wholly unwarranted because there is no evidence whatsoever that George Gardner had any reason whatsoever to know that the statement was false. George Gardner had Mr. Sandifer review the first set of extension applications before he reviewed and signed them. David Gardner told Mr. Sandifer that he was having discussions with property owners. While George Gardner did not have personal knowledge of what negotiations had taken place, he knew that it was part of David Gardner's job responsibility to negotiate such leases for Raystay. Since David Gardner and counsel had worked on the application, and since Mr. Sandifer had reviewed the application, he had a more than reasonable basis for accepting the statement. No misrepresentation can be found on George Gardner's part because he had no reason to believe the statement was false. Therefore, no intent to deceive could be found on George Gardner's part, and the statement concerning lease negotiations cannot serve as a basis for disqualifying Glendale.

654. The second statement that requires further scrutiny is Raystay's use of the word "continuing" to describe the

negotiations with cable television operators in the July 1992 extension applications. The use of the word "continuing" was appropriate because George Gardner and David Gardner had discussions with cable operators after December 1991. David Gardner ascribed several different meanings to the word "continuing". First, he noted that the discussions had continued after the December 1991 extension applications were filed. Second, he believed that the earlier discussions with cable operators were "continuing" in the sense that they were still open if an attractive program service could be found. Third, David Gardner was under the impression that Mr. Etsell was still talking to cable operators in 1992. David Gardner's first two explanations provide an adequate basis for the use of the word "continuing" so that the word cannot be considered a misrepresentation. Indeed, the word put the Commission on notice that Raystay had not completed its negotiations by reaching agreements with cable operators.

655. David Gardner's belief that Mr. Etsell was still talking with cable operators in 1992 is consistent with the fact that Mr. Sandifer and Mr. Etsell were discussing the interests of cable operators in 1992. Mr. Etsell, on the other hand, did not recall talking to cable operators after the first quarter of 1991, although he left open the possibility that he had some discussions after that time. That discrepancy provides absolutely no basis for finding a

misrepresentation, however. TBF had both the burden of proceeding and the burden of proof under this issue. Memorandum Opinion and Order, FCC 93M-469, supra. Allegations of misrepresentation "must be specific, not those capable of supporting more than one plausible conclusion." Pinelands, Inc., 7 FCC Rcd 6058, 6065, 71 RR 2d 175, 183 (1992). Here the use of the word "continuing" is accurate in other senses regardless of whether Mr. Etsell talked to cable operators in 1992. Moreover, as Mr. Etsell acknowledged, he may have had discussions that he forgot about. George Gardner confirmed that Mr. Etsell was taken off the LPTV project in early to mid 1991, but he believed he reassigned Mr. Etsell later in 1991. Another possibility is that Mr. Etsell said something that left David Gardner with the mistaken but good faith belief he was still talking to cable operators. It must be noted that Mr. Etsell did meet regularly with cable operators in his role with the Pennsylvania Cable Television Association. Moreover, since Mr. Etsell did not work out of Raystay headquarters in Carlisle, the others did not necessarily know what he did on a day-to-day basis. Both of these possibilities have record support and are inconsistent with any finding of misrepresentation. Pursuant to the Pinelands case, no substantial and material question of misrepresentation exists.

3. Lack of Candor

656. The remaining question is whether Raystay lacked candor by intentionally not disclosing anything that should have been disclosed to the Commission. Intent to deceive is an essential element of lack of candor. Fox River Broadcasting, Inc., supra. The mere failure to provide an explanation (or a complete explanation) does not establish lack of candor. Cannon Communications Corp., supra, 5 FCC Rcd at 2705 n.18, 67 RR 2d at 1166 n.18. While extensive testimony was taken on several matters, Raystay was under no obligation to report most of the matters in question. Even if there was any such obligation, no evidence of intent to deceive the Commission can be found, particularly since Raystay's principals were relying upon counsel to ensure the applications were complete.

657. Question 7(a) of FCC Form 307 required Raystay to state why construction had not been completed. The record shows that the only reason construction was not completed was that Raystay had not developed a viable business plan. The idea behind the business plan Raystay primarily worked on was to find programming acceptable to cable operators and their viewers.

658. There was no statement in the applications filed by Raystay stating, "The reason construction has not been completed is that Raystay has not developed a viable business

plan." As George Gardner testified, however, Exhibit 1 listed what Raystay was doing with the potential programming sources and with the cable operators. The use of the word "continuing" put the Commission on notice that Raystay's efforts had not been consummated. Clearly, Raystay made no attempt to hide its efforts to develop a business plan from the Commission.

659. Another reason no intent to deceive can be found is that nothing in Exhibit 1 suggests any other reason why construction had not been completed. One of the reasons for granting an extension application is that no progress has been made for reasons clearly beyond the control of the permittee. Section 73.3534(b)(3) of the Commission's rules. No reference was made in Exhibit 1 to any reason other than the actual reason, and Raystay never argued that construction had not been completed for "reasons clearly beyond its control".

660. A third reason why Raystay cannot be faulted for not including a specific statement as to why construction had not been completed is that the Mass Media Bureau found such a statement unnecessary. It is patently obvious by reading Exhibit 1 that the exhibit does not contain a sentence stating "The reason why construction has not been completed is that ...". As Bureau counsel noted in this proceeding, it is the responsibility of the Mass Media Bureau staff to determine what is required to be in such an application. Tr. 5392. If

the Low Power Television Branch thought Raystay's application was incomplete, it had several options. The instructions to FCC Form 307 state that "Defective or incomplete applications may be returned without consideration." The applications could have been denied for failure to make a sufficient showing. The staff could have submitted a request for more specific information as to why construction had not been completed. Instead, the staff clearly found Raystay's responses were sufficiently informative to justify grants of the applications. The staff clearly knew what the questions on the application form were. Under these circumstances, Raystay cannot be faulted for providing a response that was deemed adequate by the staff.

661. At hearing, TBF offered extensive evidence concerning discussions Raystay had with Trinity and other entities concerning the possible sale of one or more of the LPTV construction permits. Raystay was under no obligation to report those negotiations in the extension applications. Raystay never made any decision to sell the Lancaster or Lebanon permits, and it never had any understanding or agreement to do so. Indeed, Raystay was not in active sales negotiations with any particular party at the time either set of extension applications was filed. The negotiations with Trinity were discontinued by George Gardner before the first set of extension applications were filed. By the fall of

1991, Dennis Grolman's interest was limited to the Red Lion construction permit. Any negotiations with Robert Shaffner concerning the construction permits were extremely preliminary. None of these facts were of any importance to the Commission in ruling on the extension applications. George Gardner had made it clear the permits were not being sold to Trinity, and there was no other prospective buyer on the horizon.

662. A review of the application form and the Commission's rules further supports the conclusion that the prior discussions did not have to be reported. None of the questions in the application form required that information. Furthermore, in the case of LPTV stations, assignment and transfer agreements do not have to be filed with the Commission unless and until an assignment application is actually filed. While broadcast stations licensed under Part 73 must file such agreements with the Commission (Section 73.3613(b)(3) of the Commission's rules), Section 74.780 of the Commission's rules does not apply that requirement to LPTV stations. If the Commission is not interested in seeing assignment agreements in the absence of an assignment application, it is clearly not interested in negotiations that did not lead to an agreement and which have been discontinued. While an actual assignment agreement could be relevant information as to what would happen to the permit in the

future, Raystay never had such an agreement. Raystay therefore had no obligation to report the negotiations it had.

663. A related question is whether Raystay filed the extension applications for the purpose of selling the construction permits, and, if so, whether Raystay should have mentioned that fact in the extension applications. The record shows that Raystay did not seek extensions so it could sell the permits. George Gardner, Mr. Sandifer, and David Gardner all testified to that effect. Mr. Sandifer explained that the insignificant amount of money Raystay could have received would not have justified the time and administrative costs involved. Indeed, Raystay's failure to negotiate an express provision with Greyhound allowing the permits to be sold to a third party also shows that it was not seeking extensions for the purpose of selling the permits. Also, while Raystay talked to people who approached it with an interest in the permits, the only effort it made to seek a buyer was one letter written by David Gardner in June 1992 which Mr. Sandifer and George Gardner did not know about and which David Gardner promptly forgot. David Gardner was still trying to develop a plan to put the station on the air in October 1992. The most that could be said is that George Gardner was willing to sell the permits if TV40 was sold. TV40 was never sold. In other words, if something happens in the future, a sale is a possibility. Of course, a sale is always possible whenever