

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

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APR 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Regulations Governing Television)
Broadcasting)
)
Television Satellite Systems)
Review of Policy and Rules)

MM Docket No. 91-221

MM Docket No. 87-8

To: The Commission

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COMMENTS OF SPECTRUM DETROIT

1. Spectrum Detroit has challenged the lawfulness of the use of an LMA to bridge the interim time period for the Commission to process and consider an application for consent to assignment of the license from an interim licensee-lessor (and prospective assignor) to an interim operator-lessee (and prospective assignee). This challenge relates to the proposed license assignment and interim LMA relative to television station WGPR in Detroit, Michigan. The interim licensee-lessor (and prospective assignor) is WGPR, Inc. The interim operator-lessee (and prospective assignee) is the venerable CBS, Inc. Copies of the texts (sans exhibits) of Spectrum Detroit's initial petition and subsequent reply are attached as Exhibits A and B respectively.

2. For reasons reflected in these attachments, Spectrum Detroit questions the wisdom and challenges the lawfulness under 47 U.S.C. §310 of the use of an LMA in the television broadcast field as an interim bridge pending processing of an assignment application when the prospective assignee and interim operator-lessee is a national television network. The Commission has long

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recognized the inherent power of national television networks over affiliated local television stations, and has taken this inherent power into account in adopting rules and policies regarding network affiliation agreements and other network practices. E.g., 47 C.F.R. §§73.658-659. The overwhelming industry and financial presence of a national television network is such that, in the real world, an LMA with a mere individual television station licensee cannot possibly reflect the continued control of the station by that licensee during the interim period before the Commission can discharge its responsibilities under Section 310, no matter how the fine print legalese may be worded in the LMA documentation.

Respectfully submitted,



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April 17, 1995

EXHIBIT A

COPY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In re Application of)
)
WGPR, INC.)
Detroit, MI)
)
For assignment of Station License)
of Station WGPR-TV, Channel 62,)
at Detroit, MI)

File No. BALCT-941027KI

To: The Commission

PETITION TO DENY OR DESIGNATE FOR HEARING

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December 22, 1994

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Application of)
WGPR, INC.) File No. BALCT-941027KI
Detroit, MI)
For assignment of Station License)
of Station WGPR-TV, Channel 62,)
at Detroit, MI)

TO: The Commission

PETITION TO DENY OR DESIGNATE FOR HEARING

1. Pursuant to § 309 of the *Communications Act of 1934, as amended*, 47 U.S.C. § 309, Spectrum Detroit petitions the Federal Communications Commission (FCC or Commission) to deny or designate for hearing the pending application for assignment of Station WGPR-TV from WGPR, Inc., an entity wholly owned by the International Free and Accepted Modern Masons, Inc., to CBS, Inc. In this petition, Spectrum Detroit raises public interest questions that under § 309 of the *Communications Act of 1934, as amended*, must be considered and resolved favorably to the applicant parties before the Commission may lawfully grant the assignment of license. 47 U.S.C. § 309; *Camden Radio, Inc. v. FCC*, 220 F.2d 191 (D.C. Cir. 1954).

I.
Standing

2. Spectrum Detroit is a Michigan corporation owned by seven African-American individuals, virtually all of whom reside in Detroit, Michigan or the greater metropolitan Detroit area, and as such, are members of the WGPR-TV service area. The sworn declaration of Bishop P. A. Brooks, attached as Exhibit 1

establishes the standing of Spectrum Detroit to file this petition.

3. Bishop Brooks, a resident of the Detroit metro area for 45 years, is the founding (and current) Pastor of the New St. Paul Tabernacle, Church of God In Christ, of Detroit, and is the Prelate of the Michigan Diocese of the Church of God In Christ (comprising 85 churches located throughout the state). Bishop Brook's church produces an inspirational and informational nonentertainment television program, *March of Faith*, which has been aired weekly by Station WGPR-TV since shortly after the station signed on in 1975. Consequently, as a regular viewer of Station WGPR-TV and as a producer of *March of Faith*, Bishop Brooks has first-hand knowledge of Station WGPR-TV's program service.

4. Six other prominent and civicly-active citizens joining in the opposition to the assignment of license are identified in Exhibit 1. They are Sharon Madison, President and CEO of Madison Madison International of Michigan, one of the oldest and largest African-American design firms in the country; W. Lawrence Long, founder, President and CEO of the W. Lawrence Long Insurance Agency of Detroit; Samuel Logan, Jr., Vice President and General Manager of the Detroit-based *Michigan Chronicle*, the oldest and largest black newspaper in the state; Mel Farr, President and owner of Mel Farr Automotive Group based in the Detroit metro area and a former Detroit Lion; Dave Bing, President of Bing Steel, located in Detroit, and a former Detroit Piston; and Joel

I. Ferguson, a resident of Lansing, Michigan, President and sole shareholder of Lansing 53, Inc., the licensee of Station WLAJ-TV, Channel 53, an ABC affiliate in Lansing, and the immediate past Chairman of the Board of Trustees of Michigan State University.¹ These individuals, both individually and collectively, are parties-in-interest having standing to protest the proposed WGPR-TV license assignment. *United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966). See also *FCC v. Sanders Bros. Radio Stations*, 309 U.S. 470 (1940).

5. The petition is timely filed under § 309 of the *Communications Act of 1934, as amended*, 47 U.S.C. § 309, within 30 days of public notice of Commission acceptance for filing of the assignment application. The petition is supported by the declarations under penalty of perjury of two members of Spectrum Detroit (Exhibits 1 and 2) and by other documents and sources identified in the text, largely emanating from the assignor or the assignee themselves.

¹ Joel I. Ferguson's residence in Lansing, Michigan is located approximately 90 miles from downtown Detroit. While Mr. Ferguson resides outside the WGPR service area, he is acutely familiar with the needs and interests of the Detroit community by virtue, *inter alia*, of his past membership of eight years, including service as Chairman for two years, on the Michigan State University Board of Trustees. Moreover, Mr. Ferguson, is a party-in-interest as he submitted a \$34 million dollar bid in August, 1994, on behalf of himself and other prominent African-American individuals, to purchase Station WGPR-TV (and the co-owned FM radio station), in an effort to preserve the continuous ownership, management and program service of Station WGPR-TV by minorities, which WGPR, Inc. rejected in favor of CBS, Inc.'s \$24 million dollar purchase offer. See Exhibit 2 (Declaration of Joel I. Ferguson).

II.
Summary

6. A *prima facie* case exists there has been an unauthorized assumption of control on the part of the assignee, CBS, Inc., in concert with the licensee, WGPR, Inc. (Part III, *infra*). The grant of the proposed assignment will also result in the loss of continuous minority ownership of Station WGPR-TV and the corresponding loss or displacement of locally produced minority programming which Station WGPR-TV has historically provided the significant minority viewing audience in Detroit for nearly 20 years (Part IV, *infra*).

III.
Abdication of Control by WGPR, Inc. to CBS, Inc.

7. This Commission, as mandated by the *Communications Act of 1934, as amended*, has a long-standing policy against premature assumption of control by assignees or transferees of broadcast stations prior to FCC approval of such assignment or transfer. 47 U.S.C. § 310(d); § 73.3540 of the Commission's Rules, 47 C.F.R. § 73.3540. In making a determination whether an unauthorized transfer or assumption of control has occurred, the Commission traditionally looks beyond legal title and examines who actually controls (1) station finances, (2) personnel matters, and (3) programming. *Southwest Texas Public Broadcasting Council*, 85 FCC2d 713, 715 (1981); *CanXus Broadcasting Corporation*, 7 FCC Rcd. 3874, 71 R.R.2d 136, 137 (MMB 1992). "Even if one of these indicia of control is not dispositive in itself, it may, nevertheless support a finding of

unauthorized assignment when viewed with other indicia in the overall context of the course of conduct between the parties." *CanXus, supra*, 7 FCC Rcd. at 3874.

A.
Station Finances

8. The FCC has been very leery of arrangements whereby the prospective assignee of a broadcast station advances money to the licensee and prospective assignor either directly or by means of financing station operations during the interim period pending FCC consideration of the proposed assignment of license. Indeed, the Commission has on a number of occasions required parties who wanted to arrange for the infusion of money into an ailing operation to develop a third party intermediary that would oversee the use of the money for station purposes without allowing the supplier of the funds to exert control over station operations.

9. The asset purchase agreement between WGPR, Inc. ("licensee" or "assignor") and CBS, Inc. ("CBS" or "assignee") is dated as of September 23, 1994. It contains something called a "local marketing agreement" not provided for under the FCC's rules about which we will have more to say infra. A copy of that instrument is annexed as Exhibit 3. It specifies a commencement date of no later than November 27, 1994 (§1.1).

10. While the FCC is reluctant to rely on published news accounts in support of petitions to deny, there has been a number of news accounts in the Detroit press germane to this matter involving interviews of representatives of the assignee,

CBS, in which the accuracy of the news accounts has been borne out and corroborated by subsequent events. We have attached two articles dated November 17, 1994, one involving an interview of CBS executive Jay Newman by Marc Gunther, television writer for the *Detroit Free Press* (Exhibit 4) and the other involving an interview of Mr. Newman by Tim Kiska, television writer for the *Detroit News* (Exhibit 5).

11. Mr. Gunther gained the impression from Mr. Newman that the assignee, CBS, had already spent \$5 million on facilities for WGPR-TV ("WGPR" or "Channel 62") as of the date of the interview obviously preceding the date of his article published on November 17, 1994. Mr Kiska gained the impression from Mr. Newman that \$5 million would be spent on facilities for the station by CBS by the time the station's programming was changed from that of an independent to that of a CBS station, to commence on December 11, 1994. The accuracy of that information regarding the projected commencement date of the format change is corroborated by reference to the authoritative *TV Guide*, Detroit edition, for the week of December 10-16, 1994 at 60, copy attached as Exhibit 6.

12. Mr. Gunther gained the impression that the assignee, CBS, will launch a \$1 million promotion campaign within a week of his interview of Mr. Newman, which, as noted above, took place prior to the publication of the interview in the November 17, 1994 edition of the *Detroit Free Press*. Exhibit 4. Mr. Kiska gained the impression that the assignee, CBS, would embark on a massive promotional campaign over a 10-week period costing well

over \$1 million. This particular information is placed in quotes, denoting that the information is a verbatim or nearly verbatim report of the precise words used by Mr. Newman in the interview. Exhibit 5.

13. So, if all of this is true, then CBS has provided or is in the process of providing \$6 million or more for facilities and promotion of a television station which it doesn't own and even before expiration of the statutory 30-day waiting period before the FCC can legally act on the pending assignment application. Moreover, CBS is paying to the station owner a million dollars a year under the so-called marketing agreement, which payments have already begun and will continue throughout the pendency of the unapproved assignment application. Exhibit 3, ¶4.1. .

14. Unless totally removed from reality, one would have to rate the factor of "station finances" as a black mark, evidencing a premature and unauthorized transfer of control of the station from the licensee to the assignee.

B.

Personnel Matters

15. Dating back to the commencement of its stewardship of Section 310 of the Act, the Commission has never liked a prospective buyer of a radio or television station to become active in the affairs of the station during the interim period between (a) the signing of the sale and purchase agreement and filing of the assignment application and (b) FCC approval of the assignment application. Indeed, that has been a consistent "no-no" on the part of assignees. The law books and the Commission's

administrative files abound with published decisions and unpublished actions reflecting this consistent policy and practice.

16. Mr. Gunther learned from his interview of Mr. Newman that the latter is a CBS network vice president in New York who has been named "to run WGPR-TV, Channel 62." Those quotations reflect Mr. Gunther's words. He also learned from Mr. Newman that as of the date of the interview, "I'll be working full time in Detroit." Those quotations reflect Mr. Gunther's verbatim or nearly verbatim report of the words as used by Mr. Newman.

Exhibit 4. Mr. Kiska captioned his article "CBS' new man in town..." and identified Mr. Newman as a CBS "troubleshooter" named "to head up its new operations at Channel 62." Exhibit 5.

17. There is nothing subtle about CBS on this score. In addition to sending one of its top executives into Detroit to live there and run the station during the interim while the FCC is deciding whether the assignment serves the public interest, CBS has negotiated the so-called marketing agreement with the licensee and proposed assignor containing some extraordinary provisions about station personnel.

18. The local marketing agreement has very little if anything to do about local marketing. It has a lot to do about running the station and the personnel who attend to that operation. First of all, CBS has purchased all of the air time on the station except one hour of marginal value on Saturday morning from 7AM to 8AM. Exhibit 3, ¶2. For this, CBS gets to

keep the revenues. It purchases that air time for the sum of \$1 million dollars a year or a little over \$80,000 a month.

Television stations cannot operate on \$80,000 a month in Pierre, South Dakota, let alone in the nation's 9th largest television market. Source of market ranking, Arbitron ADI TV Households, *Television & Cable Yearbook*, 1994 Edition at A-1 (attached as Exhibit 7).

19. So, whose staff is going to run the station? According to the so-called marketing agreement, the licensee and proposed assignor has contractually committed itself to retain two full-time employees, one a general manager and the other whose duties are not described. Exhibit 3, ¶3(a) and ¶3(b). The licensee and proposed assignor has responsibilities relative to the technical operation of the station, Exhibit 3, ¶3, but it is unlikely that the general manager and the other full-time employee have the time to man the transmitting facilities during the entire schedule of operations, let alone attend to the installation of \$5 million in new equipment and facilities. Moreover, if the power costs are to be met by the licensee and proposed assignor under that provision, this will make a serious inroad into the \$80,000 monthly payment from the proposed assignee.

20. The licensee and proposed assignor has agreed to loan its sales, traffic and collection staff to the proposed assignee. Exhibit 3, ¶5.4. There is no provision in the marketing agreement for the staff needed to operate studios or produce programs, customarily a substantial complement of people. For

sure, the \$80,000 monthly budget of the licensee and proposed assignor clearly won't cover that cost in addition to the salaries of its two employees and cost of operating the technical facilities of the station.

21. The obvious truth is that CBS will run the station using employees of the licensee who are loaned to it under the so-called marketing agreement or otherwise made available to CBS or otherwise arranged for by CBS in the local job market or from its other stations and New York headquarters. The obvious truth is that the so-called marketing agreement makes provision for a minimum of two full-time employees mirroring FCC regulations, policy and practice under LMA's in radio broadcasting which do not apply to television. The obvious truth is that those two full-time employees occupy a ceremonial and token relationship to CBS's takeover of the operation of the television station.

22. All of this is enormous evidence and a strong indictment of the parties for an unlawful premature transfer of control under the factor of "Personnel Matters."

C.
Programming

23. During the many years of its stewardship of Section 310 of the Act, the Commission has always been wary of programming changes that occur during the period (a) from the time the sale and purchase agreement is executed and the assignment application is filed and (b) to the time when the agency has discharged its statutory duty and determined that the proposed change in licensee would serve the public interest. The more dramatic the

programming changes during this interim period, the more the antennae of the Commission are alerted to a potential unlawful influence on the licensee's programming judgment by the potential licensee in waiting. An overall format change is the most dramatic evidence of all of the influence of the prospective assignee.

24. Here, the programming changes have been cataclysmic. We have prepared a comparison of programming on Sunday, a weekday and Saturday during the week of September 24-30, 1994 and during the week of December 17-23, 1994. This is attached as Exhibit 8. The source of this information is the authoritative *TV Guide*, Detroit edition. It is our understanding that the schedules in *TV Guide* are based upon information furnished by television stations approximately one week prior to the time period reflected in the magazine. Accordingly, this information is not a precise depiction of the programs actually telecast, as would be the case if reference was made to station operating logs. However, our experience has been, and we believe the Commission's experience has also been, that for a representational evaluation of programming service, as distinguished from information concerning the telecast of a particular program, the use of *TV Guide* is an accurate and reliable resource. For the week of September 24-30, 1994, we have attached a copy of *TV Guide* as Exhibit 9. For the week of December December 17-23, 1994, we have attached a copy of *TV Guide* as Exhibit 10.

25. One change reflected on these exhibits is the highly

incriminating interim programming decision to change the overall format of the station. Exhibits 8-10 demonstrate that such a format change has occurred here, i.e., from independent television programming to network television programming. The meeting when the licensee and proposed assignor decided to change over from independent programming service to CBS network service commencing on December 11, 1994 must have been memorable.

Perhaps the general manager called the meeting to order and his or her full-time employee agreed to take the minutes. Since the licensee and proposed assignor had already sold all of programming time except for one hour early on Saturday morning to the prospective assignee, this meeting probably didn't last very long. It would have been difficult to talk over the din if the meeting were held in the midst of extensive activities attendant to the installation of \$5 million in new facilities by the prospective assignee. The judgment of the general manager and his or her full-time employee may have been influenced by the \$24 million in cash that would be paid if they went along with the suggestion of CBS that the format change was a good idea.

26. Long-standing local programs telecast by the station were eliminated, cut-back and moved to less desirable time periods in the process. The ministry program of Liberty Temple was moved from Sunday at 8:30AM to Sunday at 6:00AM. The ministry program of Greater Grace Temple was cut back from one hour to 30 minutes and moved from prime time (10:00PM) to 6:30AM. The Great Faith Ministries program was cut back from one hour to

30 minutes and moved from prime time (10:00PM) and near prime time (6:00PM) to 7:30AM. The Straight Gate Church program was moved from prime time (8:00PM) to 8:00AM. The March of Faith program was at first cancelled altogether, then moved from prime time (8:30PM) to 8:30AM. The source of this information is The Reverend Bishop Brooks, whose declaration is provided in Exhibit 2.

27. Guess whose idea these and other non-network programming changes was? On September 30, 1994 shortly after entry into the asset purchase agreement dated as of September 23, 1994, the licensee and proposed assignee wrote to a local program supplier indicating that the station's programming agreement had a 30-day cancellation clause and that "CBS, Inc. may decide to exercise this clause once they begin programming the station." Exhibit 11. On November 16, 1994 a form letter was issued to various local program suppliers announcing an allocation of one hour on Saturday (6-7 AM) and three hours on Sunday (6-9AM) to religious programs. This letter states "...on November 2, 1994 in a meeting with local ministers, Johnathan Rodgers, President of CBS Owned and Operated Stations dedicated the above airtime to religious programming from December 1994 until the Fall of 1995 television season." Exhibit 12.

28. Shortly thereafter, a letter went out to a participant in the new religious alignment congratulating the party for becoming a part of the "WGPR-CBS 62 broadcast line-up" and indicating that the party's "first broadcast with CBS will be

Sunday, December 11, 1994..." Exhibit 13. Perhaps this letter was merely talking about CBS in the sense of a CBS affiliate, but we don't think so. If that were true, why didn't CBS send its Vice President for Affiliates rather than its President of CBS O&O Stations?

29. The licensee and proposed assignor and CBS, the proposed assignee, get failing marks on the "programming" component of the test of whether an unlawful change in control has taken place. The basic format has been changed. In addition to the provision of CBS programming, vast changes have been made in local programming. Without any mistake about its presence or power, CBS moved in and made those changes, dealing directly with the program sources from a position of control.

D.
Conclusion

30. Naturalists who observe and identify members of the bird kingdom employ certain diagnostic points in that process. Usually there are about three key diagnostic points, not unlike the three part test of unlawful assumption of control reviewed in the foregoing passages. For example, three diagnostic points of the American Crow are (1) it is entirely black in color include eyes, beak, legs and all other parts, (2) it is relatively large and (3) its beak is powerful and large at the base. But in observing birds, often they are flying and too far away from the observer to see the diagnostic points. In the case of the American Crow, at a distance it is impossible to tell its color in comparison to several kinds of hawks of about the same size.

For this aspect of bird observation, naturalists rely on something they call the "gizz" of the bird. This isn't susceptible to precise definition. It consists of the overall appearance of the bird, its size, shape, flight, mannerisms, etc. etc.

31. If the reader will permit and accept the analogy, the "gizz" of the facts and circumstances create an enormously unfavorable overall mosaic of a clear and naked transfer of control that has taken place here.

32. The diagnostic points are bad enough. With respect to the diagnostic point of "station finances," CBS has shown up with \$24 million in cash, which is the purchase money consideration that, of course, is present in some amount or another, in all transactions. However, CBS has also shown up with \$5 million for immediate installation of new facilities and \$1 million (plus) for promotion, also immediate. That is not present in all transactions. In fact, we have never heard of a situation where the FCC has allowed the proposed assignee to come in and throw money at the station in that amount, or anything like it, without waiting for the ink to dry on the sale agreement and the executed FCC Form 314.

33. With respect to the diagnostic point of "personnel matters," CBS has moved in with its own top management person, granting interviews and making decisions as though he were running a CBS O&O station. CBS has taken over virtually all of the existing staff at the station and no doubt brought in its own

people as well. The so-called marketing agreement contains a token two-person staff commitment borrowed from the radio LMA mechanism which, to our knowledge, has never been tested under Section 310 of the Act in the courts. Whatever may be said for a two-person staff in radio, it makes no sense whatsoever for a major market television station.

34. With respect to the diagnostic point of "programming," CBS moved in to control programming with ruthless force. And for a reason. It had lost its previous affiliate in Detroit. Given this was the ninth television market in the nation, that was a disaster for the network. CBS was driven by its own self interest and time table. It wanted to have an affiliate to coincide with the change in affiliations with Fox. It didn't make arrangements for the acquisition of Channel 62 in time to accomplish that in the lawful way of awaiting FCC processing and approval of its assignment application. The solution of CBS was simple and direct -- we have to have the station now, so we will take it over, and let the devil catch the hindmost. Well, that may be the way of the corporate business world, but not even CBS is immune from the provisions of Section 310 of the Act.

35. With regard to the "gizz" of the facts and circumstances, the overwhelming picture is devastating to the parties. They aren't even close to winning any of the three diagnostic points of station finances, personnel matters and programming. Moreover, CBS is not your ordinary proposed assignee. It is one of the most powerful communications entities

in the nation and indeed in the world. Its financial strength is measured in the megabillions. In the overall scheme of power in Washington, CBS probably ranks somewhere above the FCC and below the White House, with friends among the leadership of Congress.

36. The existing licensee and proposed assignor is a local organization of minority persons, that has maintained an independent operation on Channel 62 for nearly 20 years. In the world of communications conglomerates, the existing licensee and proposed assignor is a very small player.

37. Who are these parties kidding when they rely on signed documents which say that the licensee retains control and responsibility over the station operations? No amount of legal fine print in the so-called marketing agreement can accomplish that because it is fundamentally contrary to the true facts of the business transaction itself. That transaction has occurred and is a fait accompli. This has been done without the lawfully-required government approval for control of an important frequency, worth some \$24 million, in the nation's airwaves.

38. For all of these reasons, the assignment application must be denied or set for hearing on issues to develop the full facts and circumstances and determine if the parties have violated Section 310 of the Act, and if so, whether approval of the assignment application serves the public interest.

II.

The public interest is not served by the loss
of one of the few minority-owned
television stations in the nation

39. Station WGPR signed on in September 1975 -- over 19

years ago -- and was the first minority-owned television station in the country. Since its inception, WGPR has been continuously operated and managed by minority-owned WGPR, Inc., until CBS came into the picture.² The Detroit television market, with an African-American population comprising 75.7% (1990 Census), has provided a unique and much needed service designed to specifically address the population of Detroit, most notably African-Americans. This information is supported by the declaration of Reverend Brooks, Exhibit 1.

40. The Commission, with the full support of Congress, has long recognized the need to preserve and promote minority participation in the ownership and operation of broadcast facilities. In a Task Force Report it undertook in 1978 the Commission concluded that:

Acute underrepresentation of minorities among the owners of broadcast properties is troublesome because it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his or her audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcast business, a substantial portion of our citizenry will remain underserved and the larger, non-minority audience will be deprived of the views of minorities.

FCC Minority Ownership Task Force, *Report on Minority Ownership in Broadcasting 1* (1978), cited in, *Metro Broadcasting, Inc. v.*

² Mr. Ferguson submitted an offer to purchase the television station and its sister FM station for \$34 million. Exhibit 14. The portion of this price fairly attributable to the television station is probably in excess of the \$24 million for which the television station was sold to CBS. A sale of the station to Mr. Ferguson would have continued the ownership and control by minorities.

FCC, 497 U.S. 547, 554 (1990). The Supreme Court of the United States has determined that the Commission's "interest in enhancing broadcast diversity is at the very least, an important governmental objective" *Metro Broadcasting, Inc. v. FCC*, *supra*, 497 U.S. at 567-68.

41. More recently, in a *News Release* entitled *FCC Proposes New Policies and Rules to Increase Minority Ownership of Mass Media Facilities* (MM Docket Nos. 94-149 and 91-140) released on December 15, 1994, the Commission reiterated its concern in adopting mechanisms which will foster opportunities for minorities and females to own broadcast facilities. In a separate statement issued by the Honorable Andrew C. Barrett, citation was made to a report issued by the National Telecommunications Information Agency (NTIA) which reflected that minority ownership of broadcast stations is vastly underrepresented, amounting to only 2.9%, as of September 1994.

42. Our best information is that as of this writing there are 19 minority owned and controlled television stations in the entire nation. This has been a hard fought gain with much assistance from the government and an awful lot of hard work and persistence by minority entrepreneurs. There is something wrong with the elimination of one of those minority ownerships with the sweep of a pen on a sale agreement containing an entirely disreputable so-called marketing agreement, and without any FCC inquiry or concern about the loss of 5% of the nation's minority owned and controlled television stations.

43. Equally troubling is the wholesale displacement and/or abolition of locally produced nonentertainment programming by CBS, Inc. upon the inauguration of its program service on Station WGPR-TV on December 11, 1994. In its *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979 (1978), the Commission concluded that:

We are compelled to observe that the views of racial minorities continue to be inadequately underrepresented in the broadcast media. This situation is detrimental not only to the minority audience but to all the viewing and listening public. Adequate representation of minority viewpoints serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the *First Amendment*. *Id.* at 980-81 (footnotes omitted).

44. With the takeover by CBS of WGPR, the "underrepresentation of minority viewpoints" has already been assured. Moreover, as indicated supra, upon its takeover, CBS, Inc. has relegated to less desirable time periods or displaced in their entirety, nearly all of the locally produced nonentertainment programming previously broadcast over Station WGPR-TV, in favor of its standard commercial network and syndicated programming fare. ¶¶23-29, Exhibits 8, 9, 10, 11, 12 and 13.

45. For these reasons, the assignment application should be designated for hearing to determine whether the public interest is served by the loss of one of the nation's few minority owned and controlled television station and the loss of unique minority