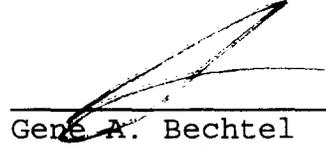


and other nonentertainment programming resulting from approval of the assignment application here in question.

V.
Conclusion

46. The Commission cannot determine that approval of the assignment application is in the public interest based upon the current state of the record. A hearing on the requested issues is require.

Respectfully submitted,



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December 22, 1994

EXHIBIT B

BECHTEL & COLE
FILE COPY

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

In re Application of)
WGPR, INC.)
and)
CBS, INC.)
For assignment of station licenses)
of WGPR-TV, Channel 62,)
Detroit, Michigan)

File No. BALCT-941027KI

To: The Commission

REPLY BY SPECTRUM DETROIT TO
RESPONSES OF WGPR, INC. AND CBS, INC. TO
FCC STAFF LETTER

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OFFICE OF SECRETARY

March 2, 1995

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

In re Application of)
)
WGPR, INC.)
 and)
CBS, INC.) File No. BALCT-941027KI
)
For assignment of station)
licenses of WGPR-TV,)
Channel 62, Detroit,)
Michigan)

To: The Commission

REPLY BY SPECTRUM DETROIT TO
RESPONSES OF WGPR, INC. AND CBS, INC. TO
FCC STAFF LETTER

1. The letters from counsel for CBS, Inc. and WGPR, Inc. dated February 23, 1995 in reply to a letter dated February 13, 1995 from the Hon. Clay C. Pendarvis, Chief, Television Branch, Video Services Division, Mass Media Bureau, further establish the impermissible and unlawful dominance by CBS, Inc. over station WGPR in advance of Commission consideration of the pending application for its consent to the assignment of the station licenses to CBS.

I.
Summary

2. The CBS and WGPR, Inc. letters and enclosed documents provide further evidence of the details of the enormous extent to which CBS has dominated the affairs of station WGPR. While these letters have avoided a direct discussion of station personnel and programming, they provide further evidence of the details of the dominance by CBS in those areas as well.

3. The evidence is compelling whether viewed under (a) the

three part test of cases such as Southwest Texas Public Broadcasting Council, 85 FCC2d 713 (1983) and its progeny, (b) a focus on the real-world center of decision-making power over the station as in WHDH, Inc., 16 FCC2d 1, recon. denied, 17 FCC2d 856 (1969), aff'd. sub nom. Greater Boston Television Corp. v. FCC, 44 F.2d 841 (D.C.Cir. 1970), cert den., 403 U.S. 293 (1971) or (c) the six part test of cases such as Intermountain Microwave, 24 RR 7 (1963) and Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42, 19 F.3d 655 (D.C.Cir. 1994).

4. From the arguments and issues as joined, it is apparent that whichever side loses the FCC ruling will take an appeal to the courts in view of the fundamental questions of interpretation and application of Section 310 of the Act that are involved. Accordingly, we request that the agency's ruling be made by the full Commission to expedite appellate court review to establish the rights of the parties at an early date given the fact that the sale and purchase of a television station is involved and during the pendency of litigation before the FCC and in the courts, a potentially unlawful station operation is and will be continuing. ¹

II.

Analysis of expenditures by CBS

5. A professor of Greek and Biblical Literature once said that the Old and New Testaments offer a "progressive revelation"

¹ As we understand it, the attention of the full Commission will be engaged in any event for consideration of the one-to-the-market matter pursuant to 47 C.F.R. §0.283(a)(1)(i).

of Christian belief. A "progressive revelation" of the financial involvement and dominance of CBS over WGPR is at work here too.

A.

Expenditures for broadcast equipment at
WGPR's East Jefferson Street facility
(CBS letter at 6-8)
(WGPR, Inc. letter at 2)

6. The sale and purchase agreement filed with the assignment application says nothing about expenditures by CBS for broadcast equipment at WGPR's East Jefferson Street facility. Neither does the so-called local marketing agreement appended to the sale and purchase agreement. In our petition to deny or designate the assignment application for hearing, we surfaced with news stories about CBS expenditures for equipment upgrade and Mr. Pendarvis asked for certain details.

7. CBS did a lot of work on the East Jefferson Street facility. This was done pursuant to an Equipment Loan Agreement dated October 31, 1994 (CBS letter, Exhibit 2). This was a little over one month after the sale and purchase agreement (dated September 23, 1994) and four days after the filing of the assignment application (on October 27, 1994). The application was never amended to refer to or furnish a copy of this Equipment Loan Agreement. The sale and purchase agreement with an attached local marketing agreement is all that was submitted by WGPR, Inc. in response to FCC Form 314, Part I, Question 4. CBS advised the Commission that said agreement embodies "the full and complete agreement between the assignor and assignee" in response to FCC Form 314, Part II, Question 2. This answer, absent an updating

amendment, has not been correct beginning only four days after the application was filed, since the application omitted the Equipment Loan Agreement between the assignor and the assignee.

2

8. This is not an inconsequential omission. According to the CBS letter and attachments, CBS has spent or will spend approximately \$1,380,000 for broadcast equipment at WGPR's East Jefferson Street facility. CBS replaced the station's recording and playback system for commercials and other insertions into the program schedule at a cost of approximately \$447,000. CBS replaced the station's recording and playback system for programs at a cost of approximately \$349,000. CBS replaced or upgraded the station's master control system at a cost of approximately \$287,000. CBS installed gear to receive satellite signals of CBS network programs and syndicated programs purchased by CBS for the station at a cost of approximately \$90,000. CBS bought and installed test equipment at a cost of approximately \$166,000. CBS provided tapes and computer software for the commercial and program record and playback system at a cost of approximately \$49,000. CBS letter, Exhibit 1, Attachment A.

9. CBS has placed the equipment of station WGPR which it

² Nor did the documents filed with the Commission provide a clue to the existence of additional agreements material to the subject matter of those documents. The sale and purchase agreement, at §8.6, and the local marketing agreement (LMA), at ¶17, both provide that they constitute the entire agreement of the parties without reference to either the Equipment Loan Agreement or Facilities Improvement Agreement referred to below in ¶10.

has replaced in storage. It is to be reinstalled if the transaction does not go through, and CBS is to take back the equipment, tapes and computer software referred to above in that event.

B.
Renovations to the station's
East Jefferson Street facility
(CBS letter at 8-10)
(WGPR, Inc. letter at 2-3)

10. CBS did some renovations to the facility of the station as well. In the "progressive revelation" of the role of CBS, we learn that these were done under a Facilities Improvement Agreement (CBS letter, Exhibit 3). This is also dated October 31, 1994 only four days after the assignment application was filed on October 27, 1994. This is also not the subject of an amendment of the application to report such an agreement between the assignor and the assignee.

11. CBS didn't just knock down a wall or two. In addition to doing that, CBS installed new or additional air conditioning, CBS increased the electrical supply to the facility, CBS provided shelves and tables for operations, CBS improved the security system at the premises, CBS provided a security fence and electrical gate, CBS installed additional lighting, and CBS installed a closed-circuit TV camera system. These renovations cost approximately \$166,000. CBS letter, Exhibit 1, Attachment A.

12. The letters of CBS and WGPR, Inc. and the attached declarations seek to paint a picture of involvement of WGPR in

these matters, at least to the extent of knowing about them and having the chief engineer or his assistant observe the work in progress. Well, the involvement of WGPR stopped short of providing any financial assistance. These renovations have been donated to the assignor by CBS. If the deal doesn't go through, the assignor gets to keep them. Even if the deal goes through, CBS will not be reimbursed for these costs as a deduction from the \$24 million purchase price. The assignor will be paid the full amount of the purchase price by CBS over and above these expenditures which CBS has already made.

C.

Repair, maintenance and improvements to
WGPR's transmission facilities

(CBS letter at 10-14)

(WGPR, Inc. letter at 3)

13. CBS apparently agreed to do some maintenance work on the station's transmitter at no charge to the station. This is referred to in a letter dated November 2, 1994 from Mr. Mathews, President of WGPR, Inc. to Mr. Newman, the "LMA-CEO" on location in Detroit (CBS letter, Exhibit 4). This letter is dated six days after the filing of the assignment application on October 27, 1994 and was never filed or reported as an agreement between the assignor and the assignee. The letter does not specify any dollar figures for the offer of CBS to do some maintenance work on the transmitter. It does reflect that such work is expected to take some 20 days and that the station's program operations were agreed to be discontinued from November 7 to November 27, 1994 to accommodate the work.

14. In the continuing "progressive revelation" of the role of CBS, we learn that the WGPR transmitter was renovated by CBS at a cost of approximately \$208,000. Not only that, some work was done on the tower and antenna at a cost of approximately \$20,000 to CBS. A new STL facility was installed at a cost of approximately \$143,000 to CBS. A new standby transmitter was purchased at a cost of approximately \$319,000 to CBS. Related support work for all of this cost CBS an additional approximately \$68,000. Grand total, approximately \$759,000. CBS letter, Exhibit 1, Attachment A.

15. Except for the new standby transmitter, which CBS will keep if the deal does not go through, these items have been donated to WGPR, Inc. by CBS. If the transaction aborts, they will remain the property and improvements of the station to the benefit of WGPR, Inc. If the transaction goes through, their cost will not be netted against the purchase price. The seller still gets the full \$24 million. Again, while the seller is depicted as collaborating with CBS in these good works, it has not collaborated by assuming any financial responsibility, even out of the purchase price. The amount of this beneficence on the part of CBS is approximately \$440,000 (total \$759,000 less standby generator costing \$319,000).

D.

Other expenditures at something called the
CBS facility at Stroh River Place
(CBS letter at 2-3)

16. The CBS letter, at 2, is terse in its description of this location, indicating that it "serves as the headquarters of

CBS's operations under the LMA." Presumably this is the situs of the office of "LMA-CEO" Mr. Newman, whose declaration is absent from the CBS and WGPR, Inc. letters as it was from their oppositions to our opening petition.

17. The Stroh River Place apparently houses a lot more offices and facilities as well. CBS has installed RF cable distribution and television sets so that LMA personnel there can watch the signal of WGPR. CBS has installed computers and a network system to manage commercial sales and broadcast schedules. CBS has installed a telephone system sufficient to handle the volume of calls and voice mail for the LMA operation. CBS has bought desks, furniture, equipment, carpet, etc. for the LMA operation and staff there. The price tag for all of this is approximately \$367,000. CBS letter, Exhibit 1, Attachment A.

E.

Tabulation of total costs for
technical facilities discussed above

18. The cost of broadcast equipment purchased and installed at the station is approximately \$1,380,000, all to be retained by CBS if the transaction aborts. Part A above.

19. The cost of renovations of the station facilities is approximately \$166,000, all to be retained by WGPR, Inc. at no cost if the transaction aborts. Part B above.

20. The cost of maintenance, repairs and additions to the transmission facilities is approximately \$759,000, of which a standby transmitter (\$319,000) will be retained by CBS and the balance (\$440,000) will be retained by WGPR, Inc. if the

transaction aborts. Part C above.

21. The cost of facilities at the LMA quarters of CBS is approximately \$367,000 which presumably will be retained or written off by CBS if the transaction aborts. Part D above.

22. The total amount expended (or to be expended) for these matters is approximately \$2,672,000. All of this has been or will be expended by CBS. WGPR, Inc. will not be responsible for any of this cost whether or not the transaction aborts. If it aborts, WGPR, Inc. will benefit to the tune of approximately \$606,000 and the balance (approximately \$2,066,000) will be retained or written off by CBS. If the transaction goes through, none of these costs will be netted against the cash purchase price in the amount of \$24 million paid by CBS to WGPR, Inc.

III.

Analysis of defense of these expenditures

24. The defense of these expenditures by CBS and WGPR, Inc. as consistent with Section 310 of the Communications Act and related FCC policy does not withstand examination.

A.

The expenditures were made in the self-interest of CBS not unlike expenditures which it makes on behalf of affiliates
(CBS letter at 15-18)

25. CBS argues that it makes expenditures, sometimes as much as \$200,000 or more, for capital improvements at affiliated stations, which are in the self-interest of CBS and not evidence of any assumption of control over the affiliates. CBS says that the expenditures here differ from expenditures on behalf of

affiliates only in degree, but not in kind. To which we have several responsive comments.

26. First, we accept the premise that all of the expenditures in this matter were made by CBS in its own self-interest.³ However, it is fair to say that all premature expenditures by all parties found guilty of unlawful assumption of control were made to serve the private interests of the party making those expenditures. E.g., the expenditures by the Lorain Journal relative to the construction and operation of radio station WWIZ in Elyria, Ohio held a law violation in Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C.Cir. 1965), and the expenditures by American Cellular Radio Network Corporation (Amcell) relative to the construction and operation of the cellular systems in Atlantic City and Philadelphia, held a law violation in Telephone and Data Systems, Inc. v. FCC, supra.

27. Second, on the facts, when the amounts and purposes are considered, it is not accurate to say that the difference between the expenditures here and those for affiliates is merely a matter of degree. Here, CBS has rebuilt and refurbished virtually the entire technical facilities of the station, its transmitter (plus a new standby transmitter), its transmission line and antenna, its STL, its master control system, its entire taping and

³ Indeed, we are prepared to believe that this entire transaction serves the interests of CBS. It is buying a Detroit market UHF television station for \$24 million plus maybe \$6 million in upgrading and promotional costs. Less than two years ago, in 1993, another Detroit market UHF television station, WKBD, was purchased by Paramount for \$105 million. BALCT-930621KE, official notice requested.

playback system, its gear to receive satellite signals for virtually all of its programming, network and syndicated, its computerized logging and scheduling system, its security system complete with fences, gates and television monitors, its air conditioning, etc. etc. etc. CBS offers no example of funding for an affiliate that approximates this kind or scope of expenditure.

28. Third, on the law, it is not accurate to equate the expenditures here as only a difference of degree, not of kind, in relation to expenditures for affiliates. Expenditures by CBS for its affiliates are not made in the milieu of Section 310 of the Communications Act and the question of premature assumption of control. Such expenditures for affiliates are not evidence of control because there is no issue of control. Expenditures to overhaul virtually an entire television station must be viewed in light of the issue of premature control that is clearly present before the parties and the Commission in this case.

29. Fourth, the quotation from a recent statement by the Commission referring to network affiliation agreements as a variant of time brokerage, CBS letter at 17, n. 11, is materially incomplete. The entire, relevant passage is:

Network affiliation agreements are a variant of time brokerage whereby the local affiliate sells time to the network in exchange for desirable programming, station compensation, and the opportunity to place local commercials within popular national programs. Revision of Radio Rules and Policies, 7 FCC Rcd. 2755 at 1784-85, n. 113 (1992). Despite the fact that a network affiliate may broadcast a significant portion of network programming, the affiliate, unless actually owned by the network, is not attributed to the network. See generally, 47 C.F.R. §73.3555, Note 2

(network affiliation agreement is not included in the list of attributable interests); 47 C.F.R. §658 (distinction between network affiliation and network ownership implicit in discussion of guidelines for network affiliation agreements).

Review of Commission's Regulations Governing Television

Broadcasting, FCC 94-322, released January 17, 1995, at ¶133, n. 159.

30. The reason why, in our view, the quotation should have been given in the complete context set forth above is this. In the regulations and policy statement cited, network affiliations do not count as ownership of broadcast stations under the rules limiting ownership of broadcast stations -- whereas LMA's do. Here, CBS wants to become the owner of this television station in the Detroit market, and has entered into an LMA (the equivalent of ownership under the multiple ownership rules cited in the foregoing passage) pursuant to which CBS has expended some \$2,672,000 to refurbish and rebuild virtually an entire station before the FCC has approved its ownership of the station. A more appropriate quotation from FCC policy, applicable to the instant situation, is that cited in our reply filed February 6, 1965:

...petitioners seeking to challenge a time brokerage agreement as an unauthorized transfer of control should refer to the same standards applicable to any alleged unauthorized transfer of control.

Revision of Radio Rules and Policies, 7 FCC Rcd. 6387, 6401 (1992).

B.

The expenditures included upgrading desired by the assignor which it could not afford

(CBS letter at 6)

(WGPR, Inc. letter at 3)

31. CBS and WGPR, Inc. both argue that certain of the expenditures were for improvements that the assignor desired to make, but did not have the funds to do so. This does not aid their cause. We are prepared to believe that most, maybe all, expenditures by parties found guilty of unlawful assumption of control had a beneficial effort on the financial affairs of the assignor or other party supposedly in control of the broadcast station.

32. Certainly that was true of the working capital which the prospective buyer of a radio station in Phoenix, Arizona was denied permission by the full Commission to advance in Phoenix Broadcasting Co., 44 FCC2d 838, 29 RR2d 187 (1973). For other examples -- that no doubt was also true of the beneficence of the Lorain Journal to the licensee of radio station WWIZ, found to be unlawful, in Lorain Journal Co. v. FCC, supra, and the beneficence of Amcell to the licensee of cellular telephone systems in Atlantic City and Philadelphia, found to be unlawful, in Telephone and Data Systems, Inc., supra.

C.

The assignor was in control of
the upgrades and improvements of the station
(CBS letter passim)
(WGPR, Inc. letter at 2-3)

33. CBS and WGPR, Inc. have provided a great deal of prose in an effort to convince the Commission that the assignor, not CBS, was in control of the upgrades and improvements made at the station from funds supplied by CBS. They have provided declarations by technical and other persons from both parties.

Nice sounding verbiage is set forth in the declarations and repeated in the text of the CBS and WGPR, Inc. letters. The verbiage is replete with references to how the upgrades and improvements were the idea of the assignor or its chief engineer, how its chief engineer or his assistant approved the upgrades and improvements, observed them, oversaw them, etc. etc. etc.

34. As indicated earlier, the role of the assignor in the upgrades and improvements did not extend to paying for any of them, not even for upgrades and improvements that the assignor will retain if the transaction aborts or as a deduction from the \$24 million purchase price in the event the transaction goes forward. Moreover, in all of this prose, there is not a single concrete example of an upgrade or improvement that was the exercise of judgment on the part of the assignor independent of the judgment of CBS. Not a single one. Not in any of the upgrades and improvements to be retained by the assignor if the deal falls through, costing CBS approximately \$606,000. Not a single one in the entire body of upgrades and improvements costing CBS approximately \$2,672,000.

35. No such single concrete example is provided in the narrative of the declarations and texts of the letters. No supporting documentation of any single concrete example is provided, such as an exchange of memoranda or correspondence in which the independent judgment of the assignor overrides the judgment of CBS. That type of documentation, as well as personal knowledge of the facts and circumstances, are within the private

possession and mens rea of CBS, WGPR, Inc. and their officers and employees. The fact that no such documentation or other evidence of any such concrete example has been provided gives rise to the presumption that none exists, a material fact and circumstance that is highly adverse to the positions of these parties here. Interstate Circuit, Inc. v. U.S., 306 U.S. 208 (1938) and other authorities cited in our reply filed February 6, 1995 at 14.

36. So, CBS upgraded and rebuilt virtually the entire television station owned by WGPR, Inc. at a cost of more than two and one-half million dollars, of which some \$600,000 is to be retained by the assignor if the deal aborts, and this record does not disclose a single instance where WGPR, Inc. exercised its own independent judgment vis-a-vis that of CBS in the matter. In the real world of business, who on earth would believe that WGPR, Inc. was in control of this multi-million dollar station financing to bring the station into a condition satisfactory to CBS for the telecast of its network and syndicated programming and for the sale, logging and telecast of commercials sold by CBS in all of the broadcast hours of the week except one hour early Saturday morning when virtually no television sets are in use? In the real world of business, who on earth would believe that CBS was not in full and consummate control of this multi-million dollar station financing to suit its needs, requirements and standards?

37. In decisions dating back nearly to the very beginning of the Commission itself, the courts have held that the

Commission must consider the influence and dominance of the party providing all or substantially all of the funding for a broadcast facility. E.g., Heitmyer v. FCC, 95 F.2d 91 (D.C.Cir. 1937); Lorain Journal Co. v. FCC, supra; WLOX Broadcasting Company v. FCC, 260 F.2d 712 (D.C.Cir. 1958). This court precedent requires a real-world consideration of who was in control of these station expenditures. When that is done, based on the record submitted by CBS and WGPR, Inc. in response to Mr. Pendarvis' letter, a compelling prima facie case exists that control of station finances with regard to these expenditures rests with CBS, not WGPR, Inc., requiring full evidentiary exploration before the conduct of the parties can be cleared of the cloud of premature assumption of control by CBS.

D.

Failure of CBS and WGPR, Inc. to give
the full picture of control over station finances
(CBS letter at 2-22)
(WGPR, Inc. letter at 1-4)

38. We have just shown that CBS, not WGPR, Inc., must be regarded as being in control over station finances in relation to the upgrading and improvement of station facilities. In their efforts to argue otherwise, CBS and WGPR, Inc. make no effort to place this aspect of control over station finances into the overall picture of control over station finances in other respects. When the overall picture is considered, the case for dominance by CBS is irresistible.

39. We start with the LMA fee in which CBS pays WGPR, Inc. the sum of \$1 million per annum. Local Marketing Agreement (LMA)

at ¶4.1. As we understand this agreement, discussed in more detail below, this fee essentially is a guaranteed profit to the assignor regardless of whether CBS makes a profit from its operation of the station under the LMA. Certainly WGPR, Inc. cannot say that this guaranteed profit, removed from the profitability of station operations, gives it control over station finances.

40. WGPR, Inc. has leased to CBS all broadcast hours of the week except one, Saturday morning between 7:00AM and 8:00AM. LMA at ¶2. Perhaps WGPR, Inc. is in control of station finances at least with regard to this one hour of program time per week. Perhaps not. WGPR, Inc.'s operating income and expenses are factored into the formula for calculating monthly payments to be paid to WGPR, Inc. by CBS. LMA at ¶6, ¶9.1 and Appendix A. The entrepreneurial benefit of profit or burden of loss, even with respect to this one hour per week of program time, rests with CBS, not WGPR, Inc.

41. The entrepreneurial benefit of profit or burden of loss with respect to all other hours of operation also rests with CBS, not WGPR, Inc. CBS retains revenues from the sale of advertising during all such other hours of operation. LMA at ¶9.2. CBS is responsible for its own direct program costs. LMA at ¶9.1. And it is indirectly responsible for all program and operating costs incurred by WGPR, Inc. LMA at ¶4.2, ¶9.1 and Appendix A. That indirect responsibility is not open ended, to say the least. The parties start with an agreed upon budget (not provided to the FCC

in the application or otherwise to our knowledge). LMA at Appendix A. Monthly expenses are then measured against that budget. Id. If expenses exceed the budget by 10%, WGPR, Inc. must submit a revised budget for the approval of CBS. Id. Extraordinary expenses must also be justified. Id. This arrangement covers all existing contracts regarding the station, whether or not such contracts are ultimately to be assumed by CBS. Id.⁴

42. What station finances are left over which WGPR, Inc. has control? What station finances are there over which CBS does not have control? The answer to both questions is -- absolutely none. CBS paid for and controlled the multi-million dollar cost of rebuilding and refurbishing virtually the entire station. CBS paid for and controls a major million dollar publicity campaign regarding the new CBS program outlet in Detroit. CBS pays for the cost of operating the station under a budget mechanism giving it control of all expenses. CBS pays WGPR, Inc. a guaranteed \$1 million per annum profit "off the top." And, CBS assumes the full entrepreneurial interest in the profits and losses of the station. Its control of station finances is as complete as if CBS owned the station outright.

E.

Discussion of precedent by CBS and WGPR, Inc.

⁴ The Commission's policy is that schedules appended to sale and purchase agreements may be omitted but must be supplied upon request. In this context, it is important for the FCC to require the submission of Schedule 1.2(a)(iv), the listing contracts referred to in Appendix A.

43. With regard to William L. Silva, 9 FCC Rcd. 6155 (M.Med.Bur. 1994), CBS letter at 18-21, WGPR, Inc. letter at 2, we continue to believe that this staff ruling by the Chief, Audio Services Division, Mass Media Bureau, is sui generis involving a mixture of several FCC policies and is not a basis for resolving the issues presented here. We shall add two thoughts to what has already been said about this decision in our reply filed February 6, 1994 at 9. First, in Silva the parties provided considerable detailed information concerning specific activities of the licensee in support of their defense of the LMA. Second, in Silva the licensee had unilateral discretion to terminate the LMA at any time it believed that continuation of the LMA did not serve the public interest (an escape clause which the Commission's staff has regarded to be of considerable importance in clearing radio LMA's). Here, WGPR, Inc. is locked into a two-year term, renewable for an additional two-year term at the option of CBS, LMA at ¶1, with mutual termination rights for breach of the agreement following multiple notices of breach or if the FCC requires termination of the agreement by final order after all litigation remedies have been fully exhausted, LMA at ¶11.

44. With regard to Stereo Broadcasters, Inc., 87 FCC2d 87 (1981), CBS letter at 20, n. 14, CBS draws the distinction that here WGPR, Inc. has maintained its own financial books and records whereas in Stereo the unauthorized control party paid station bills and salaries from its own account. What earthly