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Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC 95M-120

In re Application of)	MM Docket No. 93-265	51320
)		
PINE TREE MEDIA, INC.)	File No. BR-900817UF	
)		
For Renewal of License of Station KARW)		
Longview, Texas)		

MEMORANDUM OPINION AND ORDER

Issued: May 4, 1995 ; Released: May 8, 1995

1. Under consideration are Motion to Receive Exhibit, filed April 7, 1995, by Praise Media, Inc. ("Praise"), and Opposition to Motion to Receive Exhibit, filed April 18, 1995, by the Mass Media Bureau ("Bureau").

2. Praise seeks to have marked for identification and received into evidence as "Praise Exhibit No. 13" a two-page unsworn statement of Eugene Washington, the estranged husband of Janet Washington. Eugene Washington is presently incarcerated and therefore unavailable to testify in this proceeding. Praise offers the statement to reinforce testimony of Janet Washington on "the relationship with Ray Lee Williams" and the control and ownership of KARW. In support of its motion, Praise cites Rule 804(b)(5) of the Federal Rules of Evidence.

3. Rule 804(b)(1) through (b)(4) specify the following exceptions to the hearsay rule where the declarant is unavailable: (1) former testimony which was subject to cross-examination; (2) statements made under a belief of impending death; (3) statements against interest; and (4) statements of personal and family history.

4. Rule 804(b)(5) reads "(a) statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant."

5. The Bureau opposes Praise's motion. It argues that Eugene Washington's statement is not trustworthy because he is a convicted felon, presently incarcerated and Janet Washington is the mother of his son. The Bureau notes that although Eugene Washington notes in his written statement that he had washed his hands of the control of the station KARW in 1993, the appropriate evidence on this issue would be the quit claim deed allegedly

executed by him. The Bureau additionally states that Eugene Washington's statement relies on unsubstantiated charges that Ray Lee Williams was embezzling funds from the station and alleges these allegations are not material to the issues in this proceeding and are not fair to Williams who has no opportunity to defend himself. The Bureau's assessment of Praise's motion is correct. Eugene Washington's statement does not qualify as an exception to the hearsay rule.

Accordingly, IT IS ORDERED that the Bureau's objection IS SUSTAINED and Praise's Motion to Receive Exhibit IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak

Administrative Law Judge