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ORIGINAL

April 3, 2003

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Ms. Marlene H. Dortch

Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

APR - 3 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* Presentation Regarding MM Docket Nos. **02-277; 01-235; 01-317; 00-244** (Multiple Ownership Rulemaking) **and** relating to **BTCCT-20011121AAY** (waiver request proceeding)

Dear Ms. Dortch:

Montclair Communications, Inc. and Waterman Broadcasting Corp. conducted a round of visits yesterday with the offices of several Commissioners and with Video Division staff to discuss the Multiple Ownership Notice of Proposed Rule Making.¹ The substance of the discussions overlapped in certain respects with the duopoly rule waiver request proceeding also captioned above. The meetings were *ex parte* with respect to the rule making but not *ex parte* with respect to the waiver request owing to the participation in the meetings of the only party and its counsel that opposed that waiver; this notice is being submitted for the waiver request docket for the sake of completeness.

Waterman and Montclair, licensees respectively of WBBH-TV, Ch. 20, Fort Myers, Florida, and WZVN-TV, Ch. 26, Naples, Florida, urge relaxation of the rule with particular reference to their situation in the Fort Myers/Naples market. They have also filed an application whereby they would merge but retain the separateness of the **two** station's operations, WZVN-TV already being operating pursuant to a grandfathered LMA with Waterman. The principals of Montclair and Waterman described WZVN-TV's distinctive and high quality news operations, its DTV initiatives and its other contributions to public service — all made possible by the LMA arrangement between the two stations which is **due** to expire in June 2004. They and their counsel also discussed why the Commission's Rules

¹ These were ordinary meetings conducted with full prior notice and disclosure to, and with the full participation of, Fort Myers Broadcasting Company ("FMBC"), the only party that opposed the above-captioned waiver request. There is no merit whatever, of course, to FMBC's suggestion, made in an *ex parte* submission filed yesterday (styled "April 2, 2003 Presentation on Reconsideration"), that the General Counsel's Office pre-clearance of the meetings was erroneous because it did not meet the standards for granting oral argument before the Commission. Yesterday's meetings, of which FMBC was notified of over a month ago, did not remotely constitute oral argument. FMBC's *ex parte* submission otherwise rehashes legal and factual contentions that have already been fully rebutted in the pleadings of Waterman and Montclair in the record of the proceeding.

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on failing stations should be changed and why the circumstances of this particular case also justify a waiver of the Commission's Rules. In addition, Video Division staff asked questions about the appropriate legal principles to apply to the waiver request.

Representing Montclair at the meetings was Lara Kunkler, owner and President, and Montclair's communications attorney, Peter Tannenwald. Representing FMBC was Brian McBride, who is an owner, John Emmert, news director at WINK-TV, and its communications attorney, Matthew Leibowitz. Representing Waterman was the Executive President and General Manager of Waterman Broadcasting of Florida, Steve Pontius, and its communications counsel, the undersigned.

The discussions were held with Sarah Whitesell and Johanna Mikes, legal advisors to Commissioner Adelstein; Susan Eid, legal advisor to Chairman Powell; Catherine Bohagian, legal advisor to Commissioner Martin; Barbara Kreisman, Chief, Video Services Division, Media Bureau; Clay Pendarvis, Associate Chief, Video Services Division, Media Bureau; and David Brown, Senior Legal Advisor, Office of Broadcast License Policy. Copies of handouts and video presentations used in connection with these meetings are attached to this *ex parte* letter.

An original and three copies of this *ex parte* letter and handouts used at the meetings that were presented to staff at the meetings (two copies for the multiple ownership rulemaking and two copies for the waiver request proceeding) are being filed with the Secretary's Office in compliance with the Commission's rules. One copy of the video presentations is being filed in DVD format.

Respectfully submitted,



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Counsel to Montclair Communications, Inc.

Counsel to Waterman Broadcasting Corp.

Attachments

cc w/o enc.: Ms. Barbara Kreisman
Mr. Clay Pendarvis
Mr. David Brown (FCC)

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Sarah Whitesell, Esq.

Johanna Mikes, Esq.

Susan Eid, Esq.

Catherine Bohigian, Esq.

Matthew Leibowitz, Esq.

Fort Myers-Naples, FL Newscast Comparisons 6pm-6:30pm October 8, 2002

| | | | |
|-------------------------|-----------|----------------------------|----------------------------|
| WBBH-TV (UHF 20 NBC) | 12 topics | 9 on WZVN 3 not on WZVN | 7 on WINK 5 not on WINK |
| WINK-TV (VHF 11 CBS) | 14 topics | 9 on WZVN 5 not on WZVN | 7 on WBBH 7 not on WBBH |
| WZVN-TV (UHF 26 ABC) | 15 topics | 9 on WINK 6 not on WINK | 9 on WBBH 6 not on WBBH |

Fort Myers-Naples, FL
Newscast Comparisons
October 8, 2002

| | STATION - Show in Newscast - Format presented - Order in newscast ("Yes"-indicates story included in newscast/ "No"-indicates story-not included in newscast) | | |
|--|---|----------------------|---------------------------------|
| STORY | WZVN-TV | WBBH-TV | WINK-TV |
| Collier County Impact Fee Increase | Yes-Live Package # 1 | Yes-Live Package # 1 | Yes-Package # 2 |
| Fred Coyle Interview | Yes | Yes | Yes |
| Realtors welcome fees (existing home sales) | Yes | No | No |
| Consider increase in Tourist & Sales Tax | No | Yes | No |
| Roads, Schools: Break down of how fees used | Yes | No | No |
| Comparison of Impact Fees in other Counties | Yes | Yes | Yes |
| (Abduction & Sexual Assault in NFort Myers | Yes-voiceOver/Sketch # 2 | Yes-Live Package # 3 | Yes-Sketch/Voice Over/Sound # 4 |
| Cory Perry Anthrax Hoax Conviction | Yes-Graphic # 3 | No | Yes-Voice Over # 1 |
| Ennis Rogers | Yes-Graphic # 4 | Yes-Graphic # 4 | Yes-Graphic # 1 |
| School Bus Accident | Yes-VoiceOver # 5 | Yes-Voice Over # 5 | Yes-VoiceOver # 1 |
| Small Pox Vaccines Seminar | Yes-Package # 6 | No | No |
| Fort Myers Parking Fees | Yes-Voice Over # 7 | Yes-Voice Over # 12 | Yes-Live Package # 1 |
| Habitual violators & cost of unpaid tickets | No | No | Yes |
| Use of the boot for parking offenders | Yes | No | Yes |
| Drivers' School Flyer Sex Line Number | Yes-Voice Over # 8 | Yes-Live Package # 2 | No |
| Collier County Beach Erosion | Yes-Voice Over # 9 | No | No |
| Garbage Pineland Marina | Yes-Copy # 10 | Yes-Voice Over # 8 | Yes-Voice Over # 3 |
| FGCU Marinelab | Yes-Voice Over # 11 | Yes-Live Package # 7 | No |
| Enrique Iglesias Concert at Teco Arena | Yes-Copy # 12 | No | No |
| Whistleblower-Spray Crete Investigation | Yes-Live Package # 13 | No | No |

Fort Myers-Naples, FL
Newscast Comparisons
October 8, 2002

| STORY | STATION - Story in newscast - r presented - C. in newscast | | |
|--|--|-------------------------------|-----------------------------|
| | WZVN-TV | WBBH-TV | WINK-TV |
| Weather | Yes # 14 | Yes # 10 | Yes # 13 |
| sports | Yes # 15 | No | Yes # 14 |
| Franklin Templeton Shootout & Greg Norman | Yes-Package | No | Yes-Voice Over & Sound |
| Noelle Bush in Court | No | Yes-Copy | 0 |
| Shuttle Atlantis Mission | No | Yes-Voice Over # 9 | No |
| Coming Up at 11 p.m Topical Story Promotion | No | Yes # 9.5 | Yes # 13.5 |
| Lee County School Start Times Parent Poll | No | Yes-Live Package #11 | No |
| of Top Stories & Weather Recap | No | Yes-Voice Over/Graphic # 11.5 | No |
| Dunbar Mid [REDACTED] Suspension | No | No | Yes-Voice Over # 5 |
| Walgreens Robbery | No | No | (Yes-Graphic # 6 |
| Rental Regulations on Fort Myers Beach | No | No | Yes-Live Package # 10 |
| Air Travel Down at Naples Airport | No | No | Yes-Voice Over # 11 |
| Canal Dredging & Boating Safety | No | No | Yes-Package/Voice Over # 12 |
| Package: Story includes video and field interviews edited with reporters voice track. Typically runs 2-3 minutes. Voice Over: Studio Anchor reads script to edited video. Typically runs 20-40 seconds. Live: Reporter appears live in the newscast to introduce and/or conclude story. With package typically runs 3-4 minutes. Sketch: Usually a sketch provided by law enforcement searching for a criminal. Graphic: Still picture, graph, or other visual presentation besides moving video Sound: Short edited piece of interview shot in the field | | | |



January 26, 2003: The ABC7 HD Super Bowl Party A Successful Event Thanks to the "Screen-Savers"

It was only a little more than three weeks ago when all the planets aligned, to enable ABC7 to host a Super Bowl Party like no other, at FGCU's Alico Arena. High Definition technology was about to debut on a 60' screen, thanks to the support of Sony's corporate sales and marketing division and local sponsor Bill Smith Appliances.

The challenges were many as we broke new ground at the Alico Arena. As the first non-basketball event and the first event with beer sales, Alico Arena's administrators and the FGCU police were nervous and anxious. Rules regarding the tailgate party and open container laws were changing moment by moment. The never-ending question regarding how many **would** come to such an event would remain unanswered until the big day. These issues, in turn, were making Waterman Broadcasting management nervous and anxious. Giveaways and banners were to be ordered and turned around quickly. Sound designers were to be contracted to produce audio for the event. Media sponsors Clear Channel Radio, The News-Press and Comcast Cable were secured to help promote the big HD event on four radio stations, in newspaper and on several cable channels. Promos were produced and airing on ABC7 and NBC2. The word was getting out and Southwest Florida was talking!

Planning events is always stressful, in that there are so many factors that remain out of one's control. Many people working for different companies in several cities, from vendors to technical support, must do their job and deliver all the pieces to the event **ON TIME**, to make it a complete success. All of the best-laid plans can fall apart, if one piece of the puzzle is missing. Little did we know that missing piece would be the 60' screen promised by Sony.

10am Saturday morning: The professional rigging company from Miami informs us that our screen is half the size. Sony had delivered a 22' x 30' screen, rather than the 20' x 60' screen promised to us. That precipitated countless calls to Sony corporate headquarters in Atlanta and 25+ closed theater rental companies in Miami, Tampa and Orlando. We were willing to drive anywhere to give ABC7 viewers what we promised.

11pm Saturday night: A secure plan is in place. Sony had located a screen in Chicago and was flying it into Tampa. It would arrive at 12:15 and be at Alico Arena by 3pm Sunday afternoon. While this was not ideal, it would enable us to get it installed by 4pm - long before kickoff. Why our Sony representative did not pick up the screen in Tampa remains a mystery. Instead, a "trucking" company was hired with a promised delivery of 3pm Sunday.

3pm Super Bowl Sunday: No screen has arrived. We are attempting to make contact with the delivery company. We cannot locate the driver.

5pm Super Bowl Sunday: The screen has still not arrived. Tensions are mounting, managers are pacing, driving 1-75 looking for lost vehicles and calling each other every five minutes regarding the status of the screen in transit. The delivery man is finally located in North Fort Myers via cell phone.

5:25: Delivery man is flagged down by Bob Beville and escorted to Alico Arena. From there, it is all a blur. More than a dozen of us pitch in to help the rigging company, pulling the frame from its cases, getting down on our knees with bolts and nuts, snapping and rotating the screen on its frame. Adrenaline is high and the screen is raised in front of an audience of approximately 1,200 Super Bowl fans - **JUST IN TIME FOR THE COIN TOSS!**

Teamwork does not begin to describe just how we were able to build and raise a 30' screen in less than 20 minutes, a job that normally takes 40 minutes.

SPECIAL THANKS TO ALL THE SCREEN-SAVERS!

- Lori Grimaldi



See insert for event pictures.



For Immediate Release
March 20, 2003

Contact
Steve Pontius,
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Waterman Broadcastinn & Montclair Communications Announce
Edward R. Murrow Awards for WZVN ABC7-TV and WBBH NBC2-TV;

NBC2 and ABC7 combine to win 5 out of 9 possible Awards in reasion -

Awards Recoanire Outstanding Achievements in Electronic Journalism

Ft. Mvers. FL – Waterman Broadcasting and Montclair Communications announced today that WZVN-TV (ABC7-TV) and WBBH-TV (NBC2-TV) were honored with multiple Edward R. Murrow Awards from the Radio-Television News Directors Association (RTNDA) in the 2003 Regional Competition. The Awards recognize outstanding achievements in electronic journalism, and embody the excellence that Edward R. Murrow originated as a standard for the electronic news profession.

The Awards include Best New Series (WZVN), Best Continuing Coverage (WBBH), Best Investigative Reporting (WBBH), Best Sports (WBBH), and Best Overall Excellence (WBBH). The Murrow Awards are particularly significant as they are judged by a panel of professionals from the news broadcast industry, where television and radio news professionals recognize the best work from among their own industry peers. WZVN and WBBH competed in the Southeastern United States region, alongside other stations in Florida, Georgia, and Puerto Rico.

"I am especially proud of the professionalism and commitment of our news teams at both ABC7 and NBC2," said Darrel Adams, News Director at Waterman Broadcasting. "Being recognized with Murrow awards is an honor because it confirms the accuracy and excellence we strive for on a daily basis in our newscasts."

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Details of the Awards given to W V N and WBBH are as follows:

- "Best News Series," W V N , for *Does **It** Work?*; awarded for best coverage of a single subject reported in multiple parts. The series examines consumer products and their advertised claims and determines if they really work;
- "Best Continuing Coverage," WBBH, for INS ***Blunder***, awarded for continuing coverage of a major developing story over an extended period of time. The story uncovered a mistake by the INS that renewed visas for the 9-11 terrorists;
- "Best Investigative Reporting," WBBH, for *Privacy Trashed*; recognizing outstanding and original investigative reporting. The report exposed companies that routinely dispose of customer financial records improperly;
- "Best Sports." WBBH, for ***Full** Throttle*; awarded for a single, packaged report on one sports topic. *Full Throttle* looked at this year's Daytona 500 in intricate detail;
- "Best Overall Excellence," WBBH; awarded for overall excellence of a news organization, recognizing the depth, scope, and effectiveness of overall news performance.

No other television station in Southwest Florida was recognized.

WZVN and WBBH will now move to the next level of competition and are entered into the finals of National Competition, including all other markets and regions in the United States. The RTNDA will announce the winners of the National Awards in June, 2003.

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