

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

MM Docket No. 88-557

In re Applications of

WESTERN INDIAN File No. BP-870929AN
MINISTRIES, INC.
KHAC, Tse Bonito, New Mexico

Has: 1110 kHz, 10 kW, D (Window Rock)
Req: 880 kHz, 0.43 kW, 10 kW-LS, U
(Tse Bonito)

MESA BROADCASTING File No. BP-880328AG
COMPANY
KQIL, Orchard Mesa, Colorado

Has: 1340 kHz, 1 kW, U (Grand Junction)
Req: 880 kHz, 4.5 kW, 10 kW-LS, DA-N, U
(Orchard Mesa)

For Construction Permits

HEARING DESIGNATION ORDER

Adopted: December 2, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Western Indian Ministries, Inc. (Western) and Mesa Broadcasting Company (Mesa).

2. Mesa requests a waiver of the power limit of Section 73.21(a) (2)(ii)(c), so as to operate a nighttime power of 5 kW instead of the 1 kW prescribed by that provision. As Mesa has established that higher power is necessary to achieve coverage of its communities of license and will not preclude significantly future use of the frequency, a waiver is justified.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.¹ However, since the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals, would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to

be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would gain or lose primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service.

2. To determine in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. IT FURTHER ORDERED that Mesa's waiver request IS GRANTED.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, the applicants shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

¹ Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 Rio de Janeiro 1981 and to bilateral and other multilateral agreements between the United States and other countries.