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

MM Docket No. 88-562

In re Applications of

DON WERLINGER File No. BP-870331AD
Las Vegas, Nevada

Req: 1100 kHz, 1 kw, 50 kW-LS,DA-2, U

DON H. BARDEN File No. BP-870929AK
Las Vegas, Nevada

Req: 1100 kHz, 1 kW, 50 kW-LS, DA-2, U

LARRY L. CUMMINGS File No. BP-870929AM
Sun City - Youngstown, Arizona

Req: 1100 kHz, 1 kW, 50 kW-LS, DA-N, U

Peter V. Gureckis d/b/a File No. BP-870929AP
CAVE CREEK BROADCASTING
COMPANY
Cave Creek, Arizona

Req: 1100 kHz, 1 kW, 25 kW-LS, DA-2, U

Steven E. Brisker d/b/a File No. BP-870929AQ
TUCSON RADIO
Tucson Estates, Arizona

Req: 1110 kHz, 5 kW, DA-D

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: December 8, 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 before it for consideration the above-captioned applications of Don Werlinger (Werlinger), Don H. Barden (Barden), Larry L. Cummings (Cummings), Peter V. Gureckis d/b/a Cave Creek Broadcasting Company (Cave Creek) and Stephen E. Brisker d/b/a Tucson Radio linked to each other through the presence of intervening interlocking proposals.[12] Also before the Commission are petitions to deny filed by Triple R Broadcasting, Inc., and Barden against the Werlinger application. [3]

2. The engineering portions of the Werlinger and Cummings applications do not contain the required site photos. To remedy this deficiency, Werlinger and Cummings will be required to file appropriate amendments with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Werlinger would constitute a hazard to air naviagtion, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Our review of Werlinger's engineering proposal reveals several deficiencies. We have determined that the nighttime interference free contour would be 10.8 mV/m. Werlinger has not submitted a map clearly indicating the city limits of Las Vegas and showing his proposed nighttime interference free coverage. Consequently Werlinger will be required to submit an amendment to the presiding Administrative Law Judge within 30 days of the release of this Order clearly showing the city limits of Las Vegas, his nighttime interference free contour and detailing the area and population of Las Vegas that will be covered by the relevant contour. The presiding Administrative Law Judge will then evaluate the coverage map submitted and specify any additional city coverage issue as appropriate.

5. Barden states that he will cover only 49.17% of Las Vegas with his nighttime interference free contour. Barden claims that greater coverage of Las Vegas is not achievable because of power limitations. Accordingly, Barden seeks a waiver of Section 73.24(j) of the Commission's Rules. Based on the information submitted by Barden we cannot determine if a waiver of this rule is warranted and an appropriate issue will be specified.

6. The engineering portion of the Cummings application does not contain an adequate antenna description i.e., guyed, self-supporting or triangular. In addition, Cummings must file a corrected standard pattern plot to show tower #4 spacing as 270 degrees instead of 180 degrees. These corrections should be submitted in an amendment filed with the presiding Administrative Law Judge within (30) days of the release of this Order.

7. Werlinger and Tuscon have not amended their applications to update their other broadcast interests since the time the applications were first filed. Section 1.65 of the Commission's Rules requires that an applicant promptly amend its application to report significant changes in informations furnished to the Commission. The Commission is aware of changes in ownership information which Werlinger and Tuscon have not reported in connection with their respective applications. Accordingly, Werlinger and Tuscon will be required to file amendments with the presiding Administrative Law Judge detailing the changes in their other broadcast interests which have occurred since the time they filed their respective applications.

8. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. 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 best 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.

9. 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 with respect to the application of Don Werlinger whether there is a reasonable possibility that the tower heights and locations proposed would constitute a hazard to air navigation.

2. To determine whether the proposal of Don H. Barden would provide coverage of the city sought to be served, as required by Section 73.24(j) of the Commission's Rules, and if not whether circumstances exist which warrant waiver of that section.

3. To determine: (a) the areas and populations which would receive 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 of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

4. 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, best serve the public interest.

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

10. IT IS FURTHER ORDERED That the Federal Aviation Administration IS MADE A PARTY to this proceeding.

11. IT IS FURTHER ORDERED, That Werlinger shall file an amendment to correct the engineering deficiencies specified in paragraphs 2 and 4 with the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That Barden shall file an amendment to provide the information specified in paragraph 5 with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That Cummings shall file an amendment to provide the information specified in paragraphs 2 and 6 with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That Werlinger and Tuscon shall file the amendments called for in paragraph 7 concerning their other broadcast interests, with the presiding Administrative Law Judge within 30 days of the release of this Order.

15. 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 subsequent to the date of adoption of this Order 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.

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

17. IT IS FURTHER ORDERED, That pursuant to Section 311(a) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, 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

FOOTNOTES

[1] Groups of this nature are commonly termed "daisy chains."

[2] Barden filed minor amendments to his application on July 27, 1988, August 31, 1988 and October 24, 1988. Cave Creek filed a minor amendment on July 11, 1988. These amendments fail to meet the requirements of Section 73.3522(a)(2) of the Commission's Rules. Under Section 1.65, however, good cause has been shown for the acceptance of these amendments.

[3] The petitions to deny filed by Triple R Broadcasting, Inc. and Barden are essentially petitions to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an opporunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229 of the Commisssion's Rules.