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

**MM Docket No. 86-440**

In re Applications of

| | |
|---|---|
| EVANGEL COMMUNICATIONS, INC. | File No. BPCT-860410KN |
| ACHERNAR BROADCASTING COMPANY | File No. BPCT-860410KP |
| LINDSAY TELEVISION, INC. | File No. BPCT-860410KQ |

For Construction Permit for a
New Television Station
Charlottesville, Virginia

**ORDER**

**Adopted: January 11, 1989; Released: January 27, 1989**

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN.

1. In an *Initial Decision* (*I.D.*), 3 FCC Rcd 5421 (1988), presiding Administrative Law Judge Chachkin (ALJ) found Achernar Broadcasting Company basically unqualified under the following issue:

> To determine whether there is a reasonable possibility that operation by Achernar as proposed would result in objectionable interference to the conduct of radio astronomy activities by the National Radio Astronomy Observatory ["NRAO"] in the West Virginia "Quiet Zone."

2. Achernar has excepted to its disqualification, claiming that "[t]he most critical error in its trial was the ALJ's refusal to consider the fact that *any* grant on Channel 64 precludes its radio astronomy use under NRAO's interference criteria." Achernar Br. at 7 (emphasis added). It further claimed that "the level of interference deemed intolerable by NRAO is so low that *any* use of Channel 64 in Charlottesville from *any* site would *preclude* its radio astronomy use." *Id.*, at 22 (emphases added). Achernar elaborates that since Lindsay Television, Inc., the prevailing applicant below, would transmit on Channel 64 from slightly outside the "Quiet Zone," whereas Achernar would transmit from inside that zone, "the *same* interference would result from any grant," *id.* at 7, because both proposals would essentially render Channel 64 equally "unuseable" to NRAO for purposes of astronomical observation. *Id.*, at 10.[1] In support of this contention at hearing, Achernar proffered "Worknotes Regarding Power Densities of All Three Applicants," prepared by its engineering consultant John J. Mullaney. *See* Achernar Exhibit 6. Whereas the ALJ rejected that exhibit as irrelevant to resolution of the "Quiet Zone" issue, he accepted it as an offer of proof, and permitted Mullaney to be cross-examined on its substantive contents. Tr. 389; *see also I.D.* at n.12.

3. Upon reviewing the exceptions and replies, and after hearing oral argument on January 6, 1989, the Board finds that it would aid its deliberations to have the parties' further views (including those of the Mass Media Bureau, which is a party to this case) with respect to the accuracy of Achernar Exhibit 6 and to Achernar's deductive representations that purportedly derive therefrom. *See generally Valley Broadcasters, Inc.*, FCC 88-366, released November 21, 1988, paras. 4, 13-15. Computational inaccuracies, if any, in the exhibit should be pointed out and corrective information supplied, along with any affidavits in support thereof.

4. ACCORDINGLY, IT IS ORDERED, That Achernar Broadcasting Company IS DIRECTED to file comments as herein described within ten (10) days of the release date of this Order; that Lindsay Television, Inc., the National Radio Astronomy Observatory, and the Mass Media Bureau[2] ARE DIRECTED to file their responsive comments within ten (10) days of the date Achernar's comments are filed; and that Achernar may file reply comments within five (5) days of the date the responsive comments are filed.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

**FOOTNOTES**

[1] At oral argument, however, Achernar counsel qualified her use of the term " *same interference*, " saying "same" was intended in a relative sense. Tr. of Oral Arg. of January 6, 1989 at 1182.

[2] Evangel Communications, Inc., the lead applicant in the caption, was disqualified by the ALJ and has not filed exceptions to the denial of its application. Therefore, its application is dismissed for failure to prosecute, 47 CFR §1.276(f), and it is not afforded an opportunity to file comments.