

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In re Applications of

FAYE & RICHARD TUCK, INC.  
KBEC, Waxahachie, Texas

MM DOCKET  
NO. 83-212  
File No.  
BP-810127AJ

MARCOS A. RODRIGUEZ  
Carrollton, Texas

MM DOCKET  
NO. 83-214  
File No.  
BP-810511AJ

BLUEBONNET RADIO  
BROADCASTERS, INC.  
Plano, Texas

MM DOCKET  
NO. 83-215  
File No.  
BP-810511AL

CENTURY BROADCASTING  
CORPORATION  
Garland, Texas

MM DOCKET  
NO. 83-216  
File No.  
BP-810511AM

DONTRON, INC.  
KPBC, Garland, Texas

MM DOCKET  
NO. 83-218  
File No.  
BP-810511AP

For Construction Permit  
for a New AM Station

*Appearances*

*Kathryn R. Schmeltzer and Richard R. Zaragoza on behalf of Faye & Richard Tuck, Inc.; Robert B. Jacobi and Mark L. Pelesh on behalf of Marcos A. Rodriguez; Cheryl A. Kenny and Harry C. Martin on behalf of Bluebonnet Radio Broadcasters, Inc.; John C.*

*Quale, John S. Logan and James R. Bayes* on behalf of Century Broadcasting Corporation; *Mark E. Fields* on behalf of Dontron, Inc.; and *Robert A. Zauner* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P.  
GONZALEZ

Issued: October 1, 1985; Released: October 7, 1985

*Preliminary Statement*

1. By *Hearing Designation Order* released on March 21, 1983 (Mimeo No. MM 3002), the Commission designated for hearing in a consolidated proceeding the mutually exclusive applications of Faye & Richard Tuck, Inc. (Tuck), Marcos A. Rodriguez (Rodriguez), Bluebonnet Radio Broadcasters, Inc. (Bluebonnet), Century Broadcasting Corporation (Century) and Dontron, Inc. (Dontron) for authority to construct and operate a new AM broadcast station on 770 kHz, together with the applications filed by Athens Broadcasting Company, Inc. (Athens) and Plano Broadcasting Corporation (Plano) which are no longer a part of this proceeding.<sup>1</sup>

2. The Commission in the aforementioned *Hearing Designation Order* specified the following issues which, for purposes of clarity, have been renumbered:

1. To determine whether the antenna systems proposed by Rodriguez, Century and Dontron can be adjusted and maintained within the proposed limits of radiation.
2. To determine, with respect to the Rodriguez proposal, whether circumstances exist which warrant a waiver of Section 73.21(a)(2)(ii)(C) of the Commission's Rules.
3. To determine the areas and populations, which would receive primary service for each proposal, and the availability of other primary aural services to such areas and populations.
4. To determine in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.
5. To determine, in the event it is concluded that a choice among the

<sup>1</sup> The Presiding Judge granted Athens' "Motion of Athens Broadcasting Company, Inc. for Severance and Grant" by *Memorandum Opinion and Order*, FCC 83M-2122, released June 28, 1983 and Plano's application was dismissed with prejudice pursuant to its own motion by *Order* of the Presiding Judge, FCC 83M-2936, released August 30, 1983.

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.

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

3. By *Memorandum Opinion and Order* released on September 2, 1983 (FCC 83M-3014), the Presiding Judge resolved Issue No. 1 in Century's favor, pursuant to a "Motion for Summary Decision" filed by Century on April 27, 1983, and by *Memorandum Opinion and Order*, FCC 83M-3719, released October 19, 1983, resolved Issue No. 1 in Dontron's favor in response to a "Motion for Summary Decision" filed on September 28, 1983.

4. The Presiding Judge granted Rodriguez' motion for summary decision of the Issues Nos. 1 and 2 by *Memorandum Opinion and Order* released August 25, 1983 (FCC 83M-2875).

5. A prehearing conference was held at the Commission on May 24, 1983, followed by an Admissions Session on October 18, 1983. Hearing sessions were held at the Commission on October 19, 20 and 21, 1983. On November 18, 1983, the parties exchanged proposed rebuttal exhibits, and an Admissions session was held with respect to the rebuttal exhibits on December 16, 1983. Surrebuttal exhibits were exchanged on January 25, 1984, and a further hearing session was held on February 7, 1984. The record was closed at the conclusion of the further hearing session. Proposed findings of fact and conclusions of law and replies thereto have been filed by all applicant parties.

6. On December 5, 1983, an application was filed with this Commission for consent to assign the license of station KXOL, Fort Worth, Texas to Metro Market Broadcasting, Inc., a wholly owned subsidiary of Latin American Broadcasting Company (Latin American). *See, Order* released in this proceeding on January 17, 1984, FCC 84M-262. By letter dated May 3, 1984, the Commission's Mass Media Bureau informed counsel for Mr. Rodriguez who is Latin American's sole owner that his application for the 770 kHz frequency and the assignment application for KXOL, Fort Worth, Texas were inconsistent applications, and it ordered Rodriguez to choose between the two. Rodriguez appealed the Bureau's ruling and resolution of this matter was delayed pending action by the Commission on the Rodriguez appeal.

7. By letter dated August 29, 1985, Tetco, Inc., the licensee and proposed assignor of station KXOL(AM), Fort Worth, Texas unilaterally requested dismissal of the pending application for assignment of the license of station KXOL to Metro Market

Broadcasting, Inc. The Commission by letter dated September 11, 1985, granted the request and dismissed the application. Accordingly, the matter at hand now stands ready for resolution.

*Findings of Fact*

8. The applicants propose the following facilities:

Applicant	File No.	Docket No.	Facilities
Tuck	BP-810127AJ	83-212	KBEC, Waxahachie, Texas Has: 1390 kHz, 0.5 kW, DA-D Req: 770 kHz, 1 kW, DA-N, U
Rodriguez	BP-810511AJ	83-214	Req: 770 kHz, 2.5 kW, 5 kW-LS, DA-2, U Carrollton, Texas
Bluebonnet	BP-810511AL	83-215	Req: 770 kHz, 1 kW, 10 kW-LS, DA-2, U Plano, Texas
Century	BP-810511AM	83-216	Req: 770 kHz, 1 kW, 10 kW-LS, DA-2, U Garland, Texas
Dontron	BP-810511AP	83-218	KPBC Has: 1040 kHz, 1 kW, D (Dallas, Texas) Req: 770 kHz, 1 kW, 5 kW-LS, DA <sup>1</sup> -2, U (Garland, Texas)

*The Communities Proposed to be Served*

*Waxahachie, Texas*

9. Tuck proposes to change its current AM broadcast facility, KBEC, Waxahachie, Texas from a daytime only broadcast service to a fulltime broadcast service to Waxahachie, Texas (Tuck Ex. 1, p. 1; Tuck Ex. 5, p. 1). There are no other broadcast facilities licensed to Waxahachie (Tuck Ex. 5, p. 1).

10. Waxahachie, Texas is located approximately 30 miles south of Dallas, Texas. As of 1980, the population of Waxahachie was 14,624, of whom 2,817 were Blacks and 1,483 were Hispanics (Tuck Ex. 5, p. 1, 11). It is projected that Waxahachie will have a population of between 17,000 and 40,000 by 1990, and between 20,000 and 57,500 by the year 2000. The 1980 United States Census included Ellis County within the Dallas-Ft. Worth Standard Metropolitan Statistical Area (Dontron Rebuttal Ex. 1).

11. Waxahachie is a city incorporated under the laws of the State of Texas, and it is governed by a council-manager form of government under a City Charter and Code of Ordinances (Tuck

Ex. 5, p. 2). City services are provided by a number of departments with funding provided by the Waxahachie city budget (Tuck Ex. 5, pp. 3-5). Waxahachie is also the county seat of Ellis County, and a number of offices of the Ellis County government are located in Waxahachie (Tuck Ex. 5, p. 9). Waxahachie is served by a daily newspaper, the *Waxahachie Daily Light* (Tuck Ex. 5, p. 22).

12. The Waxahachie School District operates one senior high school, one junior high school, one middle school, two elementary schools, and several associated facilities (Tuck Ex. 5, pp. 14-15). The community has a medical center providing family health care, outpatient, and minor surgical services, and a hospital with 72 rooms (Tuck Ex. 5, p. 16). There are 51 churches of a variety of denominations in Waxahachie, as well as a number of cultural and recreational facilities (Tuck Ex. 5, pp. 16-17).

13. Waxahachie is the main shopping area for Ellis County (Tuck Ex. 5, p. 19) which has a total area of 951 square miles and a total population of 59,743 persons (Century Rebuttal Ex. 2, p. 2). Agricultural/residential and commercial/industrial properties within the County have remained in relative parity over the past decade. Ellis County's 1982 farm income exceeded that of all but one of the five counties surrounding Dallas-Ft. Worth in 1982 (Tuck Ex. 5, pp. 21-22).

#### *Carrollton, Texas*

14. Mr. Rodriguez proposes Carrollton, Texas as his city of license. Carrollton is located 15 miles from Dallas, Texas. As of the 1980 Census, Carrollton had a population of 40,595, of which 1.83 percent is Black and 6.27 percent is Hispanic (Rodriguez Ex. 2, p. 1 and Ex. A). The North Central Texas Council of Governments predicts that Carrollton's population will be approximately 55,000 in 1990 (Rodriguez Ex. 2 at Ex. B), whereas the Economic Development Division of Texas Power and Light foresees a more rapid growth to approximately 100,000 persons by 1990 (Rodriguez Ex. 3, p. 1).

15. Carrollton's form of government consists of a mayor and a seven-member council (Rodriguez Ex. 3, p. 1). There are a total of 13 elementary schools, 3 junior high schools, 2 high schools and 1 alternative school in Carrollton, as well as 1 municipal library with 50,000 volumes (Rodriguez Ex. 3, p. 2). The Carrollton School District employs 660 teachers with an annual budget for 1982 of \$57,099,650. Carrollton offers public recreation facilities, and all religious denominations have established churches in

Carrollton. As of 1982, there were 61 businesses in Carrollton employing 17,346 persons. Utility services to Carrollton are provided by the Lone Star Gas Company, Dallas City Water, General Telephone and Texas Power and Light (Rodriguez Ex. 3, p. 2). Carrollton is served by two local newspapers, *The Carrollton Chronicle* published daily and the *Metro Crest News* published weekly (Rodriguez Ex. 3, p. 1); (Rodriguez Ex. 2, p. 1). There are no broadcast facilities licensed to Carrollton (Rodriguez Ex. 3, p. 1).

*Plano, Texas*

16. Bluebonnet specifies Plano, Texas as its city of license. The City of Plano is located in Collin County, approximately 19 miles north of Dallas, Texas (Bluebonnet Ex. 7, p. 1). As of 1980, Plano had a population of 72,331, of which 3.29 percent is Black and 3.49 percent Hispanic (Bluebonnet Ex. 7, p. 1). Projections of Plano's 1990 population range from 80,000 to 160,000 (Bluebonnet Ex. 7, Attachment C, p. 4).

17. Plano is an incorporated city, with a home rule charter adopted in 1961 (Bluebonnet Ex. 7, p.1). It operates under a council-manager form of government, with a city council comprised of a mayor and five city council members. The Plano independent school district includes 18 elementary schools, 6 middle schools, 3 high schools and 2 senior high schools with more than 24,000 students (Bluebonnet Ex. 7, p. 2). Plano is also served by a local fire department employing nearly 100 firemen, and a police department employing approximately 114 officers (Bluebonnet Ex. 7, p. 2). Utilities are provided by Lone Star Gas Company, General Telephone, and Texas Power and Light (Bluebonnet Ex. 7, p. 2).

18. Located within Plano are 7 banks, 11 savings and loan institutions, 52 churches, 2 libraries, 48 shopping centers and 1 hospital (Bluebonnet Ex. 7, pp. 2-3). The City's economic base includes manufacturing, research, agriculture, real estate, banking, retailing, wholesaling and construction operations and facilities (Bluebonnet Ex. 7, p. 4), as well as two large industrial sites (Bluebonnet Ex. 7, p. 4).

19. Plano is served by one daily newspaper and by one AM radio station, KXBI, which is licensed to Plano and maintains an office and studios within that city (Bluebonnet Ex. 7, p. 5; Tr. 358-59).

*Garland, Texas*

20. Century and Dontron both propose Garland, Texas as their city of license. Garland is located 15 miles from Dallas, Texas. It is a home rule city which also operates under a council-manager form of government (Dontron Ex. 5; Century Ex. 6, p. 2). City services for the residents of Garland are administered through a professional city manager who is aided by 44 department heads and 1,618 employees (Century Ex. 6, p. 2 and Appendix B). Among the major city departments is the Garland Police Department, composed of 155 officers, and a fire department (Century Ex. 6, p. 2). Garland also has its own municipal water department (Century Ex. 6, p. 2), electric power utility, the Garland Power and Light, which is the third largest municipal power utility in the State of Texas (Century Ex. 6, pp. 2-3), and its own public library system (Century Ex. 6, p. 3). The Garland Parks and Recreations Department administers 64 public parks within the City (Century Ex. 6, p. 3).

21. The Garland Independent School District provides education to more than 30,000 students from kindergarten through high school, as well as vocational training for adults in 54 public school facilities (Century Ex. 6, p. 6). Garland is also home to Richland Community College and Eastfield Community College, as well as Amber University and a branch of East Texas State University (Century Ex. 6, p. 6; Dontron Ex. 5, p. 1). Garland has 3 hospitals, more than 85 churches, and in excess of 70 civic and service organizations (Century Ex. 6, p. 7).

22. There are approximately 300 industrial firms located within Garland with approximately 22,000 employees, and a combined annual payroll for 1982 of approximately \$401,000,000. In addition, Garland has more than 2,000 retail establishments with sales for 1981 in excess of \$562,000,000 (Century Ex. 6, pp. 4-5), 7 local banks, and 7 savings and loan associations (Century Ex. 6, p. 5).

23. At the present time, no local radio or television broadcast facilities are licensed to the City of Garland, Texas, although a construction permit for a new television station at Garland has been granted by the Commission. The City of Garland has its own newspaper, the *Garland Daily News*, and a cable service owned by Storer Cable Television (Century Ex. 6, p. 8).

24. According to the United States Census conducted in 1980, Garland has a population of 138,857 (Dontron Ex. 5, p. 1; Century Ex. 6, p. 4). Blacks and other minorities represent approximately

16 percent of the City's population (Century Ex. 6, p. 4). The Garland Chamber of Commerce projects that the population of Garland will reach 190,000 by 1990.

*The Areas and Populations to be Served by Each Applicant*

25. The proposed populations and areas to be served by each applicant are as follows:

<i>Applicant</i>	<i>0.5 mV/m — Day</i>	
	<i>Population</i>	<i>Area (Sq. Miles)</i>
Tuck	1,138,170	27,149
Rodriguez	3,644,543	45,645
Bluebonnet	4,165,270	61,981
Century	4,023,865	51,227
Dontron	3,944,819	47,463

<i>Applicant</i>	<i>10 mV/m — Night</i>	
	<i>Population</i>	<i>Area (Sq. Miles)</i>
Tuck	50,691	673
Rodriguez	1,018,158	707
Bluebonnet	1,417,840	867
Century	1,269,257	735
Dontron	932,483	748

(Joint Ex. 2, Figure 10, pp. 18-20.)

26. At least five aural services, both daytime and nighttime, are available throughout the proposed areas of service of all five applicants (Joint Ex. 1, pp. 2-3).

*307(b) Findings*

27. A 307(b) issue was designated in this proceeding because the applicants have selected different cities of license. As noted above, Waxahachie is located 30 miles south of Dallas, Texas, Plano 19 miles north, Garland 15 miles northeast and Carrollton 15 miles northwest of Dallas (Joint Ex. 2). All of the cities, with the exception of Waxahachie, are located within the Dallas-Ft. Worth Urbanized Area. Waxahachie, however, along with the other proposed cities of license is located within the Dallas-Ft. Worth SMSA (Dontron Rebuttal Ex. 1).

28. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission "... make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." In resolving a Section 307(b) issue, the Commission

considers all relevant factors which bear upon this mandate. Under the fair and equitable factors, the Commission weighs the relative needs of each of the proposed communities for a new transmission service (*i.e.*, outlet for local expression), as well as the needs of the proposed service areas for a new reception service. Under the efficiency factor, the Commission looks to the areas and populations to be served, the type or class of frequency involved, the power and hours of service and the elimination of causation of an interference area. *See, Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011 (Rev. Bd. 1969); and *Meredith Colon Johnston*, 33 FCC 2d 324 (Rev. Bd. 1972).

29. Plano, Carrollton and Garland are all separate and distinct political entities which provide a wide range of services to their respective citizens. All three communities have significant populations which range from 40,595 for Carrollton to 138,857 for Garland. They are, however, within relatively close proximity to the dominant urban area, Dallas-Ft. Worth and all lie within the Dallas-Ft. Worth Urbanized Area. They are all clearly subordinate to Dallas-Ft. Worth, and all three fall within that category of community referred to by the Review Board as the "suburbanite model." *See, Debra D. Carrigan*, FCC 85R-26, released March 20, 1985 (Rev. Bd.). In addition, all four applicants propose a high powered, regional service to a large geographical area which includes the Dallas-Ft. Worth area as well as the entire communities of Plano, Carrollton and Garland.

30. Although these applicants have selected different cities of license, what they propose to provide is a regional broadcast service to the Dallas-Ft. Worth Area. No genuine 307(b) distinctions can, therefore, be drawn between the communities of Plano, Garland and Carrollton, and, as among themselves, the Presiding Judge finds that none of these communities is entitled to a 307(b) preference.

31. Although Waxahachie lies within the Dallas-Ft. Worth SMSA, it is not located within the Dallas-Ft. Worth Urbanized Area. It is a politically distinct community which also serves as the county seat for Ellis County. The Presiding Judge concludes, therefore, that Waxahachie's location beyond the Dallas-Ft. Worth Urbanized Area and its status as the county seat for Ellis County support the finding that Waxahachie constitutes a separate community from the Dallas-Ft. Worth communities for 307(b) purposes, thereby requiring a determination as to which, if any, of the "communities" is entitled to a 307(b) preference.

32. The areas proposed to be served by the applicants are already well served, and there are no white or gray areas which would be eliminated by a grant of any one of the proposals (Joint Exhs. 1 and 2). The fact that applicants will provide a new broadcast service to their proposed service area is therefore of no decisional significance in comparing the proposals, and none of the applicants is entitled to a reception preference under the fair and equitable factor of 307(b).

33. The Dallas-Ft. Worth area has a plethora of local broadcast service whereas Waxahachie has a single, daytime only AM station. Tuck alone proposes a first, full-time local broadcast service to its designated community. The Presiding Judge concludes therefore that Tuck's proposal to provide Waxahachie with its first full-time service entitles it to a transmission preference over the so-called Dallas-Ft. Worth applicants under the fair and equitable factors considered under Section 307(b).

34. The Commission in its so-called "Clear Channel" decision, *Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 2d 1345 (1980), which resulted in the allocation of the Class II clear channel frequency in question, noted several needs which these additional frequencies were designed to meet. They are as follows: more minority-owned stations; first or second local night-time radio outlets to those communities lacking them; and additional noncommercial stations. Among the five applicants, only Rodriguez is minority controlled. However, Mr. Rodriguez has made a commitment in this proceeding to divest himself of a controlling stock interest in the licensee of an existing radio station in the Dallas-Ft. Worth Area, in the event that he is the successful applicant in this proceeding. A grant of Rodriguez' application would, therefore, not necessarily result in a gain in minority controlled stations in the Dallas-Ft. Worth area. A grant of Tuck's application would, however, meet the second most pressing need recognized by the Commission, that is the need for a first, full-time local broadcast service.

35. The record contains evidence submitted in support of the contention that Tuck could make modifications in its present operations which would enable it to provide a full-time service on its existing frequency, and at the same time eliminate some interference and expand its broadcast service to Ellis County. See, Century Rebuttal Exhs. 2 & 3. Even if we assume that the modifications as outlined in the Volken engineering report (Century Rebuttal Exhs. 2 & 3) are feasible and the stated results attainable, substantial changes would have to be made in Tuck's

existing operations; for example, Tuck would be required to modify the station's two tower directional antenna system to a three tower array, and it would be desirable to acquire additional land at the antenna site (Tr. 625-629) factors which belie the proponents claim that Tuck has a readily available alternative to the service proposed by Tuck in this proceeding.<sup>2</sup> Accordingly, the Presiding Judge finds that Tuck does not have a readily available alternative to the service proposed here, and accordingly, Tuck will suffer no comparative handicap because of its existing broadcast facility in Waxahachie.

36. Bluebonnet and Century both propose to use 10 kW of power as compared to Tuck's 1 kW, and Tuck's proposal would serve 2.5 million fewer people than Rodriguez' proposal, the most modest of the Dallas-Ft. Worth proposals. Tuck's self-described "local service" would be clearly less efficient than those of the so-called Dallas-Ft. Worth applicants. Although Tuck's proposal would eliminate an adjacent channel interference area of 30 square miles with 3,371 persons from station KGVL, Greenville, Texas operating on 1400 KCS (Tuck Ex. 6), a factor to be considered in determining a proposal's overall efficiency, it is of less significance than the substantially greater areas and populations to be served by the Dallas-Ft. Worth applicants. *See, Meredith Colon Johnston*, 33 FCC 2d 324 (Rev. Bd. 1972). Accordingly, the Presiding Judge concludes that the Dallas-Ft. Worth applicants are entitled to a preference under the efficiency factor of Section 307(b).

#### 307(b) Conclusions

37. The Presiding Judge concludes, therefore, that Tuck is entitled to a substantial preference under the fair and equitable factors, and the Dallas-Ft. Worth applicants a substantial preference under the efficiency factor, moderated somewhat by the fact that Tuck's proposal would eliminate an interference area. *See,*

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<sup>2</sup> There are serious deficiencies in the Volken engineering report. For example, it is noted that Mr. Volken, the author of the engineering report, never personally visited the KBEC site. In addition, he was unaware of the amount of land owned by Tuck at its present antenna site (Tr. 612-14), or whether there were any easements which applied to the land which would prevent the erection of a third tower (Tr. 617). Furthermore, Volken's report does not include a site plat plotting the location of the three antenna towers that would be necessary to effectuate the proposal (Tr. 618), and the report does not show where the ground system for the third tower would be located (Tr. 630). Mr. Volken agreed, on cross-examination, that if he were to file an application with the FCC for the proposed changes, the application would have to include a plat showing the three towers, as well as the ground system (Tr. 618-630).

*Meredith Colon Johnston*, 33 FCC 2d 324 (Rev. Bd. 1972). It is established Commission policy that fair and equitable factors outweigh an efficiency factor in an area that is already well served. See, *Johnston, supra*; *Dennis A. Sleighter and Willard D. Sleighter*, 6 FCC 2d 662 (Rev. Bd. 1967). Accordingly, the Presiding Judge concludes that Waxahachie is the favored community under 307(b) and, on that basis alone, finds that Tuck's proposal would best serve the public interest.

38. Since a reviewing body may disagree with the above set forth 307(b) finding, the evidence received under the contingent comparative issue will now be considered.

#### *Contingent Comparative Issue*

##### *Tuck*

39. Tuck is a Texas corporation with the following officers, directors, and shareholders: William Richard Tuck, President, Director and 40 percent stockholder; Faye Tuck, Secretary, Director, and 40 percent stockholder; Sandra Howell, Vice President, Director and 10 percent stockholder; and Jeanne Moseley, Treasurer, Director and 10 percent stockholder (Tuck Ex. 1, p. 1).

#### *Diversification*

40. Neither Tuck, nor any officer, director or stockholder of Tuck, has any ownership interest in, or control of, any media of mass communications other than the broadcast station KBEC in Waxahachie, Texas (Tuck Ex. 1, p. 2).

#### *Integration*

41. Tuck claims a 90 percent full-time quantitative integration credit on the basis of its proposal to integrate 90 percent of its ownership, 50 percent of which are women, on a full-time basis in the affairs of the proposed station.

42. William Richard Tuck, President, Director and 40 percent stockholder of Tuck, will serve as general manager of the station on a full-time basis, devoting at least 40 hours a week to his duties at the station.

43. Mr. Tuck has been a resident of Waxahachie, Texas since 1955, and intends to continue to reside in that community. He was an active member of the Optimist Club of Waxahachie and served as its Vice President and Director. He became a member of the Waxahachie Rotary Club in 1970 and is still a member (Tuck Ex. 2, p. 4). In 1955, Mr. Tuck was elected to the Board of

Directors of the Waxahachie Chamber of Commerce and at the time of the hearing had served on the Board for 28 years. During this time, he also served as Vice President and Chairman of numerous activities (Tuck Ex. 2, p. 4; Tr. 135). In 1955, Mr. Tuck joined the Waxahachie Masonic Lodge # 90 of which he is still a member. In 1955, he was elected President of the Waxahachie Marvin Elementary Parent Teachers Association and was a member for three years (Tuck Ex. 2, pp. 4-5). From 1955 to 1970, Mr. Tuck served on the Board of the Ellis County Farm Bureau and he is also an Honorary 4-H Club member and an Honorary Farmers Association member. Mr. Tuck has also received numerous honors and invitations from various clubs and organizations in Waxahachie, Ellis County and the State of Texas. Mr. Tuck is an active member of the Waxahachie United Methodist Church.

44. Mr. Tuck's broadcast experience began in 1942 with radio station KFFA, Helena, Arkansas. He is presently President, Director, General Manager and 40 percent owner of broadcast station KBEC, Waxahachie, Texas.

45. Faye Tuck is Secretary, Director and 40 percent stockholder of Tuck. She proposes to serve as the proposed station's full-time business manager, devoting at least 40 hours a week to the station's operations.

46. Mrs. Tuck has been a resident of Waxahachie since 1955 and intends to continue to reside in that community. She is a former member of the Waxahachie Optimist Club and the Century Club. Mrs. Tuck held offices with both of these organizations. She is also a former member of the Waxahachie Garden Club and held several offices with that club. Although no longer an active member, she still works with the Garden Club on publicity and fundraising projects. Mrs. Tuck also served as a volunteer worker, secretary and member of the Community Hospital for four to five years. In 1982, she served as Chairman of the Residential Fund Drive of the Ellis County Heart Association, and between 1963 and 1964, she was a member of the City Federation of Clubs, an organization consisting of presidents of all the city clubs, and she handled publicity for that organization. For the past two years, she has been a reporter and member of the Waxahachie Symphony League (Tuck Ex. 3; Tr. 179-182).

47. Mrs. Tuck's broadcasting career began in 1953 when she served as Business Manager for station KBBA, Benton, Arkansas. She started working for station KBEC, Waxahachie in 1955, and has worked for that station on a full-time basis continuously since then.

48. Sandra Howell will serve as the proposed station's full-time program director devoting at least 40 hours a week to her duties at the station. Mrs. Howell presently resides in Garland, Texas and has lived there since 1974. She does not propose to move to Waxahachie if Tuck is the successful applicant.

49. Mrs. Howell served an internship at KWTX-TV, Waco, Texas while attending college. In the fall of 1968, she began working on a full-time basis for station KWTX-TV, writing copy and working in the promotion department. Toward the end of the year 1969, Mrs. Howell began working in the promotion department at station KDFW-TV, Dallas, Texas (Tuck Ex. 4, p. 2-3), and in March 1982, she became Program Director at KBEC. She was full-time program director until April 1983, when she reduced her participation to part-time. (Tr. 192).

#### *Rodriguez*

50. Marcos A. Rodriguez is the sole owner of Marcus A. Rodriguez, an individual applicant for the construction permit for Carrollton, Texas.

#### *Diversification*

51. Marcos A. Rodriguez is President, a director and 57.34 percent owner of Spanish Broadcasting Corporation (SBC), the licensee of station KLAT(AM), Houston, Texas (Rodriguez Ex. 1, p. 1).<sup>3</sup> Rodriguez is also President, a director and owner of 100 percent of the voting stock<sup>4</sup> of Latin American Broadcasting Company (Latin American), the licensee of station KESS(FM) in Fort Worth, Texas. Latin American also owns 11.06 percent of the voting stock of SBC (Rodriguez Ex. 1, p. 1; Tr. 200, 225-226), and, pursuant to a settlement agreement approved June 1, 1983, Latin American acquired 42.5 percent of the stock of Focus Broadcasting of Waco, Inc. which is the permittee of a new television station KWKT, Waco, Texas (Rodriguez Ex. 1, p. 1).<sup>5</sup> In addition, Mr. Rodriguez will serve as a consultant to the

<sup>3</sup> By amendment received by *Order* released in this proceeding on December 7, 1984 (FCC 84M-5109), Rodriguez reported the filing of an application for the assignment of the license of station KLAT, Houston, Texas.

<sup>4</sup> See amendment to the Rodriguez application received by *Order* released in this proceeding on September 19, 1985 (FCC 85M-3681).

<sup>5</sup> As of July 9, 1985, Latin American no longer has any stock ownership interest in Focus Broadcasting of Waco, Inc., the permittee of television station KWKT, Waco, Texas. (See, *Order* released in this proceeding on September 13, 1985, FCC 85M-3588).

transferee of station KWKT, Waco, Texas<sup>6</sup> and the transferee of station KLAT(AM), Houston, Texas.

52. By *Order* released on August 6, 1985 (FCC 85R-65), the Review Board approved a settlement agreement which granted the application of Ganadores Corporation for a new broadcast facility at Universal City, Texas. The settlement agreement included an amendment to the application of Ganadores stating the resignation of Marcos Rodriguez as an officer and director and his relinquishment of stock interests in Ganadores Corporation.<sup>7</sup>

53. In a B cutoff date amendment,<sup>8</sup> Rodriguez indicated that he will divest himself of his ownership interest in Latin American and SBC, and that he will resign as an officer and director of those companies (Rodriguez Ex. 1, p. 1; Tr. 279). Mr. Rodriguez' wife was a member of the five-member Board of Directors of Latin American at the time the Carrollton application was filed (Tr. 296). She did not resign her directorship until two years after the B cutoff date in this proceeding (Tr. 318).

54. Pursuant to an order of the Presiding Judge set forth in Order, FCC 84M-5112, released December 7, 1984, additional information by affidavit of Marcos A. Rodriguez dated December 19, 1984<sup>9</sup> was provided with respect to a publication entitled *Impact Hispano*, published jointly by Jara Enterprises and Latin American Broadcasting Company. Mr. Rodriguez served as executive editor of the publication which provided news and cultural information about the Hispanic community in the Dallas-Ft. Worth area. The first issue was released in April 1984 and the last issue in September 1984. A total of four issues was published, and approximately 10,000 copies of each issue were printed. Mr. Rodriguez resigned as executive editor after the first issue was published and neither Latin American Broadcasting Company nor Mr. Rodriguez held any equity in or derived income from *Impact Hispano*.

### *Integration*

55. Mr. Rodriguez is of Cuban descent. He proposes to be the

<sup>6</sup> The consultancy agreement between Mr. Rodriguez and Focus Broadcasting of Waco, Inc. was terminated on July 9, 1985. (See, *Order* released in this proceeding on September 13, 1985, FCC 85M-3588).

<sup>7</sup> See amendment to Rodriguez' application received by *Order* released in this proceeding on September 13, 1985 (FCC 85M-3588).

<sup>8</sup> The so-called B cutoff date in this proceeding is July 20, 1981.

<sup>9</sup> The record be and it is hereby reopened for the sole purpose of receiving into the record as Rodriguez Ex. 4 the two page affidavit of Marcos A. Rodriguez dated December 19, 1984.

full-time general manager of the station, and has indicated that he intends to move to Carrollton, Texas in the event that he is the successful applicant (Rodriguez Ex. 1, p. 1).

56. Mr. Rodriguez presently resides in Fort Worth, Texas. He is a member of the Dallas Mexican Chamber of Commerce, the Fort Worth Mexican Chamber of Commerce, the Fort Worth Civic Leader Association, the Westcliff Methodist Church and the American G.I. Forum.

#### *Past Broadcast Experience*

57. Mr. Rodriguez' broadcast experience began in 1964 as an announcer and salesman for KBUY(FM) in Fort Worth, Texas. He later became General Manager of that station, and held that position until 1976. KBUY(FM) was purchased in 1976 by a corporation in which Mr. Rodriguez is a majority shareholder, President and Director. After the purchase, Mr. Rodriguez continued to function as General Manager. He is also the President, Director and majority shareholder of the licensee of KLAT(AM) in Houston, Texas (Rodriguez Ex. 1, p. 2).

#### *Bluebonnet*

58. Bluebonnet is a corporation composed of the following officers, directors and stockholders: Jim Speck, President, Director and 10 percent stockholder; Mick C. Spellman, Vice President, Director and 41 percent stockholder;<sup>10</sup> David B. McCall, III, Vice President, Secretary, Treasurer, Director and 24.5 percent stockholder; and David B. McCall, Jr., Vice President, Director and 24.5 percent stockholder (Bluebonnet Ex. 1, p. 1).

#### *Diversification*

59. Neither Bluebonnet nor its principals, officers or directors has any interest in, or connection with, any medium of mass communications (Bluebonnet Ex. 2).

<sup>10</sup> Although Mick Spellman currently holds 41 percent of Bluebonnet's voting stock, as of the B cutoff date in this proceeding he held only 11 percent of Bluebonnet's stock. Effective September 14, 1982, Mick Spellman acquired the additional 30 percent interest from Thomas Spellman, formerly a principal of Bluebonnet. Thomas Spellman now holds no interest in Bluebonnet (Bluebonnet Ex. 1). Bluebonnet does not seek comparative advantage by virtue of Mick Spellman's acquisition of the additional 30 percent interest in Bluebonnet following the B cutoff date (Bluebonnet Ex. 1).

*Integration*

60. Mr. Speck, held 10 percent of Bluebonnet's stock, and was proposed as full-time general manager of the station, devoting 40 hours a week to his duties at the station (Bluebonnet Ex. 3, pp. 1-2). He lived in Richardson, Texas, approximately four miles from Plano and within the proposed service area of the Plano station (Joint Ex. 1, p. 5).<sup>11</sup>

61. Mr. Speck was Chief Engineer and Manager of station KGGM, Albuquerque, New Mexico from 1930 to 1935, and from 1935 to 1937 he was Chief Engineer of station KGNC, Amarillo, Texas. For the following ten years, Mr. Speck was employed as an engineer at stations KRLD and WFAA, Dallas, Texas, and from 1947 to 1958 Mr. Speck was President, Manager and part owner of station KJIM in Fort Worth, Texas. He became a minority owner of station KERB, Kermit, Texas in 1960.

62. Mick C. Spellman, owner of 41 percent of Bluebonnet's stock proposes to work at the station a minimum of 20 hours a week as the station's business manager (Bluebonnet Ex. 4). Mr. Spellman is a long term resident of Forney, Texas, which is approximately 20 to 25 miles from Plano (Tr. 448).

63. David B. McCall, Jr., a holder of 24.5 percent of Bluebonnet's stock, will work at the proposed station a minimum of 20 hours a week as Director of Editorial Policy and Assistant News Director (Bluebonnet Ex. 5, p. 2). Mr. McCall, Jr. is a long term resident of Plano. He served two terms as Mayor of Plano, and is a past president of the Chamber of Commerce, Rotary Club, the United Way and the North Texas Municipal Water District. He presently serves on the Board of Directors of the Institute of Development at Baylor University and the Baylor Medical Foundation, and he recently sat on the District I Grievance Committee of the Texas Bar Association.

64. David B. McCall, III, who holds a 24.5 percent of Bluebonnet's stock, plans to devote a minimum of 20 hours a week to the proposed station serving as its Community Affairs Director and General Counsel (Bluebonnet Ex. 6, p. 2).

65. Mr. McCall, III is presently Chairman of the Planning and Zoning Commission of Plano, Texas, and President of the Plano Chamber of Commerce. In addition, he is a member of the District I Grievance Committee for the State Bar of Texas (Bluebonnet

<sup>11</sup> By amendment filed on March 22, 1985 and received by *Order* released in this proceeding on April 18, 1985 (FCC 85M-1748), Bluebonnet reported that Mr. Speck died on February 20, 1985.

Ex. 6, p. 1). He formerly served as President of the Collin County Bar Association, and as Chairman of Plano's Board of Adjustments. In addition, he is a past president of the Plano Rotary Club and a former director of the YMCA. He also served as Chairman of the Heritage Centennial during the centennial year for the City of Plano (Bluebonnet Ex. 6, p. 1).

### Century

66. Century Broadcasting is a corporation with a single class of stock and more than 50 shareholders (Century Ex. 1, p. 1). The officers and directors of Century are as follows:

<i>Name</i>	<i>Office</i>
Howard Grafman	President, Director
Anthony C. Karlos	Vice President and Secretary, Director
George A. Collias	Treasurer, Director
Joe M. Baisch	Director
James S. Soter	Director
Sheldon Grafman	Vice President
Harvey Wittenberg	Vice President
Milan Leggett	Vice President
Richard L. Zumsteg	Vice President
Allan Wilson	Vice President
Lynn Christian	Vice President
Nancy Pool	Vice President
Timothy Sullivan	Vice President
Richard J. Bonick, Jr.	Assistant Secretary-Treasurer

The following persons hold one percent (1%) or more of Century's issued and outstanding voting stock:<sup>12</sup>

Herbert S. & Hannah Braun and Gerald Cutler	4,850 shares	1.01%
James & Betty Cardis	4,950 shares	1.03%
Nicholas Collias	5,887 shares	1.23%
Nick Contos	4,950 shares	1.03%
Sam & Stella Geroulis	4,950 shares	1.03%
George & Nelia Papantonatos	4,950 shares	1.03%
Helen Scott	4,999 shares	1.04%
Joe M. Baisch	9,496 shares	1.98%
James M. Carras	6,450 shares	1.35%
George A. Collias	95,278 shares	19.88%
Howard Grafman	95,278 shares	19.88%
Anthony C. Karlos	95,378 shares	19.90%
George D. Mannos	7,012 shares	1.46%
James S. Soter	20,553 shares	4.29%

<sup>12</sup> Milan Leggett owns .03 percent of Century's outstanding voting stock.

67. Of the 559,670 shares of Century stock issued and outstanding, 114,664 shares are held by stockholders with less than a 1 percent interest in the Corporation. Century holds 80,437 shares as treasury stock.

#### *Diversification*

68. Century is a 77 percent general partner in Century Chicago Broadcasting, Ltd., licensee of WLOO(FM) and WAIT(AM), Chicago (Century Ex. 7, p. 1; Tr. 508). Century also owns 100 percent of KWST, Inc., the licensee of KMGG(FM), Los Angeles,<sup>13</sup> and 100 percent of KMGG, Inc. which in turns owns 100 percent of KMEL, Incorporated, licensee of KMEL(FM), San Francisco (Century Ex. 7, p. 1; Tr. 508). In addition, Century's wholly-owned subsidiary, Century St. Petersburg Broadcasting Corporation, recently became the licensee for station WLFW(AM), St. Petersburg, Florida.<sup>14</sup>

69. Century was the licensee of WABX(FM), Detroit, Michigan until January 5, 1983, when the station was sold (Century Ex. 7, p. 1).

70. Century principals Howard Grafman, Anthony C. Karlos and George Collias are also officers, directors and stockholders of KSHE, Inc., licensee of KSHE(FM), Crestwood, Missouri. In the aggregate, they hold 61 percent of the voting stock of KSHE, Inc. Century has a station management contract with KSHE (Century Ex. 7, p. 1; Tr. 508-509).<sup>15</sup>

71. Century also has a programming subsidiary, Century National Productions which creates ideas for television and cable (Tr. 472-473).

72. Century director Joe Baisch holds a 4.04 percent interest in Total TV, Inc. of Janesville, Wisconsin. He is also trustee of a family trust that holds .68 percent of Total TV, Inc. Century director James Soter is a 6 percent shareholder and a director of a suburban weekly newspaper entitled "Good News Weekly" with a circulation of approximately 30,000 in the Chicago area. Mr. Soter

<sup>13</sup> On March 23, 1984, the license to operate KMGG(FM), Los Angeles, California, was assigned from KWST, Inc., a wholly owned subsidiary of Century Broadcasting Corporation, to Emmis Broadcasting Corporation of Minnesota. See, *Order* released in this proceeding on June 11, 1984 (FCC 84M-2653).

<sup>14</sup> Amendment received by *Order* released in this proceeding on April 18, 1985 (FCC 85M-1746).

<sup>15</sup> On March 23, 1984, the license to operate KSHE(FM), Crestwood, Missouri, was assigned from KSHE, Inc. with which Century is affiliated, to Emmis Broadcasting Corporation of Minnesota. See, *Order* released in this proceeding on June 11, 1984 (FCC 84M-2653).

is also a 6 percent shareholder and director of "Greek Star", a weekly newspaper with a national circulation (Century Ex. 7, p. 2). Mr. Leggett holds a 4 percent interest in KOZT(FM), Fort Bragg, California (Tr. 499).

#### *Integration*

73. Howard Grafman, President, a Director and 19.88 percent shareholder of Century is proposed as the station's part-time Sales Service Director.

74. George Collias, a 19.88 percent shareholder, as well as Treasurer, General Counsel and Chairman of the Board of Century, will serve as part-time Business Manager of the proposed station (Century Ex. 3, pp. 1-2).

75. Milan Leggett, Vice President and Director of Engineering for Century and a .03 percent stockholder will serve as Director of Engineering for the station (Century Ex. 5, pp. 1-2).

76. Messrs. Grafman, Collias and Leggett have extensive past broadcast experience.

#### *Dontron*

77. Dontron is a Texas corporation owned solely by its President and Director, Donald B. Crawford.

#### *Diversification*

78. As noted above, Dontron is 100 percent owned by Donald B. Crawford. Dontron is the licensee of station KPBC, Dallas, Texas, the station which is proposing to change frequency as well as station location in this proceeding, and of FM station WYCA, Hammond, Indiana (Dontron Ex. 1). Mr. Crawford also owns FM stations WDCX, Buffalo, New York, station WDJC, Birmingham, Alabama, and AM station KBRT, Avalon, California. In addition, he is President, Director, 24.1 percent stockholder and General Manager of FM station WMUZ, Detroit, Michigan (Dontron Ex. 1).

#### *Integration*

79. Dontron's sole principal does not propose to be integrated into the affairs of the station.

#### *Auxiliary Power*

80. Tuck and Dontron will install auxiliary power to insure uninterrupted service in the event of a power failure to their proposed stations (Tuck Ex. 1, p. 2; Dontron Ex. 4).

*Conclusions of Law*

*Tuck*

*Diversification*

81. Tuck has no chargeable media interests.

*Integration*

82. Tuck claims 90 percent full-time integration of ownership into management. Richard Tuck will serve as the station's general manager working a minimum of 40 hours a week at the station. Tuck is therefore entitled to a 40 percent quantitative integration credit for its proposal to integrate Mr. Tuck into the affairs of the proposed station. Mr. Tuck has been a resident of Waxahachie continuously since 1955, and has been active in the civic affairs of the community. In addition, Mr. Tuck has extensive past broadcast experience. Tuck's 40 percent quantitative integration credit for Mr. Tuck is therefore qualitatively enhanced by his local residence with civic involvement, and by his past broadcast experience.

83. Faye Tuck became involved in broadcasting in 1953 when she worked as Business Manager at a station in Arkansas (Tuck Ex. 3, p. 3). Since then, she has worked at stations either owned or operated by her husband. Her duties at the proposed station are described as follows: complete charge of the Traffic Department, working with the Sales Department and the Program Director; scheduling all of the station's programming, including spot advertisements, producing the daily program logs; participation in the station's financial transactions; bookkeeping; rendering statements, affidavits of performance, and co-op materials; maintaining the public file; maintaining communication between the station and the community; and assisting all community organizations with publicity on their meetings and fundraising drives (Tuck Ex. 3, pp. 1-2). During the course of her testimony, Mrs. Tuck indicated that her duties at the proposed station would be the same as her present duties at KBEC (Tr. 154, 170), which she described as being responsible for traffic, bookkeeping, and billing (Tuck Ex.3, p. 3; Tr. 119, 128, 154, 170).

84. Prior to the filing of the Tuck application for the new AM station, Mrs. Tuck was never identified as KBEC's business manager (Tr. 150, 152).<sup>16</sup> Moreover, Mrs. Tuck has no staff at

<sup>16</sup> In an amendment to the 1977 KBEC renewal application, signed by Mr. Tuck, dated June 30, 1977, and received by the Commission on July 5, 1977, Faye

station KBEC (Tr. 118-119), and does not supervise or direct employees, although she assumes Mr. Tuck's duties when he is away from the station (Tr. 187). According to her testimony, she works with her husband in preparing the station's budget and salaries (Tr. 179), and discusses FCC filings and the costs of equipment with Mr. Tuck (Tr. 185-186).

85. There is no evidence of record to indicate that Mrs. Tuck has any management responsibilities at station KBEC. She performs non-management, for the most part simply clerical duties, and assists her husband with his duties as general manager. Although she stands in his place when he is not at the station, there is no indication in the record that she has any authority distinct from that of her husband. As noted above, Mrs. Tuck indicated that her duties at the proposed station will be the same as those at the existing broadcast facility; duties which have not been shown to be of management level responsibility. Although she has been given the title of business manager with duties which appear to involve some managerial authority, according to her testimony she does not envision her role at the proposed station to be any different from that at KBEC's present facility which has been shown not to involve any management level responsibility. Accordingly, Tuck is not entitled to a quantitative integration credit for the proposed integration of Mrs. Tuck.

86. Mrs. Howell will serve as the station's full-time program manager. Her duties will include supervising the programming side of the station's operations; determining and administering the station's programming policies; supervising the announcers and the control room, as well as training the announcers and coordinating their working schedules. The record indicates, therefore, that Mrs. Howell, as program manager, will have management level responsibilities at the station; and that Tuck is entitled to a 10 percent full-time quantitative integration credit for its proposal to integrate Mrs. Howell into the affairs of the station. This credit is qualitatively enhanced by Mrs. Howell's gender as well as her past residence in Waxahachie, and her prior broadcast experience.

Tuck was described as "traffic manager, secretary, gathers and writes news, bookkeeping..." (Tr. 122). In an application for transfer of control filed in connection with KBEC in 1980, also signed by Mr. Tuck, Faye Tuck's position was described as "traffic, bookkeeping, 25 years" (Tr. 127-128). The minutes of a special meeting of the directors of Faye & Richard Tuck, Inc. held in connection with a 1980 transfer of the station, signed by Mrs. Tuck, specified that Faye Tuck will continue as traffic manager and bookkeeper (Tr. 175). Mrs. Tuck has never used a business card identifying herself as business manager and has never signed any station correspondence as business manager (Tr. 174).

*Rodriguez**Diversification*

87. As noted above, Mr. Rodriguez had a brief association with a short-lived publication, *Impacto Hispano*, which provided news and cultural information to the Dallas-Ft. Worth area between January and September 1984; the same area to be served by Rodriguez' proposed Carrollton AM station. His association with a news publication in the proposed community of license is of comparative significance under the diversification criterion. Similarly, Mr. Rodriguez' role as consultant to the licensees of station KWKT, Waco, Texas and KLAT(AM), Houston, Texas, and Mrs. Rodriguez' position as one of five directors of Latin American Broadcasting Company, the licensee of station KESS, Ft. Worth, Texas, as of the so-called B cutoff date in this proceeding, are also of decisional significance. With respect to Mr. Rodriguez' ownership interest in Latin American Broadcasting Company and Spanish Broadcasting Corporation, the licensees of several broadcast facilities, the Presiding Judge finds that Mr. Rodriguez made an unequivocal diversification commitment on or before the so-called B cutoff date in this proceeding, to divest himself of his interests in these corporations, and he therefore has no chargeable interests in these broadcast facilities. *See, Las Misiones De Bejar TV Co.*, 93 FCC 2d 191 (Rev. Bd. 1983).

*Integration*

88. Rodriguez claims 100 percent quantitative integration credit on the basis of his proposal to serve as the station's full-time general manager. It is noted, however, that his integration commitment was not made until approximately a week before he executed the B cutoff date amendment proposing his integration (Tr. 266); and that Mr. Rodriguez was unable to state whether or not he discussed the commitment with his wife, although he said that he probably did, and he could not recall her reaction (Tr. 267). It is simply not credible that Mr. Rodriguez would be unable to recall his wife's reaction if his commitment to be integrated on a full-time basis had in fact been a firm one. The commitment would require Mr. Rodriguez and his wife to live apart during the work week for the first time in 27 years of marriage (Tr. 316), since Mrs. Rodriguez is herself committed to work full time at a broadcast facility in San Benito, Texas (Tr. 315), and San Benito is approximately 400 miles from Carrollton. Such a significant

change in a couple's lifestyle would, it seems, generate some discussion. Mr. Rodriguez' inability to recall his wife's reaction can only be explained by concluding that the commitment was not a *bona fide* one and, therefore, generated little or no concern. Mr. Rodriguez' full-time integration commitment is further drawn into question by the fact that one month after he made his commitment to the Carrollton station, Mr. Rodriguez committed himself to work full time at another broadcast facility in Luling, Texas (Tr. 303-304, 310, 313). Although the Luling, Texas application was subsequently amended to remove the conflict, Mr. Rodriguez did not notice the inconsistent commitments until his attorney called his attention to the problem (Tr. 314). The Presiding Judge concludes therefore that Mr. Rodriguez' commitment to the Carrollton station lacks credibility and it is discounted, and he finds that Rodriguez is not entitled to any integration credit. *See, Berryville Broadcasting Company*, 70 FCC 2d 1 (Rev. Bd. 1978).

### Century

#### *Diversification*

89. Century has a number of attributable media interests: a 77 percent general partnership interest in the licensee of station WAIT (AM) and station WLOO(FM), Chicago, Illinois; 100 percent ownership of station KMGG(FM), Los Angeles, California; 100 percent ownership of station KMEL(FM), San Francisco, California; and ownership of station WABX(FM), Detroit, Michigan and station WLFW(AM), St. Petersburg, Florida. Century is also charged with the interests of its shareholders Howard Grafman, Anthony C. Karlos and George Collias who together own 61 percent of the voting stock of the licensee of station KSHE, Crestwood, Missouri. Furthermore, Century has a management contract with station KSHE, Crestwood, Missouri, a management position relevant under the diversification criterion. *See, Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965).

90. Century also has a programming subsidiary which must also be considered under the diversification criterion.

#### *Integration*

91. Century claims a comparative credit for its proposal to integrate its principals, Howard Grafman, George Collias and Milan Leggett into the affairs of the station. Although each one of these individuals testified that he will devote 20 hours a week

to his duties at the station, Messrs. Grafman and Leggett subsequently indicated that the figure was an average figure, and that there would be weeks when they might spend less than 20 hours a week on their duties at the station (Tr. 472, 496). In addition, Messrs. Leggett and Collias limited their commitment to at least a year after the first six months of operation of the station (Century Ex. 3, p. 2, Century Ex. 5, p. 2). Messrs. Grafman and Collias also testified that the time spent on their duties at the station would be in addition to their present activities which would result in a proposed work week of between 70 and 80 hours for Mr. Grafman (Tr. 471), and between 70 and 90 hours a week for Mr. Collias (Tr. 502-503).

92. A 20 hour week commitment to the proposed station is the minimum amount required to entitle a principal to an integration credit. See, *Midwest Broadcasting Company*, 70 FCC 2d 1489 (Rev. Bd. 1979). Mr. Grafman's and Mr. Leggett's commitment to devote an average of 20 hours a week to the station is less than the 20 hours a week commitment required for a part-time integration credit. In addition, Messrs. Collias and Grafman's commitment is only for a year after the first six months of operation. The Presiding Judge concludes therefore that the commitments of Messrs. Collias, Grafman and Leggett of less than 20 hours a week and/or for a prescribed period of time are insufficient to qualify Century for any integration credit, and no credit will be awarded Century.

#### *Bluebonnet*

##### *Diversification*

93. Neither Bluebonnet nor any of its principals has any ownership interest in, or connection with any broadcast station, newspaper, cable television system or other entity engaged in a medium of mass communications (Bluebonnet Ex. 2).

##### *Integration*

94. Bluebonnet claims a 10 percent full-time and 60 percent part-time integration credit on the basis of its proposal to integrate Mr. Speck on a full-time basis, and Messrs. McCall, Jr., McCall, III and Mr. Spellman on a part-time basis.

95. As of the date of the hearing, Mr. Speck was 76 years old (Tr. 417) and had been, virtually, in total retirement since 1974 (Tr. 399, 400). Bluebonnet's proposal that Mr. Speck would assume the duties of a full-time general manager after the station becomes operational, after almost 11 years of retirement from

active employment, is simply credible. See, *Veterans Broadcasting Co., Inc.*, 38 FCC 25 (1965). Bluebonnet will not receive any credit for Mr. Speck's proposed participation in the management of the station.

96. Mr. McCall, Jr. will serve as Director of Editorial Policy and Assistant News Director at the proposed station. According to his testimony, he will regularly prepare as well as formulate editorial policy and, at least initially, deliver editorials over the air (Bluebonnet Ex. 5, p. 2; Tr. 387). As assistant news director, Mr. McCall, Jr. will cover and direct the coverage of local news (Bluebonnet Ex. 5, p. 2).

97. With the exception of Mr. McCall, Jr.'s brief reference in his direct testimony to his participation in formulating the editorial policy of the station, the evidence of record does not support a finding that Mr. McCall, Jr. will actively participate in the day-to-day management of the station, or that he will play an important role in policy making at the station. The evidence indicates, rather, that his participation will be limited to reporting back to the station on community functions (Tr. 390-392), and that the title of assistant news director more properly describes his anticipated duties. See the Review Board's decision in *High Sierra Broadcasting, Inc.*, 96 FCC 2d 423 (Rev. Bd. 1983) in which the Board states that it doubts that part-time assistant positions can be given decisional significance. No integration credit will be given to Bluebonnet for its proposal to integrate Mr. McCall, Jr. into the affairs of the station.

98. Mr. McCall, III will serve as the proposed station's Community Affairs Director and General Counsel (Tr. 428). He will produce and direct a regular public affairs program featuring local leaders and issues, as well as be in charge of other local public affairs presentations (Bluebonnet Ex. 6, p. 2). As general counsel, he will handle all legal affairs of the station (Bluebonnet Ex. 6, p. 2). After the station is in operation, Mr. McCall, III will spend four hours a week on legal matters and 16 hours a week on community affairs (Tr. 433), and he may occasionally spend less than 20 hours a week on his duties for the station (Tr. 433-435).

99. As stated above, a commitment of 20 hours a week on a regular basis is the minimum hourly commitment required for a part-time integration credit. Mr. McCall, III has indicated that there will be occasions when he will spend less than 20 hours a week on his duties at the station. Accordingly, on that basis alone, Bluebonnet is not entitled to a part-time integration credit for Mr. McCall, III. Furthermore, his duties as described in the

record are not managerial in nature and do not include a role in policy making for the station. On this basis as well, Bluebonnet is not entitled to an integration credit for Mr. McCall, III.

100. It is argued that the integration commitments of the Messrs. McCalls' cannot be credited because of the number of other commitments for their time. Although Mr. McCall, III's current work week totals between 50 and 70 hours and Mr. McCall, Jr.'s between 60 and 80 hours, both individuals have indicated that they propose to meet their respective commitments to the station by eliminating or reducing the number of hours devoted to certain present activities. The Messrs. McCalls' have shown a willingness to work a long work week in the past and there is nothing in the record which draws into question their continued willingness to do so.

101. Mr. Spellman proposes to work 20 hours a week as the station's business manager. In this capacity he will handle billing and collections, bill paying and the payroll, as well as be responsible for balancing the books. In addition, he will keep Bluebonnet's Board of Directors advised of Bluebonnet's financial status and will participate in all other financial decision making (Bluebonnet Ex. 4, p.1). Mr. Spellman described auditor/bookkeeper as essentially the same thing as business manager (Tr. 460).

102. The *Policy Statement, supra*, identifies business manager as a position likely to involve the occupant in an important role in management of the station. Although Mr. Spellman considers the position of business manager to be essentially the same thing as auditor/bookkeeper, a position which would not necessarily involve management or policy making responsibilities, he also testified that he would participate in the station's financial decision making. The latter responsibility clearly would involve Mr. Spellman in an important role in the management of the station, and Bluebonnet is therefore entitled to a part-time integration credit for Mr. Spellman.

### *Dontron*

#### *Diversification*

103. Dontron is to be attributed with 100 percent ownership of station WDCX(FM), Buffalo, New York; station WDJC(FM), Birmingham, Alabama; station KBRT, Avalon, California; and station WYCA, Hammond, Indiana. Mr. Crawford's 24.1 percent interest in station WMUZ, Detroit, Michigan, as well as his

position as general manager of station WMUZ, must also be charged to Dontron under the diversification criterion.

#### *Integration*

104. Dontron does not propose any integration of ownership into the management of the station.

#### *Ultimate Conclusions*

105. The Presiding Judge finds that there is a greater need for a first local full-time aural broadcast service at Waxahachie than there is for an additional regional service to the Dallas-Ft. Worth area, and that Tuck is entitled to a grant of the construction permit for frequency 770 kHz under Section 307(b) of the Communications Act of 1934, as amended, and it will be so ordered.

106. In the event that the above set forth conclusion is set aside on appeal, the Presiding Judge further finds that Tuck is entitled to a grant under the contingent comparative issue. Tuck has no chargeable media interests, the highest possible standing under the diversification criterion, and proposes 50 percent full-time integration of ownership into management, far more than any other applicant, entitling Tuck to a substantial preference under the integration criterion over all the other applicants. In addition, Tuck's integration credit is qualitatively enhanced by Mr. Tuck's residence in Waxahachie and his involvement in the civic affairs of that community, Mrs. Howell's gender and her past residence in Waxahachie, and the past broadcast experience of both Mr. Tuck and Mrs. Howell. Tuck's proposal is further enhanced by its intention to install an auxiliary power source at its antenna site.

#### *Rulings*

107. IT IS ORDERED that for failure to show good cause, the Request for Official Notice filed by Century Broadcasting Corporation on April 27, 1984 IS DENIED.

108. AND IT IS FURTHER ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, 47 C.F.R. 1.276, the application of Faye & Richard Tuck, Inc. (MM Docket No. 83-212, File No. BP-810127AJ) for a change in the facilities of AM broadcast station KBEC from 1390 kHz, 0.5 kW,

DA-D to 770 kHz, 1 kW, DA-N, U, full time, Waxahachie, Texas IS GRANTED subject to the conditions as set forth below; and the applications of Marcos A. Rodriguez (MM Docket No. 83-214, File No. BP-810511AJ), Bluebonnet Radio Broadcasters, Inc. (MM Docket No. 83-215, File No. BP-810511AL), Century Broadcasting Corporation (MM Docket No. 83-216, File No. 810511AM), and Dontron, Inc. (MM Docket No. 83-218, File No. BP-810511AP) ARE DENIED<sup>17</sup>

This grant is subject to and conditioned upon any action the Commission may deem necessary or appropriate in light of the final outcome of the currently pending appeal entitled *Hubbard Broadcasting, Inc. v. FCC*, filed November 4, 1982 at the Supreme Court of the United States (Case No. 82-772).

To insure maintenance of the radiated fields within the authorized values of radiation an antenna monitor of sufficient accuracy and repeatability, having a minimum resolution of 0.1 degree phase deviation and 0.1 percent sample-current deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample currents of each element in the array.

Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample currents and their ratios, and sample-current deviations for each element of the array, along with the final amplifier plate voltage and current, the common point current, and field strengths of each monitoring point for both nondirectional and directional operations for a period of at least 30 days, to demonstrate that the array will be maintained within the specified tolerances.

FEDERAL COMMUNICATIONS COMMISSION

JOSEPH P. GONZALEZ, *Administrative Law Judge*

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<sup>17</sup> In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).