

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telemedia Broadcasting, Inc.)	File No. EB-01-IH-0456
WGRQ(FM))	Facility ID No. 64922
Colonial Beach, Virginia)	
)	
and)	
)	
Rappahannock River Broadcasting, LLC)	
WGRX(FM))	Facility ID No. 62205
Falmouth, Virginia)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2002

Released: July 31, 2002

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. On July 3, 2001, the Free Lance-Star Publishing Co. of Fredericksburg, Virginia (“Free Lance-Star”) filed a complaint against Telemedia Broadcasting Company, Inc. (“Telemedia”), licensee of WGRQ(FM), Colonial Beach, Virginia and Rappahannock River Broadcasting, LLC. (Rappahannock”), licensee of WGRX(FM), Falmouth, Virginia. The complaint alleged: 1) that Telemedia failed to maintain a main studio for Station WGRQ(FM) at a proper location as required by Section 73.1125 of the Commission’s rules, 47 C.F.R. § 73.1125, 2) that Telemedia failed to maintain and provide public access to a complete local public inspection file for Station WGRQ(FM) as required by Section 73.3526 of the Commission’s rules, 47 C.F.R. § 73.3526, and 3) that Rappahannock filed a pleading interposed solely for the purpose of delay contrary to Commission policy prohibiting the filing of frivolous pleadings. The complaint asserts that both Telemedia and Rappahannock are controlled by the same owner, Carl Hurlebaus. For the reasons discussed below, we admonish Telemedia for its failure to provide access to the entire local public inspection file on one occasion. We deny the complaint with respect to the allegation that Telemedia violated the main studio rule and the allegation that Rappahannock filed a frivolous pleading.

II. BACKGROUND

2. Free Lance-Star first alleges that Telemedia's main studio does not comply with Section 73.1125 of the Commission's rules.¹ Free Lance-Star asserts that Station WGRQ(FM)'s main studio (located in Fredericksburg, Virginia) is outside the station's community of license, is 28.8 miles (more than 25 miles) from the reference coordinates of the center of its community of license and is outside its principal community contour. Thus, according to Free Lance-Star, Telemedia has not conformed to any of the three options provided for in the main studio rule. Free Lance-Star submitted an engineering statement including a map of what it asserts is Station WGRQ(FM)'s principal community contour. (Station WGRQ(FM) is the only broadcast station in its community of license.)

3. Telemedia claims that the location of the WGRQ(FM) main studio is not in violation of the main studio rule because although its main studio is slightly more than 25 miles from the center of its community of license, due to unique terrain, the station's own principal community contour includes the main studio location. Thus the main studio is within the contour of a Colonial Beach, Virginia broadcast station. Telemedia has submitted an alternative engineering statement which relies on a Longley Rice irregular terrain model of Station WGRQ(FM)'s principal community contour with its response.

4. Free Lance-Star also alleges that Telemedia violated Section 73.3526 of the Commission's rules which requires that each commercial broadcast station maintain and provide public access to a local public inspection file. In support of this allegation, Free Lance-Star states that one of its employees, Gary C. Harrison, and Free Lance-Star's counsel, George Snead, visited the Telemedia main studio for Station WGRQ(FM) on June 27, 2001 and asked to see the public inspection file. Mr. Harrison states that Tom Cooper, the station manager, tendered the public inspection file, but the file that they were provided was missing several documents required to be maintained in the file. Free-Lance Star also asserts that when its agents requested a copy of the contents of the file, the WGRQ(FM) station manager, Thomas Cooper, stated, "I would prefer not to."

5. Telemedia responded that the events alleged are largely accurate, but that the failings were inadvertent. Mr. Harrison and Mr. Snead's visit occurred at a time when Telemedia was remodeling the main studio. The station manager, Tom Cooper, provided access to what he believed to be the entire public inspection file and then asked that the Free-Lance Star personnel direct any questions to another station employee. Mr. Harrison asked if Mr. Cooper could make a copy of the file, which Mr. Cooper interpreted as a request for an immediate copy of the entire file. Mr. Cooper explained that he made the statement, "I would prefer not to" relating only to a request that he make an immediate copy of the entire file. Mr. Cooper explained that he had to leave to take care of matters relating to the remodeling of the main studio. He believes that, under the circumstances, the Free-Lance Star personnel should have both made their request for copies of his assistant and asked about the missing parts of the file before engaging in a game of

¹ Section 73.1125 requires that the main studio must be either 1) within the station's community of license, 2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license or 3) within 25 miles from the reference coordinates of the center of its community of license.

“gotcha.”² Mr. Cooper attested that at all pertinent times the station has maintained a complete local public inspection file, and that the failure to provide the complete file was accidental.

6. With respect to the allegation that Rappahannock filed a frivolous pleading, Free Lance-Star alleges that Rappahannock filed a petition to deny an application to assign Station WWUZ(FM) Bowling Green, Virginia to Free Lance Star for purposes of delay. The former Mass Media Bureau dismissed Rappahannock’s Petition to Deny, considered the Petition as an informal objection which it then denied, and granted the underlying application.³

III. DISCUSSION

7. Telemedia asserts that its main studio location is compliant because one of the options in our main studio rule permits it to locate its main studio anywhere within its principal community contour. With its response, Telemedia submitted a supplemental engineering showing that utilizes the Longley-Rice irregular terrain model, arguing that, due to irregular terrain, its main studio lies within its principal community contour. The Commission has approved the use of supplemental showings (including the Longley-Rice analysis) to show compliance with main studio requirements in situations involving irregular terrain. *See In the Matter of Amendments of Parts 73 and 74 of the Commission’s Rules To Permit Certain Minor Changes in Broadcast Facilities Without A Construction Permit*, 12 FCC Rcd. 12371, 12401-03 (1997).⁴ We have reviewed the engineering submissions by Free-Lance Star and Telemedia. Because the terrain involved would result in better signal propagation than is assumed in the standard contour prediction methods described in Section 73.313 of the Commission’s rules, 47 C.F.R. § 73.313, we find that the location of the WGRQ(FM) main studio is not in violation of the Commission’s rule.

8. With respect to Free-Lance Star’s allegations regarding the public inspection file, we find that Telemedia failed to fully comply with the rules. It appears that the station personnel were involved in remodeling the main studio of Station WGRQ(FM) at the time of the request and that the failure to provide the complete public inspection file was the result of oversight. We find, nevertheless, that station personnel failed to provide access to the complete public inspection file upon request and failed to meet its obligation to provide copies for a reasonable duplication fee within 7 days upon request. In light of all the facts and circumstances in this case, we hereby admonish Telemedia for its failure to fully comply with the public inspection file rule. *See In re Application of Tabback Broadcasting Company for Renewal of License Station KAZM(AM), Sedona, Arizona*, 15 FCC Rcd 11899 (2000) (Commission affirmed staff decision to admonish licensee for violation of the public inspection file in similar circumstances).

² Response to Complaint at 6.

³ Letter from Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau to Arthur B. Belendiuk, Esquire, dated August 23, 2001 (File No. BALH-20010511AAF).

⁴ In a Report and Order the following year, the Commission further relaxed (in ways not applicable here) the main studio requirements in order to lessen the burden on the licensee. *In the Matter of Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd. 15691 (1998).

9. Finally, with respect to the allegation that Rappahannock filed a frivolous petition to deny an application to assign station WWUZ(FM) to Free-Lance Star, we cannot conclude that the petition to deny was frivolous. Rappahannock alleged that Free-Lance Star engaged in anti-competitive conduct involving its other stations and its newspaper. Rappahannock argued that given this behavior, it was contrary to the public interest to permit it to acquire any additional stations. While the former Mass Media Bureau denied the relief requested, the Bureau carefully considered the allegations and the applicable law before doing so. We decline to issue any sanction relating to such filing.

IV. CONCLUSION

10. ACCORDINGLY, Telemedia Broadcasting, Inc. is HEREBY ADMONISHED for violating Section 73.3526 of the Commission's Rules, 47 C.F.R. § 73.3526. The remainder of the complaint filed by Free-Lance Star Publishing Co. on July 3, 2001 is HEREBY DENIED.

11. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL be sent via certified mail/return receipt requested to William H. Crispin, Esquire, Crispin & Brenner, P.L.L.C., 1156 15th Street, N.W., Suite 1105, Washington, D.C. 20005 and via regular mail to Arthur M. Belendiuk, Esquire, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W. Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau