

AN INTENSIVE HISTORY OF A BROADCAST  
STATION KBGO, WACO, TEXAS

THESIS FOR THE DEGREE OF M. A.  
MICHIGAN STATE UNIVERSITY

JOHN MORGAN SPENCER

1974

~~330~~

6-11-41

ABSTRACT

AN INTENSIVE HISTORY OF

A BROADCAST STATION

KBGO, WACO, TEXAS

By

John Morgan Spencer

This thesis presents a detailed history of a standard (AM) broadcast station in order to study common legal, corporate, and management problems that can arise in a broadcast operation.

The thesis includes a description of the Waco, Texas, market and brief histories of the other standard broadcast stations there. The three applications for use of the KBGO frequency are summarized, with detailed information regarding the background of the ultimately successful applicant. The hearing process that determined the propriety of a merger agreement between two of the applicants is discussed. The thesis also includes a description of the station construction and operation, and the contested transfer of the station to a second group of owners.

It is concluded that most of such broadcasting problems can be anticipated, and can be avoided or minimized by adequate planning.

AN INTENSIVE HISTORY OF  
A BROADCAST STATION  
KBGO, WACO, TEXAS

By

John Morgan Spencer

A THESIS

Submitted to  
Michigan State University  
in partial fulfillment of the requirements  
for the degree of

MASTER OF ARTS

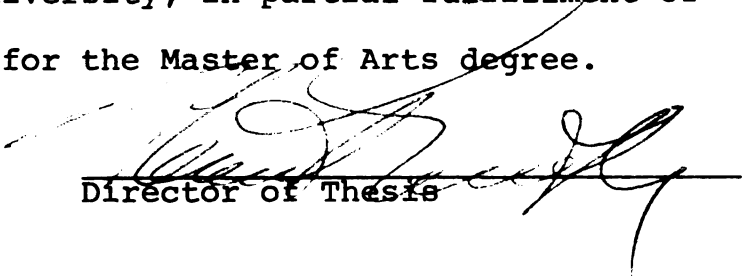
Department of Television and Radio

1974



Copyright by  
JOHN MORGAN SPENCER  
1974

Accepted by the faculty of the Department  
of Television and Radio, College of Communication Arts,  
Michigan State University, in partial fulfillment of  
the requirements for the Master of Arts degree.



Director of Thesis

## DEDICATION

This thesis is dedicated to George M. Erickson and **Dr.** Walter B. Emery, whose enthusiasm for radio and for **C**ommunications law was contagious.

## ACKNOWLEDGEMENTS

The writer is deeply grateful to the many people whose cooperation facilitated his research and made possible a more comprehensive history of KBGO. John M. Borders, Horace K. Jackson, Sr., and Charles M. McDonald were especially helpful in granting interviews and making available their personal files.

Others who provided information include Ralph J. Bitzer, Lawrence Brandon, Milton P. Burke, William M. Cady III, Robert W. Cahill, Dr. James D. Carter, Bid Causey, Nate Chodorow, Harold Clark, William P. Clarke, Donnell D. Dickson, Jr., R.D. Franks, Lloyd George, R.E. Lee Glasgow, Elfrieda Wolfertz Jackson, Hub Jackson, George M. Johnston, Lee Lockwood, Goodson McKee, Joe Cudd Monroe, Joyce Lane Monroe, David W. Small, Vern Stierman, Roger D. Thomas, William C. Tinus, and Robert E. Weathers. Other research assistance was provided by Donald E. Bilger, Jack Hines, and Quentin Proctor. Thesis advisers Leo A. Martin and Dr. Thomas A. Muth offered valuable suggestions for improving the manuscript.

Completion of the thesis would not have been possible without the encouragement and patience of the writer's wife and parents.

## TABLE OF CONTENTS

|                                                                                                                    |     |
|--------------------------------------------------------------------------------------------------------------------|-----|
| INTRODUCTION . . . . .                                                                                             | 1   |
| PART I. THE WACO MARKET                                                                                            |     |
| Chapter                                                                                                            |     |
| I. THE WACO ECONOMY . . . . .                                                                                      | 6   |
| II. WACO BROADCASTING. . . . .                                                                                     | 14  |
| Radio Station WACO<br>Radio Station KWTX<br>Radio Station KAWA<br>FM Broadcast Stations<br>Unsuccessful Applicants |     |
| PART II. APPLICANTS FOR 1580                                                                                       |     |
| III. THE CAHILL APPLICATION . . . . .                                                                              | 50  |
| IV. THE AUDIOCASTING OF TEXAS, INC.<br>APPLICATION. . . . .                                                        | 55  |
| Radio Station KJOE<br>Audiocasting of Texas, Inc.                                                                  |     |
| V. THE JACKSON APPLICATION. . . . .                                                                                | 88  |
| PART III. HEARING AND MERGER                                                                                       |     |
| VI. MERGER ATTEMPTED . . . . .                                                                                     | 95  |
| VII. MERGER THWARTED. . . . .                                                                                      | 119 |
| VIII. MERGER APPROVED. . . . .                                                                                     | 128 |

PART IV. STATION OPERATIONS

|                                  |     |
|----------------------------------|-----|
| IX. CONSTRUCTION . . . . .       | 145 |
| X. OPERATION. . . . .            | 161 |
| XI. TRANSFER OF CONTROL. . . . . | 179 |

PART V. ANALYSIS

|                                   |     |
|-----------------------------------|-----|
| XII. EXCUSES FOR FAILURE. . . . . | 200 |
| XIII. CONCLUSIONS. . . . .        | 213 |
| SOURCES CONSULTED. . . . .        | 231 |

# LIST OF TABLES

| Table                                                                                                                                  | Page |
|----------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. Population of Waco and McLennan County, and<br>Their Rank among Texas Cities According to<br>Population . . . . .                   | 7    |
| 2. Estimates of Population and Retail Sales for<br>the Waco Area. . . . .                                                              | 8    |
| 3. Population of Marlin and Falls County. . . . .                                                                                      | 28   |
| 4. Population of Gatesville and Coryell County. . . . .                                                                                | 52   |
| 5. Population of Shreveport, and Bossier and<br>Caddo Parishes . . . . .                                                               | 56   |
| 6. Population of Killeen. . . . .                                                                                                      | 90   |
| 7. Stockholders of Audiocasting of Texas, Inc.,<br>October 25, 1962 . . . . .                                                          | 152  |
| 8. Stockholders in Audiocasting of Texas, Inc.,<br>after Proposed Stock Sales . . . . .                                                | 181  |
| 9. Waco Radio Audience Shares, November 1963. . . . .                                                                                  | 183  |
| <del>1</del> 10. Revenues and Losses of KBGO, 1965 through 1970 . . . . .                                                              | 192  |
| <del>1</del> 11. Populations and Radio Revenues of Waco, Texas,<br>Compared with Those of Three- and Four-<br>Station SMSA's . . . . . | 209  |
| <del>1</del> 12. Three- and Four-Station SMSA's Showing<br>Aggregate Profit or Loss . . . . .                                          | 209  |
| <del>1</del> 13. Aggregate Radio Profit or Loss, Waco, Texas. . . . .                                                                  | 210  |



## LIST OF ILLUSTRATIONS

| Figure                                                                                                  | Page |
|---------------------------------------------------------------------------------------------------------|------|
| 1. Locations Mentioned in the Text. . . . .                                                             | 9    |
| 2. Interference-Free Service Contours of WACO . . .                                                     | 19   |
| 3. Interference-Free Service Contours of KWTX . . .                                                     | 26   |
| 4. Interference-Free Service Contours<br>of KMLW and KAWA . . . . .                                     | 31   |
| 5. Stations Authorized on 1580 kHz<br>on August 25, 1961 . . . . .                                      | 70   |
| 6. Daytime Allocation Study for KBGO. . . . .                                                           | 71   |
| 7. Interference to KBUS and KHBR from KBGO. . . . .                                                     | 72   |
| 8. Nighttime Service Contours of KBGO . . . . .                                                         | 73   |
| 9. Service Contours of Proposed<br>Gatesville Station . . . . .                                         | 92   |
| <b>10.</b> Daytime Interference-Free Service Contours<br>of Waco Standard Broadcast Stations. . . . .   | 205  |
| <b>11.</b> Nighttime Interference-Free Service Contours<br>of Waco Standard Broadcast Stations. . . . . | 206  |
| <b>12.</b> Radio Revenue, Waco, Texas, 1946-1965. . . . .                                               | 214  |
| <b>13.</b> Distribution of Radio Revenue,<br>Waco, Texas, 1946-1965 . . . . .                           | 215  |

## INTRODUCTION

This thesis traces the early history of standard (AM) broadcast station KBGO, in Waco, Texas, with special attention to the station's legal and corporate problems. These two areas were chosen for emphasis because they are two of the three--the third is engineering--that, while basic to broadcasting, seem to the writer to be least understood among many broadcasters.

KBGO was put on the air by people who--with one exception--had no broadcast experience except for ownership of a station operated for them by an experienced broadcaster. They failed to appreciate the problems involved in getting a construction permit from the Federal Communications Commission (FCC), building a station, and operating it in the face of established competition; and because they ignored the special problems of the broadcasting business, they did not succeed in their venture.

Nothing occurs in a vacuum. A thorough understanding of what happened to KBGO and why therefore requires description of the background of the station owners and the market where it operated. The first part of this study describes the market in economic terms (its history, growth, and general economic condition) and presents brief histories

of the other standard broadcast stations in Waco. These histories serve two purposes: they describe the competition KBGO faced, and they provide points of reference against which the KBGO history can be compared. A section about the unsuccessful applicants for Waco radio facilities is also included to make the Waco radio history complete and to provide further examples for comparison with KBGO's experience.

While many stations receive their initial broadcast authorization (a construction permit) without a hearing--a formal proceeding which resolves disputes and determines whether an application should be granted, or which of two or more should be granted--greater competition for increasingly scarce broadcast frequencies has resulted in more hearings in recent years. The KBGO construction permit was issued after a hearing ordered when three applicants requested conflicting uses of the same broadcast frequency, and only one of the applications could be granted. The second part of this study describes the three applicants and their proposals. In the case of the ultimately successful applicant, its previous broadcast operation is described to provide background for its Waco application and operation, and as a further example for comparison with the KBGO experience.

The third part of the study describes events leading to grant of the construction permit for KBGO. It offers an

insight into the reasons for and mechanics of the hearing process, and shows how changes in the Communications Act can affect pending applications. It also illustrates the delays that are typical of hearing proceedings.

The fourth part of the study is more typical of radio station histories. It describes the operational aspects of putting KBGO on the air: construction of physical facilities, staffing, programming, and sales. Considerable attention is paid to corporate-level activities, too: ownership, financing, and budgeting. Building on the foundation established in the earlier chapter on the background of the KBGO owners, it shows how they relied on their earlier success in Shreveport without properly studying what was required for success in Waco.

The final part of the study analyzes the KBGO failure, emphasizing those legal, corporate, and management problems that might have been avoided or minimized by better planning. Because the principal aim of this study is to describe the early history of KBGO, a detailed analysis of the station's difficulties is not presented. The analysis attempts only to draw together key material set out previously, add some data not required for the historical narrative, draw some tentative conclusions about the causes of the KBGO troubles, and speculate briefly about what might have been done differently.

The background and history of the station, however,

are presented in considerable detail. The writer believes that a superficial history, while perhaps interesting, would not provide sufficient information for a real understanding of why and how operational problems arose without being foreseen. To the extent potential perils are shown by one station's experiences, they can better be anticipated and planned for--or avoided--by other broadcasters. Providing such foreknowledge is the purpose of this thesis.

A principal source of information in the study was documents and records of the FCC: decisions, applications, and unpublished record files. Additional background information was provided by government, business, and scholastic publications. Details of events outlined by such data were filled in by interviews and correspondence with, and personal files of, the people directly involved in the events described.

PART I

THE WACO MARKET

## CHAPTER I

### THE WACO ECONOMY

McLennan County is a rectangle of land in central Texas, traversed from northwest to southeast by the Brazos River. Originally the home of the Hueco Indians, part of the vast Wichita tribes, its settlement by whites began in 1835, the year before Texas won its independence from Mexico. McLennan County was created by the state legislature in January 1850, and organized in August 1850 with its county seat at Waco. In August 1856 the town of Waco was incorporated.<sup>1</sup>

Waco's early growth was fostered by the fertility of the area and by its location as a principal point for west-bound pioneers to cross the Brazos River. Many stayed, and the county population increased ninefold from 1860 to 1900. After 1900 the population continued to grow more rapidly than that of the United States as a whole, but slowed behind the boom experienced in other parts of Texas. Strikingly indicative of Waco's and McLennan County's exclusion from the Texas boom is their decline from early positions among the state's largest cities and counties (see Table 1).

TABLE 1  
 POPULATION OF WACO AND McLENNAN COUNTY,  
 AND THEIR RANK AMONG TEXAS CITIES AND  
 COUNTIES ACCORDING TO POPULATION<sup>2</sup>

| Year | Population |                 | Rank According to Population |                 |
|------|------------|-----------------|------------------------------|-----------------|
|      | Waco       | McLennan County | Waco                         | McLennan County |
| 1860 | ---        | 6,206           | --                           | 36              |
| 1870 | 3,008      | 13,500          | --                           | 12              |
| 1880 | 7,295      | 26,934          | 6                            | 9               |
| 1890 | 14,445     | 39,204          | 7                            | 5               |
| 1900 | 20,686     | 59,722          | 7                            | 5               |
| 1910 | 26,425     | 73,250          | 8                            | 5               |
| 1920 | 38,500     | 82,921          | 9                            | 6               |
| 1930 | 52,848     | 98,682          | 9                            | 7               |
| 1940 | 55,982     | 101,898         | 10                           | 8               |
| 1950 | 84,706     | 130,194         | 9                            | 10              |
| 1960 | 97,808     | 150,091         | 12                           | 12              |
| 1970 | 95,326     | 147,553         | 13                           | 12              |



TABLE 2

ESTIMATES OF POPULATION AND RETAIL SALES FOR THE WACO AREA<sup>3</sup>  
(Retail Sales in Thousands of Dollars)

| Year | Waco<br>Population | McLennan County |                 |                                           |
|------|--------------------|-----------------|-----------------|-------------------------------------------|
|      |                    | Population      | Retail<br>Sales | Constant (1967)<br>Dollar Retail<br>Sales |
| 1946 | 73,000             | 121,800         | 68,476          | 117,053                                   |
| 1947 | 71,600             | 117,700         | 89,938          | 134,436                                   |
| 1948 | 80,000             | 120,700         | 104,532         | 144,982                                   |
| 1949 | 81,300             | 122,700         | 104,814         | 146,238                                   |
| 1950 | 85,600             | 130,600         | 136,878         | 189,845                                   |
| 1951 | 87,000             | 132,800         | 142,272         | 182,869                                   |
| 1952 | 92,200             | 137,800         | 152,925         | 192,358                                   |
| 1953 | 98,500             | 139,300         | 160,545         | 200,431                                   |
| 1954 | 101,500            | 140,000         | 166,407         | 206,717                                   |
| 1955 | 103,900            | 142,200         | 159,691         | 199,116                                   |
| 1956 | 104,100            | 141,900         | 160,836         | 197,587                                   |
| 1957 | 105,500            | 143,500         | 166,451         | 197,451                                   |
| 1958 | 106,200            | 148,100         | 167,527         | 193,448                                   |
| 1959 | 108,000            | 149,100         | 181,776         | 208,219                                   |
| 1960 | 99,100             | 151,500         | 174,587         | 196,829                                   |
| 1961 | 98,100             | 153,600         | 169,741         | 189,443                                   |
| 1962 | 103,800            | 155,000         | 182,848         | 201,819                                   |
| 1963 | 104,100            | 157,000         | 188,713         | 205,794                                   |
| 1964 | 104,400            | 159,000         | 194,721         | 209,603                                   |
| 1965 | 104,500            | 159,500         | 211,750         | 224,074                                   |
| 1966 | 104,200            | 161,900         | 219,983         | 226,320                                   |
| 1967 | 106,100            | 162,600         | 248,789         | 248,789                                   |
| 1968 | 110,100            | 162,600         | 266,528         | 255,785                                   |
| 1969 | 112,600            | 155,000         | 258,983         | 235,868                                   |
| 1970 | 93,800             | 149,300         | 242,469         | 208,486                                   |

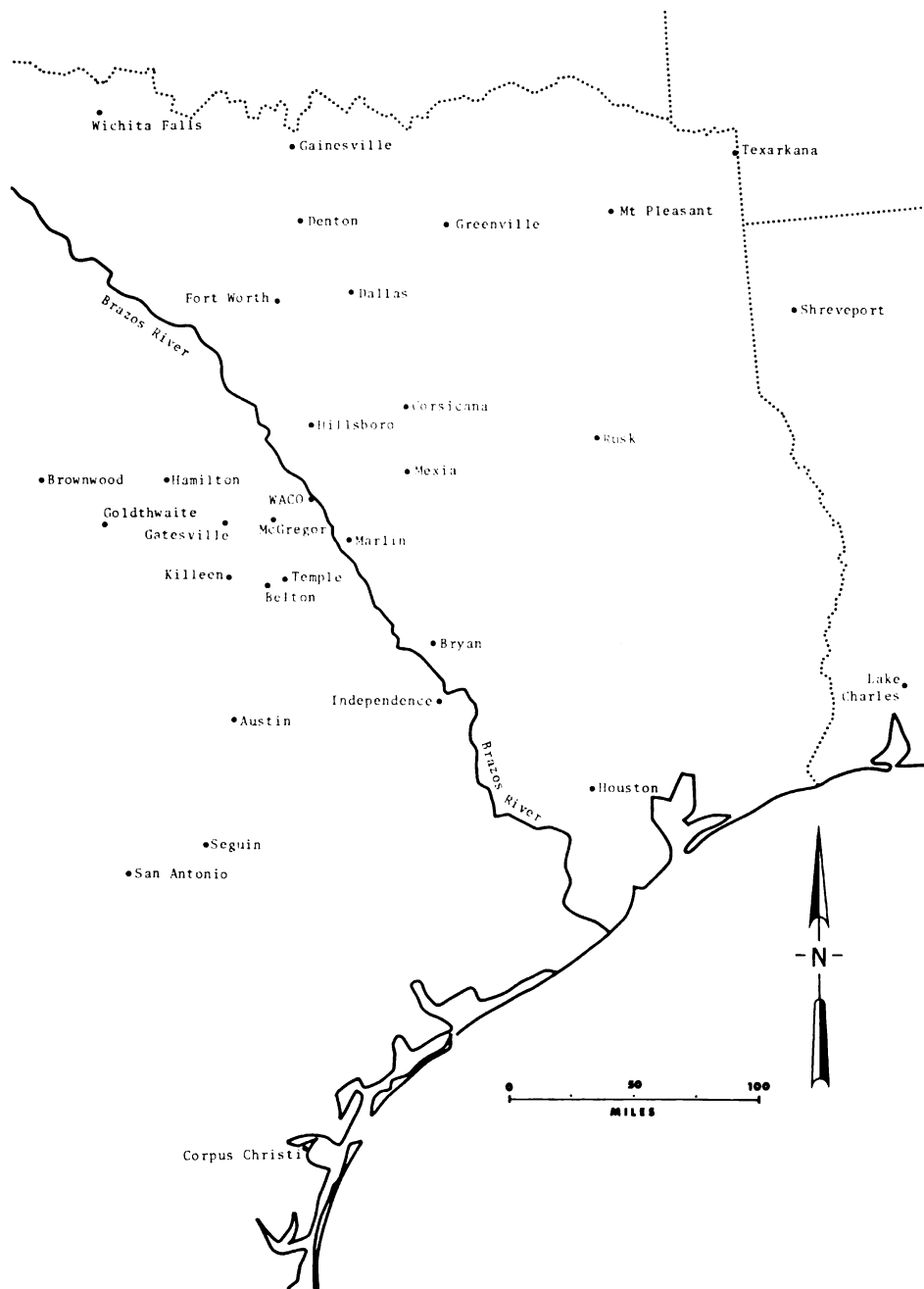


Fig. 1.--Locations Mentioned in the Text

Yearly estimates of population and retail sales for the Waco area since World War II are presented in Table 2. Retail sales are listed as estimated by Sales Management magazine, and also in terms of constant (1967) dollars to make possible direct comparisons between years.

During its first half century, McLennan County's economy was based on agriculture, especially cotton. As an important regional trade center, it soon developed a diversified economy of insurance, banking, and wholesale and retail trade. Because of the absence of significant natural resources, however, there was no major industrial development. Waco is the long-time home of Baylor University and Paul Quinn College.<sup>4</sup>

A 1958 report of the Waco City Plan Commission stated the following conclusions about the Waco economy:

1. Good location for distribution of manufactured products to widespread market area with adequate transportation facilities to realize this advantage.
2. Excellent supply of semi-skilled and unskilled labor.
3. Firmly established as a regional center for wholesale and retail trade, education and medical, professional and business services.
4. In a rich agricultural area with strong potential for development of the food processing industry.<sup>5</sup>

The same report noted the following principal weaknesses that would affect the city's economic growth:

1. Lack of adequate water supply.
2. Shortage of engineering and technical skills in the labor force.
3. Lack of raw materials other than agricultural products, sand, gravel, and limestone.
4. Increasing competition of Dallas in retail and wholesale trade activities.<sup>6</sup>

The 1958 Comprehensive Plan saw the greatest potential for economic development to be in manufacturing, with government activities, medical and professional services, wholesale trade, retail trade, and business and personal services following in order. It projected a county population of 220,000 in 1980.<sup>7</sup>

Nine years later, a study by the same commission concluded that:

Without any special raw materials, without an unusually attractive composition of labor force, without any exceptional relation to transportation facilities, without outstanding higher education facilities in technological fields and without a locational advantage, Waco must rely most upon its quality and appeal as a place in which to live and do business.<sup>8</sup>

The 1967 Comprehensive Plan projected a 1985 Population of 215,000 for McLennan County, with the greatest occupational increases in the manufacturing and Professional services categories.<sup>9</sup>

The county's economy suffered setbacks with the Closing of James Connally Air Force Base and the Twelfth Air Force Headquarters in 1968. In the same period, however, two higher education facilities were established. James Connally Technical Institute (affiliated with Texas A&M University) admitted its first students in 1965, using many of the facilities of the former Air Force Base; and in 1966 McLennan Community College (two-year) began operation.

The data set out above indicate that the population

of Waco and McLennan County increased until the late 1960's, when the closing of two military installations eliminated a large number of jobs; no data is available to show whether growth resumed after a brief period of population losses, or what the growth rate has been since then. The 1970 census revealed that the county's rural population continues to decline, and that of the Waco urbanized area keeps increasing.

## Notes

<sup>1</sup>"Waco," Encyclopedia Americana, 1969, XXVIII, 251.  
Zachary T. Fulmore, The History and Geography of Texas  
(Austin, Texas: S.R. Fulmore, 1926), pp. 63 and 213.  
General Directory of the City of Waco 1888-9 (Galveston,  
Texas: Morrison and Fourmy, 1889), p. 2.

<sup>2</sup>U.S., Department of Commerce, Bureau of the Census,  
census reports, 1860-1970.

<sup>3</sup>"Survey of Buying Power," Sales Management, 1947-  
1971. Economic Report of the President, February 1971  
(Washington: Government Printing Office, 1971), p. 249.  
Population and retail sales estimates copyright 1947-1971  
Sales Management Survey of Buying Power; further repro-  
duction is forbidden. Constant (1967) dollar retail sales  
estimates were calculated by adjusting retail sales  
estimates by each year's consumer price index.

<sup>4</sup>"Waco," Encyclopedia Americana, 1969, XXVIII, 251.

<sup>5</sup>City of Waco, City Plan Commission, A Report Upon  
Comprehensive City Plan, Waco, Texas (St. Louis: Harland  
Bartholomew and Associates, 1958), p. 19.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid., pp. 11-19 and 138.

<sup>8</sup>City of Waco, Planning Department, Comprehensive  
Plan, Waco, Texas (St. Louis: Harland Bartholomew and  
Associates, 1967), I, 23.

<sup>9</sup>Ibid., p. 30.

## CHAPTER II

### WACO BROADCASTING

#### Radio Station WACO

The principal users of wireless telegraphy before World War I were the government (especially the military), ships in the Great Lakes and at sea, and amateurs. After the war, some of the amateurs evolved into broadcasters. Perhaps the first broadcast operation in Texas was WRR in Dallas, which claims to have begun broadcasting with 20 watts of power in March 1920.<sup>1</sup>

Three broadcast stations began operation in Waco in 1922: WJAD, WLAJ, and WWAC.<sup>2</sup> The latter two were short-lived; William Penn Clarke (an early Waco amateur, 5ZAF and 5FB) reported:

WWAC was at Sanger Brothers [a department store]. I was the one who talked Mr. Sanger into letting me build a broadcasting station. I had gotten a license, Commercial Grade on September 15, 1922, to operate it. It was in operation from September 25th, 1922, until January 23, 1924, at which time I resigned. They no longer had anyone interested in the station and it was abandoned. I went to work for the telephone company.

Station WLAJ was at the Waco Electrical Supply Co. located about 618 Austin Ave., and was made and operated by Paul Deeley, an early radio amateur [5AA]. He later left Waco and went to work for Cornell-Dublier Condenser Corp.<sup>3</sup>

The first broadcast station in Waco was put on the

air by Franklin Pierce Jackson. Jackson, whose family was from Goldthwaite, Texas, moved to Waco in 1911. He first worked as a mechanic in a local auto garage, but by the time World War I broke out, he owned the Cadillac dealership in Waco.<sup>4</sup>

A boyhood leg injury kept Frank Jackson from being drafted during the war, but in June 1918 he enlisted as a mechanic at Rich Field, just west of Waco. During his military service the Cadillac agency was taken away from him, so upon his discharge in February 1919, Jackson opened a garage downtown at 217-219 Washington Avenue. Thinking business would be better uptown, he later moved to 906 Franklin Avenue.<sup>5</sup>

Business did not improve very much though, and Jackson began spending his spare time learning about radio. One of the youngsters who worked with Frank Jackson was William C. Tinus, who later became a vice-president of Bell Telephone Labs, Inc.<sup>6</sup> Tinus reported:

I became an active radio amateur [5IQ] as soon as the restrictions were off after World War I--1919 or 1920. I was in high school and first knew Frank Jackson when I worked for him in his garage which specialized in repairing Cadillacs. My first transmitter was a Ford Model T spark coil, and the receiver was a crystal detector. Everything was home made. There were two or three other hams in Waco. We saved our money and bought some of the earliest vacuum tubes --audiotrons--glass tubes with wires coming out both ends. With improved receivers we could hear KDKA in Pittsburgh shortly after it came on the air. Frank was an ex-telephone man and was much interested in radio, although as I recall he was never an active amateur. We helped him build a good receiver and he immediately



got the bug to transmit as well as receive. I was concerned with Frank's enterprises from about 1920 until I graduated from Texas A&M in 1928.

The first transmitting experiment was made in the garage about 1921. A tube intended to be an audio amplifier was rigged as a radio frequency oscillator and a flashlight bulb was connected in series with the antenna lead-in to tune up and see that we were putting some juice into the antenna. (We had no ammeters etc.) I would guess the output was of the order of one-quarter watt. Then we put an old telephone microphone in series with the antenna and when we talked into it the bulb would flicker. We scrounged an old wind-up phonograph and the music would make the bulb flicker. We hams dashed home on our bikes and listened on our ham receivers. Music was on the air and we could hear Frank too. What a thrill! This was the beginning of broadcasting in Central Texas.

Frank must have begun worrying about a license about the end of 1921. I do not know when he applied to the Department of Commerce for one but you say he got it in July 1922.

When better tubes were obtainable a better transmitter was built--an oscillator-amplifier with about twenty watts output, and as I recall WJAD operated from the garage with this in 1922.

You asked a question about antennas. In the early days all of them followed shipboard designs--two poles or towers, horizontal parallel wires with spreaders at both ends, hoisted with halyards through pulleys at the top of the poles. We soon learned that a single wire worked about as well for receivers.<sup>7</sup>

Frank's wife Elfrieda Jackson described how the station grew:

Frank was there at Ninth and Franklin then. He wasn't doing as well as he would have liked to do; so he just decided, "Well, by golly, I'll just try building a broadcasting station!"

He had a good deal of time on his hands, so he just went into it.

All these new things: listening to WFAA and WBAP!

Frank would go up there and see that station and see all those parts and everything. Well, by George, he just came home and copied them.

He built this great big oil vat that you kept your tubes cool in. He built that! All those kinds of things.

And he talked with me as if I were another

mechanic. I happened to be mechanically inclined, so I could listen. Lots of times if something happened at the broadcasting station, I just had to take over--take the panel over and operate it just like one of the operators. I just had to when something happened.<sup>8</sup>

WJAD commenced operation on July 22, 1922, with 15 watts of power on 360 meters (833 kHz).<sup>9</sup> The station's power was increased to 150 watts in January 1923; in August 1925 a change to 850 kHz with 500 watts was authorized; and in January 1927 WJAD was switched to 670 kHz with 500 watts.<sup>10</sup> In October 1927 WJAD was moved to 900 kHz with 500 watts, sharing time with KFQB in Fort Worth; in November 1928 WJAD was reassigned to operate with one kilowatt, sharing time with KFQB on 1240 kHz, a regional (as opposed to a cleared) channel.<sup>11</sup>

The 1928 change was part of a nationwide reallocation by the Federal Radio Commission to eliminate heterodyne interference, squeals resulting from the simultaneous reception of stations assigned to the same channel but operating on slightly different frequencies. In order to "clear" 40 channels from 640 to 1190 kHz of such interference, only one full-time station was to be permitted on each cleared channel.<sup>12</sup>

In 1929 someone had the idea of changing WJAD's call letters to WACO. The letters WACO were assigned to the merchant vessel Nebraskan at the time; but its owners gave them up, and on December 10, 1929, WACO was assigned to Jackson's station, the first in the country to bear the

name of its city of license.<sup>13</sup>

In order to increase its hours of operation, in May 1933 WACO moved to 1420 kHz (a local channel), with 100 watts and specified hours.<sup>14</sup> In November 1934 full-time operation was authorized.<sup>15</sup> In May 1938 the station was permitted to increase its daytime power to 250 watts.<sup>16</sup>

WACO applied to shift to 1230 kHz, with 250 watts full-time, in February 1944; an amended application changed the request to 1460 kHz with one kilowatt full-time and a nighttime directional antenna; and in November 1945 the amended application was granted.<sup>17</sup> No significant facility changes have occurred since 1946; figure 2 depicts the predicted day and night interference-free service contours of the station.

In addition to facility changes, there were several changes in the ownership of WJAD/WACO. In 1929 Frank Jackson sold a half-interest in the station to J.M. Gilliam and Orville Bullington; in March 1930 Jackson sold his remaining interest and Central Texas Broadcasting Co., Inc., became the licensee, with WACO then part of the Southwest Broadcasting System.<sup>18</sup> In August 1936 four of the five Southwest Broadcasting System stations were bought by the Hearst newspaper interests; WACO was licensed to the KTSA Broadcasting Company, a subsidiary of Hearst Radio, Inc.<sup>19</sup>

Hearst did not keep its southwestern stations long, though. In May 1939 WACO was sold to the Frontier

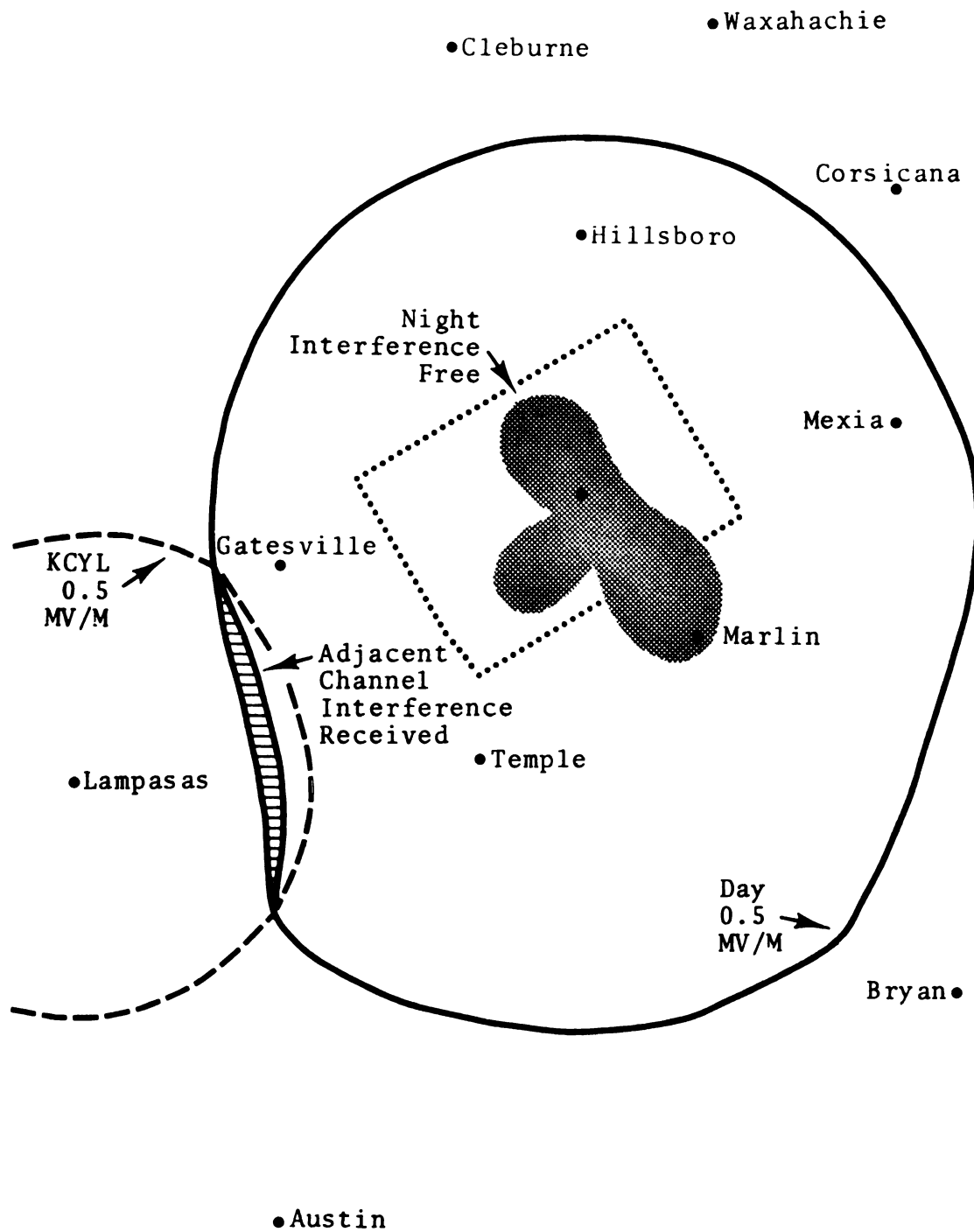


Fig. 2.--Interference-Free Service Contours of WACO<sup>20</sup>

Broadcasting Company, owned by E.S. Fentress (50 percent; publisher of the Waco News-Tribune, the Waco Times-Herald, and other newspapers), Sid W. Richardson (25 percent; rancher and capitalist), and Charles F. Roeser (25 percent; oil man).<sup>21</sup> In December 1941 Fentress sold half his stock to an associate, Charles E. Marsh (co-publisher and editor-in-chief of the newspaper chain); then in mid-1946 Fentress and Marsh sold almost all their stock (Fentress kept 5 percent) to C.C. Woodson (publisher of the Brownwood Bulletin and 25 percent owner of KBWD, Brownwood) and Wendell Mayes (manager and 25 percent owner of KBWD).<sup>22</sup>

In March 1947 Richardson and Roeser transferred their interests in Frontier to their Texas State Network (TSN).<sup>23</sup> In August 1949 TSN acquired the stock held by Mayes, Woodson, and Fentress; and in a June 1954 reorganization WACO was assigned to the WACO Broadcasting Company, Inc., wholly owned by TSN.<sup>24</sup>

TSN sold WACO to the WACO Broadcasting Corporation in December 1955. The corporation was originally owned by Mayes (40 percent; by then with interests in six other southwestern stations), Woodson (40 percent; with interests in two other stations and five newspapers), and R.E. Lee Glasgow (20 percent; manager of WACO, who had started with the station as a salesman in 1935); but Mayes and Glasgow each became 50 percent owners in May 1959, and Glasgow bought out Mayes in November 1964.<sup>25</sup>

In May 1970 WACO was sold again, this time to WACO Radio, Inc., a south Texas corporation connected with several broadcast stations.<sup>26</sup>

Radio Station KWTX

The second radio station in Waco was KWTX. In May 1941 Beauford H. Jester (a Corsicana, Texas, attorney) filed an application for a Waco station to operate on 1230 kHz (a local channel) with 250 watts, unlimited hours.<sup>27</sup> A competing application for the same facilities was filed in August 1941 by Roy B. Albaugh (owner of the Texas Fireproof Storage Co. in Waco), and the Commission designated the conflicting applications for a comparative hearing.<sup>28</sup>

In February 1942 Jester entered into an agreement with W.W. Callan, DeWitt T. Hicks, Hilton W. Howell, Wilford W. Naman, Robert E. Levy, Ross M. Sams, and Davis Stribling to form a corporation to build and operate the station Jester had applied for. An amended application was filed in April 1942; it showed that ownership would be divided thusly: Jester, 50 percent; Hicks and Naman, 10 percent each; Callan, Howell, Sams, and Stribling, 6.67 percent each; and Levy, 3.33 percent.<sup>29</sup>

The new men were substantial Waco business and professional figures. Callan was president and principal stockholder of Central Texas Freight Lines, and vice-president of the Waco Chamber of Commerce. Hicks was president and large stockholder of Hicks Rubber Company

(a tire dealership), and mayor of Waco. Howell had practiced law in Waco for 20 years, and Naman for more than 25 years. Levy was sole owner of Robert E. Levy & Company, an investment-security business. Sams had for 22 years operated a large church-furniture manufacturing plant. Stribling was sole owner of the Stribling Insurance Agency.<sup>30</sup>

In April 1942 the Commission adopted a policy of not granting any application " . . . involving the use of any materials to construct or change the transmitting facilities of any standard . . . broadcast station."<sup>31</sup> The policy had been recommended by the Defense Communications Board " . . . to conserve materials and the services of skilled personnel to meet the war requirements of the armed forces of the United States."<sup>32</sup>

Two days later applicant Albaugh petitioned for dismissal without prejudice, and the petition was granted on May 1, 1942.<sup>33</sup>

Hearings on the remaining Jester application were held in May, July, and October 1942.<sup>34</sup> The applicants contended they had acquired all necessary materials before the Commission adopted its critical-materials policy. In their "Proposed Findings of Fact and Conclusions," the applicants stated:

6. The proposed construction does not involve the use of any critical materials listed as such by the War Production Board at the time of the hearing. The

applicants had acquired manufactured articles and some used equipment already manufactured.

7. Therefore, the granting of the application would be consistent with the policy announced by the Commission with respect to authorization involving the use of critical materials, announced in the Commission's Memorandum Opinion dated February 23, 1942.

8. The granting of this application would be consistent with the Commission's Memorandum Opinion dated April 27, 1942. The applicants had in good faith acquired their equipment without violating the policy established by the Memorandum Opinion of February 23, 1942, since the applicants purchased their equipment from manufacturers and owners, without priority and without using equipment listed by the War Production Board as "vital materials". On May 8, 1942, applicants complied with the Memorandum Opinion of the Commission dated April 27, 1942, by showing that (1) applicants had made substantial expenditures upon their application and preparations to construct the proposed station prior to the date of the Memorandum Opinion, and (2) applicants had on hand or available substantially all materials and equipment necessary to complete construction.<sup>35</sup>

Discussing station WACO, they argued:

2. There is only one radio station in Waco. This is Station WACO, 250 wt, 1450 kc frequency. That station is owned, one-half by the owners and publishers of Waco's only newspaper, and one-half by the stockholders of the Texas State Network. The attorney representing Albaugh is also the attorney for Station WACO and for many of the network stations. The 1940 census showed Waco having a city population of 55,980 and McClennan [sic] County, of which it is the county seat, having a population of 101,898. Existing Station WACO is a Mutual Network station and a Texas State Network station. The network programs and contracts do not enable the station to give complete and adequate local radio service and programs. The records of the Commission will reveal that Waco is the only city in Texas with a population of 50,000 and over which does not have more than one radio station.<sup>36</sup>

In April 1943 the Commission said that, "The mere fact that applicant has on hand or available substantially all of the materials necessary to complete the proposed construction, as claimed in this case, does not permit the



grant under the present policy, which specifically refers to the 'use' and not the acquisition of materials."<sup>37</sup> In October 1943 the Commission dismissed the application without prejudice.<sup>38</sup>

In February 1944 Frontier Broadcasting Company filed for authorization to move WACO from 1450 kHz to 1230 kHz (see page 18). In March 1944 the partnership headed by Jester reapplied for 1230 kHz with 250 watts.<sup>39</sup> The Commission consolidated these applications with two others, and designated all for hearing.<sup>40</sup>

Following the hearings, in August 1945, Frontier submitted an amended application for 1460 kHz.<sup>41</sup> Frontier requested that the granting of the Jester and other applications be contingent on the grant of its own application for 1460 kHz.<sup>42</sup>

Jester, then a commissioner on the Texas Railroad Commission, wrote to U.S. Senator Tom Connally:

We insist that we have at the two hearings made out a case justifying the grant of our application. We do not think it fair for the grant of our application to be dependent upon the grant of the amended Waco application or the grant of the other two stations, Denton and Greenville.

We consider this more stalling on the part of the Waco station to prevent or delay our getting our Waco station into operation there and continuance of the monopoly they have of the radio and news dissemination in Waco.

I firmly believe that if you will evidence your interest in the fairness and justification of the grant of our application to Chairman Paul Porter and Commissioner Durr that it will be very helpful to us in having the Federal Communications Commission immediately grant our application.

The Federal Communications Commission has hundreds of applications pending before it. Some have had a hearing and some have not. But the equity of our situation is that we have been filed since 1941 and we have already had two hearings, we have a good record made and we should not be held back by this frame-up consolidated application and hearing and Waco's new amendment to its application.<sup>43</sup>

Jester also wrote FCC Commissioner Paul A. Walker:

Mr. Fentress and his partner own a one-half interest in the Frontier Broadcasting Company, Inc., which owns one-half interest and operates this Waco station. Fentress and his partner also own the only newspaper in Waco. They publish a morning and afternoon paper. The people in Waco and that vicinity feel as we do that this group has all too long had a monopoly on radio and newspaper news in this area.

We do not think that our application should be contingent upon the granting of Waco's amended application. The delay that we would be caused to suffer on having our application granted on the record made simply continues and prolongs the monopoly in radio and newspaper news the Waco station and newspaper enjoys.<sup>44</sup>

One month later, in November 1945, the Commission granted all four applications.<sup>45</sup>

The only change in KWTX facilities from those originally authorized followed the Commission's 1958 decision permitting stations on local channels to operate with daytime power of one kilowatt.<sup>46</sup> KWTX applied for the higher daytime power in January 1960; its application was designated for hearing with that of another local channel station in November 1961 (because of interference problems), then was granted in April 1962.<sup>47</sup> Figure 3 shows the KWTX interference-free service contours: nighttime, and daytime for both the former power of 250 watts and the present power of one kilowatt.

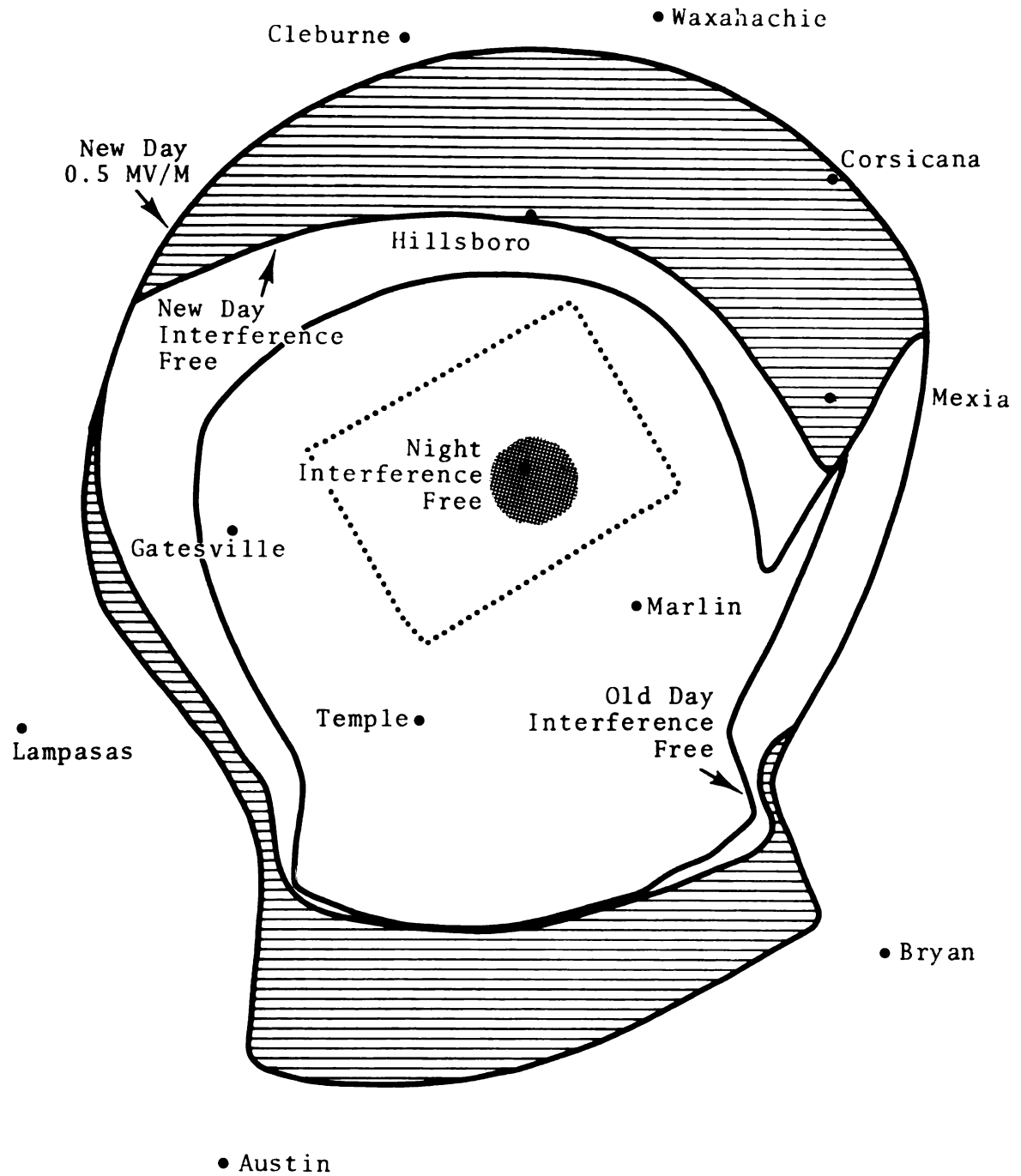


Fig. 3.--Interference-Free Service Contours of KWTX<sup>48</sup>

There have been only three substantial changes in the ownership of KWTX. Following Jester's death in 1949, his stock passed to his heirs; the stock was later exchanged for preferred stock in the corporation.<sup>49</sup>

The second major change occurred after KWTX-TV was put on the air in April 1955 as Waco's first VHF television station.<sup>50</sup> The first VHF station in the area was Temple's KCEN, which began operation in November 1953; on the same day Waco UHF station KANG-TV went on the air.<sup>51</sup>

KANG-TV was constructed by Clyde Weatherby tr/as Central Texas Television Company; Weatherby was owner of a daytime standard broadcast station in Hamilton, Texas, KCLW.<sup>52</sup> Central Texas (soon incorporated with Weatherby as 85 percent stockholder) did not succeed financially, and in December 1954 the station was taken over by the Texas Broadcasting Corporation, owned by the family of Senator Lyndon Johnson.<sup>53</sup> A year later KANG-TV surrendered its permit, and turned over to KWTX-TV its physical assets in exchange for 29.05 percent of the KWTX common stock.<sup>54</sup>

The only other significant ownership change was the gradual acquisition by general manager Milford N. "Buddy" Bostick of about one-eighth of the stock by 1964. By mid-1964 the KWTX common stock was held as follows:

|                            |                |
|----------------------------|----------------|
| Texas Broadcasting Company | 29.032 percent |
| Milford N. Bostick         | 12.465 percent |
| Hilton E. Howell           | 12.465 percent |
| Ross M. Sams               | 12.465 percent |
| W.W. Callan                | 9.780 percent  |

|                           |                              |
|---------------------------|------------------------------|
| Robert E. Levy            | 8.643 percent                |
| Thomas D. Stribling       | 7.972 percent                |
| George and Ellender Chase | 4.493 percent                |
| Diana C. Braswell         | 1.343 percent                |
| W. Woody Callan, Jr.      | 1.342 percent. <sup>55</sup> |

### Radio Station KAWA

Waco's third standard broadcast station was KAWA, which had its roots in Marlin, Texas. In January 1947 Falls County Public Service filed an application for a new station there, to operate on 1010 kHz with 250 watts, daytime only.<sup>56</sup>

TABLE 3  
POPULATION OF MARLIN  
AND FALLS COUNTY<sup>57</sup>

| Year | Marlin | Falls County |
|------|--------|--------------|
| 1860 | ---    | 3,614        |
| 1870 | ---    | 9,851        |
| 1880 | ---    | 16,240       |
| 1890 | 2,058  | 20,706       |
| 1900 | 3,092  | 33,342       |
| 1910 | 3,878  | 35,649       |
| 1920 | 4,310  | 36,217       |
| 1930 | 5,338  | 38,771       |
| 1940 | 6,542  | 35,984       |
| 1950 | 7,099  | 26,724       |
| 1960 | 6,918  | 21,263       |
| 1970 | 6,351  | 17,300       |

Falls County Public Service was a partnership of two central Texans. Virgil H. Gage graduated from Baylor University with a degree in radio, and " . . . has been engaged professionally in radio since 1944 in his present

position [as radio information specialist for the Waco Veterans Administration Hospital] and at the Radio Department at Baylor University."<sup>58</sup>

"William L. Pennington, is a resident of Marlin, Texas, who became interested in the establishment of the proposed station because of his awareness of a civic need for a broadcast station in the community and because he believes the proposed broadcast station will be financially profitable. Mr. Pennington is employed in Falls County as an engineer with the Texas State Highway Department."<sup>59</sup>

Objections to the Marlin application were filed by KWBU (licensed to Baylor University, operating at Corpus Christi, Texas, on 1030 kHz under special service authorization), which contended that the proposed Marlin station would cause interference to KWBU (and receive it from KWBU) should KWBU "retreat" to its original 1010 kHz frequency.<sup>60</sup>

WJZ (later WABC), New York, petitioned to intervene, since granting the Marlin application might lock KWBU into 1030 kHz and jeopardize KOB's (Albuquerque, New Mexico) return from 770 kHz to 1030 kHz, thus threatening WJZ's class I-A clear channel status.<sup>61</sup>

"On April 20, 1950, the Hearing Examiner released his Initial Decision looking toward a grant of the application of Falls County Public Service, Marlin, Texas,

conditioned, among other matters, upon the applicant's waiving its 'right to object, for itself or otherwise, to any interference that may be caused to the station's service in the event that the Commission should determine at a future date that the public interest would be served by authorizing the use of the 1010 kc frequency by Station KWBU in Corpus Christi.'" <sup>62</sup>

The Commission heard oral argument in September 1950. <sup>63</sup> It decided that KWBU had no special claim to 1010 kHz as a "retreat" frequency, and in December 1950 granted Falls County's application. <sup>64</sup> The station finally went on the air in April 1953 as KMLW. <sup>65</sup>

In July 1958 KMLW applied for a power increase to 500 watts. <sup>66</sup> A few months later, in January 1959, it amended its application to request 10 kilowatts with a directional antenna (still daytime only), and a change of assignment from Marlin to Waco-Marlin. <sup>67</sup> This was a wise application in light of the declining economic base provided by Marlin and Falls County (see Table 3).

A construction permit granting the amended application was issued on November 8, 1960. <sup>68</sup> In July 1961 KMLW requested and received new call letters, KAWA. <sup>69</sup> Construction of the new transmitting facility was completed in November 1961; an application for license was filed in February 1962; and the license was issued in May 1962. <sup>70</sup>

At that time KAWA began operations with studios in

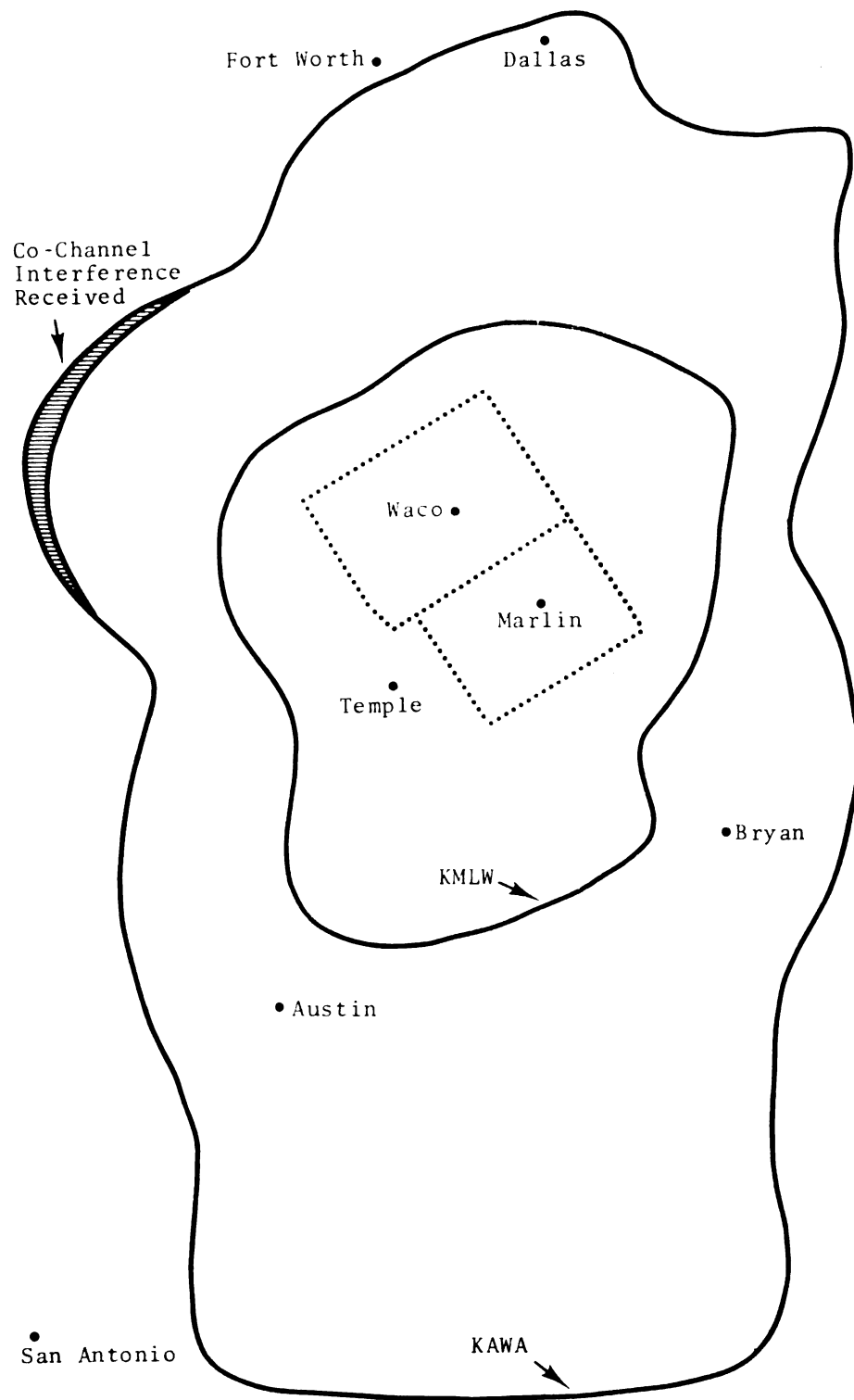


Fig. 4.--Interference-Free  
Service Contours of KMLW and KAWA<sup>71</sup>



both Waco and Marlin, and its principal offices in Waco. The Waco location was a renovated theater on the main street of the central business district (806 Austin Avenue).<sup>72</sup> Figure 4 shows the interference-free service contours of KMLW (1 kilowatt) and KAWA (10 kilowatts).

KMLW/KAWA has had several ownership changes. Pennington bought out Gage in 1951, then sold the station to Hugh M. McBeath and Charles E. Reagan in 1952, even before KMLW went on the air.<sup>73</sup> The latter two formed KMLW, Inc., in 1954; and in 1957 control of the licensee passed to M-L Radio, Inc., which in 1958 became the licensee corporation.<sup>74</sup> In 1965 KAWA was assigned to Morbro, Inc.<sup>75</sup> From 1957 until 1965 the station had been controlled by Illinois people; Morbro's principals were Delvin W. Morton of Waco, Orman L. Kimbrough of Longview, Texas, and the Texas Capital Corp. The three had interests in several Texas radio and television stations.<sup>76</sup>

#### FM Broadcast Stations

There are three commercial FM broadcast stations in Waco: KEFC, KHOO, and KWTX-FM. KEFC was put on the air in September 1959, KHOO (formerly WACO-FM) in March 1961, and KWTX-FM in December 1970.<sup>77</sup>

#### Unsuccessful Applicants

To this point only the successful applicants for broadcast licenses have been discussed. There were many other persons interested in establishing stations in Waco

who were unable to do so.

#### 1500 Kilohertz

The earliest such application in Commission records was that of John S. Braun (an early Waco amateur, 5CV, and an engineer at KTRH-KPRC, Houston), who applied for 1500 kHz with one kilowatt, daytime only, on March 7, 1936. His application was dismissed with prejudice March 9, 1937.<sup>78</sup>

#### 1330 and 930 Kilohertz

On September 13, 1936, T.E. Kirksey (former owner and manager of KFYO, Lubbock, Texas) applied for 1330 kHz with 500 watts, unlimited time.<sup>79</sup> He amended his application on January 14, 1937, to specify 930 kHz with 500 watts day and 250 watts night, but the application was denied February 2, 1938. The Commission found: "(a) That the new station which the applicant proposes would not prove self-sustaining or enjoy the good will and economic support of the community of Waco; (b) that there does not exist a public need for the additional broadcast service here contemplated; and (c) that public interest, convenience, or necessity would not be served by the granting of the application."<sup>80</sup>

#### 1230 Kilohertz

Roy B. Albaugh's 1941 application for 1230 kHz was discussed previously (see pages 21-22).

## 1010 Kilohertz

A flurry of activity took place in the 1950's, beginning with the April 3, 1950, application of Winston O. Ward (owner and manager of KIMP, Mt. Pleasant, Texas) for 1010 kHz and one kilowatt, daytime only.<sup>81</sup> Because it conflicted with the Marlin application of Falls County Public Service, by then well through the hearing process, it was dismissed on April 11, 1950.<sup>82</sup>

## 920 and 770 Kilohertz

A lengthy effort by the McLennan Broadcasting Company to get on the air began on March 14, 1951, with the filing of an application for 920 kHz with 500 watts daytime and a directional antenna.<sup>83</sup> An August 22, 1952, amendment specified 770 kHz with one kilowatt daytime; and consideration of the application was deferred pending resolution of the daytime skywave hearing.<sup>84</sup> The application was finally dismissed on June 22, 1964, as directed by the Commission in its clear channel hearing.<sup>85</sup> McLennan was owned by L.E. Richards, 20 percent owner, manager, and chief engineer of KIWW (later KBUC), San Antonio.<sup>86</sup>

## 940 Kilohertz

Five applications were filed seeking to use 940 kHz in Waco. On March 21, 1955, the Austin Radio Company (later the Waco Radio Company) requested 250 watts daytime only. Austin Radio was controlled by Jacob A. Newborn, Jr., owner of KETX (a UHF television station in Tyler, Texas,

that later went into bankruptcy) and KASE (later KTAP) in Austin, Texas.<sup>87</sup>

On July 25, 1955, Hugh M. McBeath (see page 32 for his connection with KMLW) applied for 250 watts daytime.<sup>88</sup>

On September 18, 1955, R.E. Lee Glasgow (see page 20 for his connection with WACO) applied for 500 watts daytime; but the application was dismissed at his request on November 10, 1955, after he arranged to purchase 20 percent of WACO.<sup>89</sup>

On October 13, 1958, Radio Broadcasters, Inc., applied for one kilowatt daytime, with a directional antenna; a March 31, 1959, amendment changed the request to 250 watts non-directional.<sup>90</sup> Radio Broadcasters was owned by Harlon Fentress (25 percent; son of E.S. Fentress, and publisher of the Waco News-Tribune and Waco Times-Herald), Wilton Lanning (25 percent; president of a large Waco sporting goods store), Joe L. Ward, Jr. (16.7 percent; managing partner of a Waco wholesale auto supply house), J.H. Kultgen (8.7 percent; owner of the Waco Ford dealership), Bernard Rapoport (8.7 percent; executive vice-president of American Income Life Insurance Co.), William Stimson (8.7 percent; general manager of KORC, Mineral Wells, Texas), Frank Beard (1.8 percent; Air Force officer), Mike Beard and Pat Beard (1.7 percent and 1.8 percent; Waco attorneys), and David B. Kultgen (1.8 percent; Waco attorney).<sup>91</sup>

On October 30, 1958, Heart of Texas Broadcasters applied for 250 watts daytime.<sup>92</sup> Heart of Texas was originally backed solely by James G. Ulmer (general manager and 90 percent owner of KCUL, Fort Worth; he had previously been manager and stockholder of KGKB, Tyler Texas; and he had had connections with several other Texas stations);<sup>93</sup> but by an April 7, 1959, amendment Ulmer took in as partners H.A. Bridge, Jr. (55 percent; part owner of KMHT, Marshall, Texas, and KLUE, Longview, Texas), R.L. Hicks (10 percent; president and principal owner of a Waco advertising company), and Samuel R. Jones (10 percent; Waco attorney).<sup>94</sup>

To further complicate matters, on March 25, 1959, Belton Broadcasters, Inc., applied for the same frequency at near-by Belton, using one kilowatt daytime with a directional antenna;<sup>95</sup> and on April 21, 1959, Floyd Bell amended a pending application to request use of the same frequency with one kilowatt daytime at Texarkana.<sup>96</sup> On August 14, 1959, the six remaining applications (Glasgow's had been dismissed) were designated for consolidated hearing.<sup>97</sup>

Not wanting to become involved in an expensive hearing, Heart of Texas requested dismissal of its application in March 1960.<sup>98</sup> Soon the other three Waco applicants also withdrew: by mid-1960 Belton had arranged to reimburse them for their application expenses in

exchange for the dismissal of their applications.<sup>99</sup>

Finally, only the Belton and Texarkana applications were granted.<sup>100</sup>

## Notes

<sup>1</sup>An undated information sheet from WRR claims: "Radio Station WRR in operation since 1920 is one of the pioneer stations in this country and was the first broadcast station on the air in the State of Texas. The Municipal Radio Department, of which WRR is a part, had its start in radio communication experiments by engineers in the Dallas Fire Department several years before commercial radio evolved." A postal card from WRR to this writer dated May 18, 1970, stated that, "Although we have no documented evidence, the first broadcast on WRR was believed to be in March, 1920." See also Rupert N. Richardson, Texas: The Lone Star State (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1958), p. 435.

<sup>2</sup>U.S., Department of Commerce, Bureau of Navigation, Radio Service Bulletin, No. 72 (April 2, 1923), p. 19.

<sup>3</sup>Letter from William Penn Clarke, Waco, Texas, September 26, 1971.

<sup>4</sup>Elfrieda Wolfertz Jackson, private interview held at her home, Waco, Texas, December 24, 1970.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid. Who's Who in America, Vol. 35, 1968-1969 (Chicago: Marquis--Who's Who, Incorporated, 1968), p. 2191.

<sup>7</sup>Letter from William C. Tinus, Maplewood, New Jersey, August 8, 1971. Tinus also related the following interesting anecdotes about WJAD:

About 1923 Frank [Jackson] sold the garage, opened a radio store to sell custommade receivers, and moved WJAD to the Hotel Raleigh (where I'm sure he got free rent on the top floor for the transmitter and on the second floor for a studio, in return for announcing that WJAD was on the Raleigh. Paid advertisements soon followed--perhaps among the earliest.) The transmitter was again rebuilt--this time about 50 watts as I recall. I do not know when it was later upped to 500 watts (again homemade) since I was in college at the time.

Your question about wavelength or frequency calls for a laugh. The Dept. of Commerce assigned all broadcasters to 360 meters, and a little later to 360 and 400. As more stations came on the air the nighttime bedlam and squeals were terrific. Standard practice was to monitor (I did it at home) and phone the transmitter to move over to a relatively clear spot on the dial. This interference mess was the prime reason for

legislation leading to the FCC.

The receiver business was interesting in those days. We made them in big wood cabinets with room inside for the storage battery to light the filaments, its charger, and the "B" batteries. They worked far better than the Atwater-Kents and a few other pioneers on the market, and cost about the same. I installed many of them--a good many on remote farms out from Waco. I will always remember the amazement and fascination of the farm families involved. It became their tie to the world--much as TV is to shut-ins today. The replacement market for "B" batteries was terrific.

. . . . .  
I recall a point that might be of interest to you. Frank was a racing car bug although he seldom drove himself. He had a stripped down chassis (Stutz, I believe) in which he had installed a surplus WWI liberty aircraft engine. It was painted bright red, made a lot of noise, and was horribly overpowered. To boost business for the radio shop we decided to put a receiver on it. We used a big four wire antenna on 10' poles, fore and aft, and got enough energy at points near WJAD to drive one of the early paper cone loudspeakers directly from a crystal detector. We would roar around the business section, park on a corner, and let the crowd that gathered hear radio music as we passed out cards for the radio shop. It must have been one of the very first car radios.

. . . . .  
Some very early pioneering in "chain broadcasting" was promoted by WJAD and several other early Texas stations. All were homemade equipment and therefore without license to connect to Bell System lines. Nevertheless they connected up stations from Nuevo Laredo to Fort Worth over a motley assortment of wires leased from oil companies, railroads etc.

<sup>8</sup>Elfrieda Jackson interview.

<sup>9</sup>WACO still has its original authorization, a faded telegram from the Department of Commerce dated July 22, 1922. A newspaper account, however, indicates that the first broadcast was actually the evening of July 21, 1922. "Radio Phone Broadcasts Waco Music," Waco Times-Herald, July 22, 1922, p. 3.

<sup>10</sup>"Only Radio Unit With Identical Call--City Name," Waco Sunday Tribune-Herald, January 3, 1937, p. 8. The other stations on 670 kHz were WEEI, Boston, 500 watts; WMAQ and WQJ, sharing time in Chicago, 1,000 and 500 watts; and KFOA, Seattle, one kilowatt. U.S., Federal Radio



Commission, Second Annual Report (Washington: Government Printing Office, 1928), pp. 57-61.

<sup>11</sup>"Only Radio Unit With Identical Call--City Name," p. 8. Also on 900 kHz were WBZ, Springfield, and WBZA, Boston; KSAC, Manhattan, Kansas; KFJM, Grand Forks, North Dakota; KSEI, Pocatello, Idaho; and WHA, Madison, sharing time with WLBL, Stevens Point, Wisconsin. Federal Radio Commission, Second Annual Report, p. 104. The other stations on 1240 kHz were WGHP, Fraser, Michigan; WRPC, Valparaiso, Indiana; and WQAM, Miami, sharing time with WIOD, Miami Beach. Federal Radio Commission, Second Annual Report, p. 208.

<sup>12</sup>Federal Radio Commission, Second Annual Report, p. 214.

<sup>13</sup>Mrs. Jackson claimed she and her husband thought of getting the call letters WACO when, looking at an alphabetical list of stations, they noticed that WACO was not taken. Elfrieda Jackson interview. Jack Oscar Gross, general manager of WACO in 1930, also claimed credit for the call letters WACO. "Our Respects to Jack Oscar Gross," Broadcasting, October 25, 1943, p. 36. Radio Service Bulletin, No. 135, June 30, 1928, p. 13. U.S., Department of Commerce, Radio Division, Commercial and Government Radio Stations of the United States (Washington: Government Printing Office, 1929), p. 60. Advertisement, Waco News-Tribune, December 13, 1929, p. 7.

<sup>14</sup>Application of Central Texas Broadcasting Co., Inc., for construction permit, file 3-P-B-2877 (filed May 9, 1933).

<sup>15</sup>Application of Central Texas Broadcasting Co., Inc., for modification of license, file 3-ML-B-1393 (filed June 25, 1934).

<sup>16</sup>Application of KTSA Broadcasting Company for construction permit, file B3-P-1916, docket 4839 (filed August 16, 1937), 5 F.C.C. 366 (1938).

<sup>17</sup>Application of Frontier Broadcasting Company for construction permit, file B3-P-3574, docket 6590 (filed February 5, 1944). Amendment to application of Frontier Broadcasting Company for construction permit, file B3-P-3574 (amendment submitted September 28, 1945). Order, dockets 6590, 6218, 6352, and 6589 (November 30, 1945), FCC Mimeo 86654.

<sup>18</sup>Application of Central Texas Broadcasting Co.,

Inc., for assignment of license, file 3-A-B-163 (filed December 14, 1929). "Only Radio Unit With Identical Call--City Name," p. 8.

<sup>19</sup>Application of KTSA Broadcasting Company for assignment of license, file B3-AL-104 (filed March 29, 1936). "Transfer of KOMA and WACO To Hearst Radio Is Approved," Broadcasting, August 15, 1936, p. 14.

<sup>20</sup>Since available WACO daytime coverage maps do not show the predicted 0.5 mv/m interference-free service contours required, the daytime contours have been computed by the author using station data and present FCC propagation curves. The nighttime interference-free service contour was taken from "Base Map Showing the Other Services Available within the Proposed Nighttime Interference Free Contour," Exhibit 1A of Audiocasting of Texas, Inc., dockets 12876 and 12877 (exhibit submitted September 18, 1959).

<sup>21</sup>Application of Frontier Broadcasting Company for assignment of license, file B3-AL-227 (filed November 3, 1938). "FCC Approves Two More Hearst Sales," Broadcasting, May 15, 1939, p. 22.

<sup>22</sup>FCC ownership report for WACO (January 19, 1942). Who's Who in America, Vol. 23, 1944-1945 (Chicago: The A.N. Marquis Company, 1944), p. 1348. FCC letter to Frontier Broadcasting Company advising that transfer application not required for Frontier to transfer 25 percent interest to Woodson and 20 percent interest to Mayes. FCC Minute 134-A-46 (adopted June 20, 1946); minute in WACO ownership file. Application of Frontier Broadcasting Company for transfer of control, file BTC-769 (filed May 23, 1949).

<sup>23</sup>Application of Frontier Broadcasting Company for transfer of control, file B3-TC-449 (filed May 12, 1945).

<sup>24</sup>Application of Frontier Broadcasting Company for transfer of control, file BTC-769 (filed May 23, 1949). Application of WACO Broadcasting Company, Inc., for assignment of license, file BAL-1803 (filed May 26, 1954).

<sup>25</sup>Application of WACO Broadcasting Corporation for assignment of license, file BAL-2171 (filed November 25, 1955). FCC ownership report for WACO (January 6, 1956). "Pate Proves Ability as Head of Radio Station," Waco Sunday Tribune-Herald, January 3, 1937, p. 9. Application of WACO Broadcasting Corporation for transfer of control, file BTC-3129 (filed May 14, 1959). FCC ownership report for WACO (June 2, 1959). Application of WACO Broadcasting

Corporation for transfer of control, file BTC-4686 (filed October 23, 1964). FCC ownership report for WACO (December 10, 1964).

<sup>26</sup>Application of WACO Radio, Inc., for assignment of license, file BAL-6802 (filed November 13, 1969).

<sup>27</sup>Application of Beauford H. Jester for construction permit, file B3-P-3176, docket 6218 (filed May 8, 1941). Jester was a Corsicana, Texas, attorney who served on the Texas Railroad Commission from 1942 to 1946, and was governor of Texas from 1947 to 1949. Who's Who in America, Vol. 25, 1948-1949 (Chicago: The A.N. Marquis Company, 1948), p. 1264. Letter from M.N. Bostick to FCC dated July 11, 1949; letter in KWTX ownership file.

<sup>28</sup>Application of Roy Branham Albaugh for construction permit, file B3-P-3268, docket 6219 (filed August 2, 1941). Order, docket 6218 (November 24, 1941), 6 Fed. Reg. 6097.

<sup>29</sup>The amended application was in the name of Beauford H. Jester, individually and as trustee for W.W. Callan, DeWitt T. Hicks, Hilton E. Howell, Wilford W. Naman, Robert H. [sic] Levy, Ross M. Sams, and Davis Stribling. Amendment to application of Beauford H. Jester for construction permit, file B3-P-3176 (amendment filed April 9, 1942).

<sup>30</sup>Ibid.

<sup>31</sup>Memorandum Opinion of April 27, 1942, "Policy and Procedure for the Handling of Broadcast Applications Exclusive of International, ST, Developmental, High Frequency Experimental and Non-Commercial Educational," 9 F.C.C. 356. "FCC Issues Freeze Order, With Leeway," Broadcasting, May 4, 1942, p. 9.

<sup>32</sup>Proposed Findings of Fact and Conclusions of the Commission, docket 6218 (adopted April 21, 1943; released April 23, 1943), 10 F.C.C. 210, 211.

<sup>33</sup>Petition to Dismiss Without Prejudice by applicant, application of Albaugh for construction permit, file B3-P-3268 (petition filed April 30, 1942). Proposed Findings of Fact and Conclusions of Jester, docket 6218 (pleading filed December 14, 1942), at 2.

<sup>34</sup>Proposed Findings of Fact and Conclusions of the Commission, docket 6218 (adopted April 21, 1943), 10 F.C.C. 210.

<sup>35</sup>Proposed Findings of Fact and Conclusions of Jester, docket 6218 (pleading filed December 14, 1942), at 8.

<sup>36</sup>Ibid., at 2.

<sup>37</sup>Proposed Findings of Fact and Conclusions of the Commission, docket 6218 (adopted April 21, 1943), 10 F.C.C. 210, 211.

<sup>38</sup>Order, docket 6218 (October 12, 1943), FCC Mimeo 71170.

<sup>39</sup>Petition for Reinstatement of Application of Beauford H. Jester et al. for construction permit, file B3-P-3176, docket 6218 (petition filed March 25, 1944).

<sup>40</sup>Order, docket 6218 (May 26, 1944), 9 Fed. Reg. 5929. Letter from Beauford H. Jester to Senator Tom Connally dated October 26, 1945; copy in docket 6218 file.

<sup>41</sup>Amendment to application of Frontier Broadcasting Company for construction permit, file Bs-P-3574 (amendment filed November 30, 1945).

<sup>42</sup>Letter from Beauford H. Jester to Senator Tom Connally dated October 26, 1945.

<sup>43</sup>Ibid.

<sup>44</sup>Letter from Beauford H. Jester to FCC Commissioner Paul A. Walker dated October 26, 1945; letter in docket 6218 file.

<sup>45</sup>Order, dockets 6590, 6218, 6352, and 6589 (November 30, 1945), FCC Mimeo 86654.

<sup>46</sup>Report and Order, docket 12064, "Amendment of Part 3 of the Commission's Rules and Regulations and Technical Standards Concerning the Power Limitation of Class IV AM Broadcast Stations" (adopted May 28, 1958; released June 2, 1958), FCC 58-513, 17 P&F Radio Reg. 1541.

<sup>47</sup>Application of KWTX Broadcasting Company for construction permit, file BP-13806, docket 14404 (filed January 6, 1960). Order, dockets 14404 and 14405 (November 21, 1961; released November 27, 1961), FCC 61-1396, 26 Fed. Reg. 11303.

<sup>48</sup>Application of KWTX Broadcasting Company for construction permit, file BP-13806 (filed January 6, 1960).

<sup>49</sup>FCC ownership report for KWTX (December 31, 1949).  
FCC ownership report for KWTX (April 1, 1959).

<sup>50</sup>KWTX-TV history cards, License Division, Broadcast Bureau, FCC. See also Initial Decision, dockets 10694 and 10695 (September 30, 1954), 44 F.C.C. 116, 11 P&F Radio Reg. 365; and Order, dockets 10694 and 10695 (adopted December 1, 1954; released December 2, 1954), 44 F.C.C. 161, 11 P&F Radio Reg. 410a.

<sup>51</sup>KCEN history cards, License Division, Broadcast Bureau, FCC. KANG-TV history cards, License Division, Broadcast Bureau, FCC.

<sup>52</sup>KANG-TV history cards. KCLW history cards, License Division, Broadcast Bureau, FCC.

<sup>53</sup>KANG-TV history cards.

<sup>54</sup>Ibid. FCC ownership report for KWTX (January 12, 1956).

<sup>55</sup>FCC ownership report for KWTX (July 15, 1964).

<sup>56</sup>Application of Falls County Public Service for construction permit, file B3-P-5631, docket 9086 (filed January 17, 1947).

<sup>57</sup>Census reports, 1860-1970.

<sup>58</sup>Gage replaced M.S. Hagler (like Pennington a state highway engineer) in 1949 as Pennington's partner. Letter from William L. Pennington to FCC dated March 10, 1949; letter in docket 9086 file. Decision, docket 9086 (December 4, 1950), 15 F.C.C. 417, 6 P&F Radio Reg. 273, Preliminary Statement ¶6.

<sup>59</sup>Decision, docket 9086 (December 4, 1950), 15 F.C.C. 417, 6 P&F Radio Reg. 273, Preliminary Statement ¶7.

<sup>60</sup>Ibid., Preliminary Statement ¶4.

<sup>61</sup>Ibid.

<sup>62</sup>Ibid., Preliminary Statement ¶5.

<sup>63</sup>Ibid.

<sup>64</sup>Ibid., Conclusions ¶¶5 and 19.

<sup>65</sup>KAWA history cards, License Division, Broadcast Bureau, FCC.

<sup>66</sup>Application of KMLW, Inc. (later amended to M-L Radio, Inc.), for construction permit, file BP-12159, docket 13509 (filed July 7, 1958).

<sup>67</sup>Amendment to application of M-L Radio, Inc., for construction permit, file BP-12159 (amendment filed January 28, 1959).

<sup>68</sup>Memorandum Opinion and Order, dockets 13509 and 13510 (November 8, 1960; released November 10, 1960), 44 F.C.C. 2226, 20 P&F Radio Reg. 942.

<sup>69</sup>KAWA history cards.

<sup>70</sup>Application of M-L Radio, Inc., for license to cover construction permit, file BL-9075 (filed January 2, 1962). KAWA history cards. The station was constructed by Donnell D. Dickson, Jr. Dickson, originally from Waco, had been chief of operations at Voice of America installations, and had built dozens of broadcast stations. Immediately before the KAWA job, he had been chief engineer of KWFR, San Angelo, Texas. Donnell D. Dickson, Jr., telephone interview from San Antonio, Texas, October 19, 1974.

<sup>71</sup>Amendment to application of M-L Radio, Inc., for construction permit, file BP-12159 (amendment filed January 28, 1959).

<sup>72</sup>Goodson McKee, private interview held at his office at KAWA, Waco, Texas, June 7, 1972.

<sup>73</sup>Application of William L. Pennington for assignment of permit, file BAP-160 (filed April 2, 1951). Application of Hugh M. McBeath and Charles E. Reagan for assignment of permit, file BAP-171 (filed February 12, 1952).

<sup>74</sup>Application of KMLW, Inc., for assignment of license, file BAL-1841 (filed August 16, 1954). Application of KMLW, Inc., for transfer of control, file BTC-2438 (filed February 25, 1957). Application of M-L Radio, Inc., for assignment of license, file BAL-3128 (filed August 6, 1958).

<sup>75</sup>Application of Morbro, Inc., for assignment of license, file BAL-5261 (filed October 14, 1964).

<sup>76</sup>Application of KMLW, Inc., for transfer of control, file BTC-2438 (filed February 25, 1957). FCC ownership report for KMLW (September 15, 1958). Application of Morbro, Inc., for assignment of license, file BAL-5261

(filed October 14, 1964). FCC ownership report for KAWA (February 1, 1965).

<sup>77</sup>KEFC history cards, License Division, Broadcast Bureau, FCC. KHOO history cards, License Division, Broadcast Bureau, FCC. KWTX-FM history cards, License Division, Broadcast Bureau, FCC.

<sup>78</sup>Application of John S. Braun for construction permit, file B3-P-1016 (filed March 9, 1936). Waco, Texas, application record cards, License Division, Broadcast Bureau, FCC. "Actions of the Federal Communications Commission," Broadcasting, March 15, 1937, p. 80.

<sup>79</sup>Application of T.E. Kirksey for construction permit, file BP-1385, docket 4275 (filed September 16, 1936). See also 2 F.C.C. 440 (1936).

<sup>80</sup>Amendment to application of T.E. Kirksey for construction permit, file BP-1385 (amendment filed January 14, 1937). Statement of Facts, Grounds for Decision, and Order, docket 4275 (February 2, 1938), 5 F.C.C. 129, 131.

<sup>81</sup>Application of Winston O. Ward for construction permit, file BP-7602 (filed April 3, 1950).

<sup>82</sup>Letter from FCC to Winston O. Ward dated April 11, 1950; copy in application file BP-7602.

<sup>83</sup>Application of L.E. Richards tr/as McLennan Broadcasting Company for construction permit, file BP-8031, docket 10181 (filed March 14, 1951).

<sup>84</sup>Amendment to application of McLennan Broadcasting Company for construction permit, file BP-8031 (amendment filed August 22, 1952). Order, docket 10181 (August 22, 1952), FCC 52M-364, FCC Mimeo 79592. Order, docket 8333, "Daytime Skywave Transmissions of Standard Broadcast Stations and Acceptance of Applications" (adopted December 4, 1950), FCC 50-1432, 15 Fed. Reg. 9065.

<sup>85</sup>Waco, Texas, application record cards. Report and Order, docket 6741, "Clear Channel Broadcasting in the Standard Broadcast Band" (adopted September 13, 1961; released September 14, 1961), 31 F.C.C. 565, 21 P&F Radio Reg. 1801; reconsideration denied, Report and Order, docket 6741 (adopted November 21, 1962; released November 28, 1962), 45 F.C.C. 400, 24 P&F Radio Reg. 1595.

<sup>86</sup>Application of McLennan Broadcasting Company for construction permit, file BP-8031 (filed March 14, 1951).

<sup>87</sup>Application of Jacob A. Newborn, Jr., trustee for Nancy and Nena Newborn, tr/as Austin Radio Company, for construction permit, file BP-9763, docket 13155 (filed March 21, 1955). "UHF KETX(TV) Tyler Quits," Broadcasting, October 25, 1954, p. 70. Broadcasting Yearbook (Washington: Broadcasting Publications Inc., 1959) p. B-234.

<sup>88</sup>Application of Hugh M. McBeath for construction permit, file BP-10001, docket 13156 (filed July 25, 1955).

<sup>89</sup>Application of R.E. Lee Glasgow for construction permit, file BP-10119 (filed September 28, 1955). Letter from R.E. Lee Glasgow to FCC dated November 3, 1955; letter in application file BP-10119.

<sup>90</sup>Application of Radio Broadcasters, Inc., for construction permit, file BP-12465, docket 13158 (filed October 13, 1958). Amendment to application of Radio Broadcasters, Inc., for construction permit, file BP-12465 (amendment filed March 31, 1959).

<sup>91</sup>Application of Radio Broadcasters, Inc., for construction permit, file BP-12465 (filed October 13, 1958).

<sup>92</sup>Application of James G. Ulmer tr/as Heart of Texas Broadcasters for construction permit, file BP-12985, docket 13160 (filed October 30, 1958).

<sup>93</sup>Ibid.

<sup>94</sup>Amendment to application of Heart of Texas Broadcasters for construction permit, file BP-12985 (amendment filed April 7, 1959).

<sup>95</sup>Application of Belton Broadcasters, Inc., for construction permit, file BP-12934, docket 13159 (filed March 25, 1959).

<sup>96</sup>Application of Floyd Bell for construction permit, file BP-11870, docket 13157 (filed February 20, 1958). Amendment to application of Floyd Bell for construction permit, file BP-11870 (amendment filed April 21, 1959).

<sup>97</sup>Order, dockets 13155, 13156, 13157, 13158, 13159, and 13160 (August 14, 1959), FCC 59-869, 24 Fed. Reg. 6789.

<sup>98</sup>See Initial Decision of Hearing Examiner Thomas H. Donahue, dockets 13157 and 13159 (January 31, 1961), 30 F.C.C. 549, 21 P&F Radio Reg. 328, n. 1.



<sup>99</sup>Ibid. See also Memorandum Reversing Ruling, dockets 13157 and 13159 (November 3, 1960; released November 4, 1960), FCC 60M-1887, 20 P&F Radio Reg. 903.

<sup>100</sup>Initial Decision of Hearing Examiner Thomas H. Donahue, dockets 13157 and 13159 (January 31, 1961), 30 F.C.C. 549, 21 P&F Radio Reg. 328.

PART II

APPLICANTS FOR 1580

## CHAPTER III

### THE CAHILL APPLICATION

The first application in the proceeding that led to a construction permit for KBGO had its origin in San Francisco. A major increase in the number of broadcast stations occurred after World War II, and continued through the mid-1950's. One person interested in putting stations on the air was Robert Sherman, partner in a San Francisco advertising agency.<sup>1</sup> Sherman had ambitious plans, described in a pleading filed with the Commission in his own application proceeding:

The business of Robert Sherman is the promotion and development of new radio stations throughout the United States, with the ultimate goal of ownership and management of AM radio stations. Through business methods which he contends are a trade secret, Sherman locates promising broadcast opportunities in "population growth areas". In some instances, Sherman himself exploits these opportunities by filing applications in which he is a principal. However, he is able to discover more promising opportunities than he could possibly develop for himself. Accordingly, he has made it a practice to develop these situations by interesting other persons in them, and preparing and filing applications on behalf of such other parties. In all, Sherman has been responsible for the promotion, preparation and filing of 20 applications for new AM stations.<sup>2</sup>

One of those Sherman approached was an old friend from his days at Stanford University, Robert W. Cahill.<sup>3</sup> Cahill and his brother owned a construction firm in San

Francisco, Cahill Construction Co., Inc.<sup>4</sup> He had no previous experience with broadcasting, but was interested in the field as a business investment.<sup>5</sup>

Cahill filed two applications for construction permits.<sup>6</sup> The first requested a 250 watt daytime station on 1580 kHz in Gatesville, Texas; it was filed on January 21, 1958. The proposed station would cause interference to no other stations, but 20.3 percent of the population within its normally protected (0.5 mv/m) service contour would receive interference from co-channel KWED in Seguin, Texas.<sup>7</sup> Cahill therefore requested a waiver of section 3.28(c) of the Commission's rules, justifying the requested waiver by the fact that the proposed station would bring a first local service to Gatesville and Coryell County.<sup>8</sup>

Gatesville lies about 35 miles west of Waco, and is the county seat of Coryell County. The area is chiefly agricultural, though a large section of the county is part of Fort Hood, a large Army installation. Unfortunately for the county, most Fort Hood personnel live and trade in Bell County, to the south.<sup>9</sup>

The Gatesville population has risen steadily, if slowly, but the county population until recently has shown little growth (see Table 4).

TABLE 4  
POPULATION OF GATESVILLE  
AND CORYELL COUNTY<sup>10</sup>

| Year | Gatesville | Coryell County |
|------|------------|----------------|
| 1860 | ---        | 2,666          |
| 1870 | ---        | 4,124          |
| 1880 | ---        | 10,924         |
| 1890 | 1,375      | 16,873         |
| 1900 | 1,865      | 21,308         |
| 1910 | 1,929      | 21,703         |
| 1920 | 2,499      | 20,601         |
| 1930 | 2,601      | 19,999         |
| 1940 | 3,177      | 20,226         |
| 1950 | 3,856      | 16,284         |
| 1960 | 4,626      | 23,961         |
| 1970 | 4,683      | 35,311         |

Cahill's application was prepared in part by Sherman, and proposed completely local programming of 82.5 percent entertainment (recorded music), 11.9 percent news, and token amounts of discussion, religious, agricultural, and educational programs.<sup>11</sup>

The application estimated construction costs of \$27,219.27, first-year operating costs of \$24,000, and first-year revenues of \$35,000. Cahill submitted a personal financial statement which showed a net worth of over \$625,000 and yearly income of \$77,500.<sup>12</sup>

Notes

<sup>1</sup>Application of John F. Egan and Robert Sherman d/b as Bay Area Electronic Associates for construction permit, file BP-11319, docket 12544 (filed May 24, 1957).

<sup>2</sup>Proposed Findings and Conclusions of Respondents (KWIP and KSJO), docket 12544 (pleading filed February 9, 1959), at 9.

<sup>3</sup>Robert W. Cahill, telephone interview in San Francisco, California, April 1971.

<sup>4</sup>Application of Robert W. Cahill for construction permit, file BP-11812 (filed January 21, 1958).

<sup>5</sup>Robert Cahill telephone interview.

<sup>6</sup>Cahill's second application is not relevant to this study. It proposed a station in Denver, Colorado, with one kilowatt on 1470 kHz, directional antenna, daytime only. It was filed on May 12, 1958, but dismissed without prejudice at Cahill's request on October 22, 1959. Application of Robert W. Cahill for construction permit, file BP-12006 (filed May 12, 1958). Denver, Colorado, application record cards, License Division, Broadcast Bureau, FCC.

<sup>7</sup>Application of Robert W. Cahill for construction permit, file BP-11812 (filed January 21, 1958).

<sup>8</sup>Section 3.28(c) of the Commission's rules stated:  
 Upon showing that a need exists, a Class II, III, or IV station may be assigned to a channel available for such class, even though interference will be received within its normally protected contour; Provided; (1) No objectionable interference will be caused by the proposed station to existing stations or that if interference will be caused, the need for the proposed service outweighs the need for the service which will be lost by reason of such interference; and (2) primary service will be provided to the community in which the proposed station is to be located; and (3) the interference received does not affect more than 10 percent of the population in the proposed station's normally protected primary service area. However, in the event that the nighttime interference received by the proposed station would exceed this amount, then an assignment may be made if the proposed station would provide either a standard broadcast nighttime facility to a community not having such a facility or if 25

percent or more of the nighttime primary service area of the proposed station is without primary nighttime service.

Report and Order, docket 10509 (August 4, 1954), FCC 54-1014, 19 Fed. Reg. 5141. Application of Robert W. Cahill for construction permit, file BP-11812 (filed January 21, 1958).

<sup>9</sup>Record, dockets 12876 and 12877, applications of Audiocasting of Texas, Inc., and Horace K. Jackson, Sr., for construction permits, at 24 and 31.

<sup>10</sup>Census reports, 1860-1970.

<sup>11</sup>Application of Robert W. Cahill for construction permit, file BP-11812 (filed January 21, 1958), Section IV, p. 1.

<sup>12</sup>Ibid., Section III and Exhibit 1.

## CHAPTER IV

### THE AUDIOCASTING OF TEXAS, INC., APPLICATION

#### Radio Station KJOE

The second application in the proceeding that produced KBGO came from Shreveport and a station put on the air there in 1954, KJOE. Shreveport lies on the Red River in northwest Louisiana, 18 miles from Texas. The Arklatex, as the region is known, is a major agricultural area; but it is the rich fields of oil and natural gas that have fueled Shreveport's growth in this century. Population of the area has risen steadily (see Table 5).<sup>1</sup>

Broadcasting began in Shreveport with the same 1922 boom that produced WJAD in Waco. An early station was WGAQ, first licensed to W.G. Patterson on May 19, 1922. Like WJAD, it originally operated on 360 meters with low power, but made regular improvements in its facilities.<sup>2</sup>

Another early Shreveport station was KWKH, named after its owner, the W.K. Henderson Iron Works & Supply Company. KWKH began operation in 1925 or 1926, and apparently first operated on 760 kHz with one kilowatt.<sup>3</sup>

Patterson's station, in the meantime, was changed to KSBA in August 1926; it was then operating on 1150 kHz with 500 watts.<sup>4</sup> In February 1929 Patterson sold KSBA to



S.R. Elliott and A.C. Steere, who formed the Tri-State Broadcasting System (Inc.) and changed the call letters to KTBS.<sup>5</sup>

TABLE 5  
POPULATION OF SHREVEPORT, AND  
BOSSIER AND CADDO PARISHES<sup>6</sup>

| Year | Shreveport | Bossier and<br>Caddo Parishes |
|------|------------|-------------------------------|
| 1850 | 1,728      | 15,846                        |
| 1860 | 2,190      | 23,488                        |
| 1870 | 4,607      | 34,339                        |
| 1880 | 8,009      | 42,338                        |
| 1890 | 11,979     | 51,885                        |
| 1900 | 16,013     | 68,652                        |
| 1910 | 28,015     | 79,938                        |
| 1920 | 43,874     | 105,531                       |
| 1930 | 76,655     | 153,058                       |
| 1940 | 98,167     | 183,365                       |
| 1950 | 127,206    | 216,686                       |
| 1960 | 164,372    | 281,481                       |
| 1970 | 182,064    | 294,703                       |

The November 11, 1928, reallocation of American broadcast stations put KSBA (KTBS) on 1450 kHz with one kilowatt, and KWKH on 850 kHz with ten kilowatts (sharing time with WWL in New Orleans).<sup>7</sup> Other Shreveport stations reallocated were: KFDX (1923-1929) and KWEA (1926-1936), which shared time on 1210 kHz with 100 watts; and KRMD (established in November 1926), which with 50 watts on 1310 kHz shared time with KGGH, Cedar Grove, Louisiana.<sup>8</sup> Both KWKH and KRMD became full-time stations in 1934: KWKH

moved to 1100 kHz with ten kilowatts, and KRMD stayed on 1310 kHz with 100 watts.<sup>9</sup> Later, the NARBA reallocations of March 29, 1941, moved KWKH to 1130 kHz with fifty kilowatts, KTBS to 1480 kHz with one kilowatt, and KRMD to 1340 kHz with 250 watts.<sup>10</sup>

In the meantime, two of the Shreveport stations were purchased by Times Publishing Company, Ltd., publisher of The Shreveport Times. In October 1934 it bought the stock of Tri-State (KTBS); and in May 1935 it bought the stock of International Broadcasting Corporation (which had acquired KWKH in September 1933).<sup>11</sup> Only KRMD was not owned by Times Publishing.

Concern with such concentration of control of broadcasting led to the adoption on November 23, 1943, of section 3.35 of the Commission's rules:

Multiple ownership. No license shall be granted for a standard broadcast station, directly or indirectly owned, operated or controlled, by any person where such station renders or will render primary service to a substantial portion of the primary service area of another standard broadcast station, directly or indirectly owned, operated or controlled by such person, except upon a showing that public interest, convenience and necessity will be served through such multiple ownership situation.<sup>12</sup>

KWKH and KTBS were directly affected by the new rule because they were both controlled by The Shreveport Times. In May 1944 Tri-State reached agreement to trade KTBS for KTHS, a ten-kilowatt 1090 kHz station in Hot Springs, Arkansas. Commission approval of the swap was obtained,

and KTBS was taken over by a partnership of John McCormack (former general manager of KWKH-KTBS), Allen Morris, George Wray, and P.E. Furlow.<sup>13</sup>

The owners of KTBS applied several times for better technical facilities to remain competitive with KWKH, which in 1939 was authorized to operate with fifty kilowatts.<sup>14</sup> Applications were filed for higher power on 1480 kHz, and for lower frequencies, but all were dismissed.<sup>15</sup> Finally, in October 1946, KTBS applied for a change to 710 kHz, requesting ten kilowatts daytime and five kilowatts nighttime, with separate directional antenna patterns. The application was granted on November 28, 1947.<sup>16</sup>

The switch of KTBS from 1480 kHz to 710 kHz in 1947 presented the opportunity for a new station in Shreveport on the former KTBS channel. KRMD sought permission to operate on 1480 kHz with five kilowatts daytime and one kilowatt nights in an application filed in February 1947, but because of interference problems the application was amended in August 1949 to request one kilowatt daytime and 500 watts nights.<sup>17</sup> When this lower power did not solve the interference problems, KRMD asked that the application be dismissed, stating, "Petitioner has determined that further prosecution of its application is not economically feasible or practical at the present time."<sup>18</sup> The expense of proceeding to a hearing was more than KRMD was willing to pay; the application was dismissed in November 1950.<sup>19</sup>

## S.A. Chesley

One of those who became interested in the 1480 kHz channel was S.A. "Alex" Chesley. In late 1952 Chesley became national sales manager of KTBS, after having served as general manager of WSFC in Somerset, Kentucky (1948-1949), as general manager of WJMR in New Orleans (1949-1952), and as sales representative for World Broadcasting System, Inc., in New York (1952).<sup>20</sup>

On March 27, 1953, Chesley filed an application for a new station in Shreveport, to operate on 1480 kHz with one kilowatt, daytime only.<sup>21</sup> After routine processing (there was no conflicting application), Chesley's application was granted on December 9, 1953, and a construction permit issued.<sup>22</sup>

Martin Kirsch, Jr.,<sup>23</sup> later described what happened next:

Shortly after C.A. Chesley, Jr. [sic] was granted a construction permit for 1480 Kc, at Shreveport, there appeared in our local daily newspapers, stories to the effect that it didn't appear that the station would be built as Mr. Chesley could not be located, having left town, without leaving a forwarding address.

Approximately a month passed. Charles Ray contacted me and told me that shortly after the application had been filed, Mr. Chesley had agreed to sell him an interest in the station. He next told me that he didn't believe Mr. Chesley had sufficient funds to construct the station. He suggested that I try to obtain the C.P.

30th December, we located Mr. Chesley's mother at Madison, Wisconsin. Mrs. Chesley was reluctant and very evasive about giving information relative to Mr. Chesley. I told her that I was trying to locate him, as I was interested in buying his C.P. She was quite surprised to learn that it had been granted. I

suggested that she tell Mr. Chesley and ask him if he was interested in making a transfer.

The next day, 31 December, I decided to again try to reach Mr. Chesley, so I again placed a call to him at his mother's home. On this call, the operator was given another telephone number in Madison and Mr. Chesley proved to be there. I asked Mr. Chesley if he was interested in transferring his C.P. and he replied that he was interested in selling anything he had, for a profit. I told him that C.P.'s weren't transferable for profit--that the grantee was allowed to recover only the amount that had been expended.<sup>24</sup>

Kirsch contacted Chesley several times in mid-January to arrange for acquisition of the construction permit; but in a January 20 letter to Kirsch, Washington attorney Harry J. Daly wrote:

I find that Mr. Chesley is dealing with Cady & Johnson, attorneys in Shreveport, who claim to be drawing an agreement for some unknown person where it is believed that they will pay to Mr. Chesley the sum of \$4200. and also hire him as a consultant. I am very reliably advised that Mr. [Neville] Miller here in Washington has told all of these people that he will have nothing to do with the matter if there is any advantage or profit made either directly or indirectly upon the assignment of the construction permit.<sup>25</sup>

On February 4 Chesley returned to Shreveport. He talked with Kirsch again about the construction permit, but even on the fifth said he still had not made up his mind about transferring it.<sup>26</sup>

Also on the fifth, though, he contracted with Audiocasting, Inc., to assign the permit to it for \$2,924.21--a "rather inflated bill of expenses," according to one of Audiocasting's principals.<sup>27</sup> The same day, attorney Miller wrote the Commission, stating that Chesley ". . . desires to assign the construction permit to a group

of  
the  
by  
re  
co  
th  
A  
3  
3  
3  
N  
S  
C  
C  
C  
C  
C

of business men in Shreveport, and a corporation entitled 'Audiocasting, Inc.' is in the process of being organized by these residents of Shreveport. An application requesting the Commission's consent to assign the construction permit to Audiocasting, Inc. will be filed in the next few days." <sup>28</sup>

Audiocasting, Inc.

The "unknown person" Daly referred to in his January 20 letter to Kirsch was Joe C. Monroe, a popular disc jockey at KCIJ in Shreveport. Monroe explained his interest in owning a new station:

I was a disc jockey in Shreveport with a morning show from 6 to 9. I found out a construction permit was available for a station on 1480. So I got to figuring, heck, I was making enough--I had enough billing going between 6 and 9 in the morning to make the station make money. So I assumed that I could do it at least as well with my own station as I could with somebody else's. <sup>29</sup>

Monroe took his idea to two local professional men, William M. (Bill) Cady III, an attorney, and Milton P. Burke, a certified public accountant. They formed a corporation, Audiocasting, Inc., to take over the construction permit, and from friends and friends of friends quickly secured subscriptions to the company's stock to finance the undertaking (total capitalization was only \$24,000).<sup>30</sup> On February 24, 1954, the application for assignment of the construction permit to Audiocasting was filed.<sup>31</sup>

The application estimated construction costs of \$17,000, and first-year operating expenses of \$48,000 and income of \$72,000. It proposed a staff of eight: a manager, a program/traffic director, three announcer/engineers, one salesman, a bookkeeper/record librarian, and a stenographer/copywriter.<sup>32</sup>

The Commission approved the assignment application on April 14, 1954, and Audiocasting promptly took steps to get the station constructed and on the air.<sup>33</sup> On April 16 attorney Miller requested that the call letters KJOE be reserved for the station (Chesley had reserved KSHE previously).<sup>34</sup> Construction of the physical facilities began on June 10, and was completed on July 22. The application for license was submitted the next day, and program test authority was granted on July 27.<sup>35</sup>

The station had been built for little money (in addition to the \$2,924.21 Chesley had been paid, construction expenses were only \$21,050.60),<sup>36</sup> and Monroe's plans for the operation were similarly frugal:

I had five people in the beginning. I had myself, manager/program director/salesman/copywriter. My wife Joyce ran most of the inside. But I was doing five or six hours a day on the air and the rest of the time I was selling. Then I had another combination salesman/announcer. And I had a chief engineer. We were remote-operated, so we only had--I think there were only five of us in the beginning, possibly six.<sup>37</sup>

His chief concern was KJOE's air sound, and he paid to get the best announcers available:



I always paid good salaries, usually above average. In fact, they tried to organize announcers in Shreveport and mine would have nothing to do with it. Because I was already paying 25 or 30 bucks a week minimum more than what they were asking as a minimum wage. Back in those days, most announcers in Shreveport were making about \$80 or \$85 a week. And I think my lowest-paid man was making \$115 a week. And Vern [Stierman, chief announcer] I was paying \$170 and something a week, which in those days was a fantastic salary.<sup>38</sup>

The station was programmed with popular music and hourly news at five minutes before the hour.<sup>39</sup> The format was borrowed from the pioneering work of McLendon, Storer, and Storz.<sup>40</sup> While the competition was airing network programs (WKWH was affiliated with C.B.S., KTBS with N.B.C., KRMD with A.B.C., and KENT with Mutual) and block programming the remaining time (KCIJ, the independent, was also block-programmed), only KJOE featured a popular music jukebox format.<sup>41</sup>

Monroe continued:

We were one of the first to go rock and roll. I think we were--to the best of my knowledge--the first station in the nation to broadcast our news five minutes before the hour. My thinking there was that the listeners that I wanted, I felt, were not as interested in news as they were in music. My theory was that we would give them the news at the time nobody else had it, with the thinking--rightly or not so--that when most of the other six or seven stations in town were broadcasting news, people who were not interested in talk would have only one place they could get music. That was us.

Also, I used the hour Sunday morning from eleven to twelve to great advantage in making people aware of the station. In fact, every station in town was broadcasting a church broadcast from eleven until twelve o'clock on Sunday. We were the only station in town where you could get entertainment. I used that hour to try to sell our image with a lot of promotional spots, and like that. Telling people what we were doing. The

little catch phrases that you use to try to build an image.

Our competitor helped quite a bit. The guy who fired me spread a rumor that I had said something vulgar on the air--which I had not. But they fired me with no notice. One day I'm saying, "I'll see you again tomorrow," and tomorrow I'm not there. So naturally they got a lot of calls; and they told the listeners that I had said something vulgar, and they had fired me. I can't remember now what it was that they said I had said.

Anyway, this actually helped create a lot of interest in KJOE before it went on the air, that would not have been had they not done that. I was credited with saying all kinds of things that I didn't say, but it kept people talking about Joe Monroe at a time when I was not exposed to the public. So they really defeated their purpose.<sup>42</sup>

KJOE was an immediate success. The first month on the air, the station showed a profit of about \$300; and in the next few years it paid dividends of over \$50,000 (on the original investment of only \$24,000).<sup>43</sup>

In 1956 Audiocasting began considering improving the facilities of KJOE.<sup>44</sup> On May 15, 1958, an application was filed to install a directional antenna (four towers) and increase daytime power to five kilowatts.<sup>45</sup> The application was amended on September 4, 1958, to add a request for nighttime operation with one kilowatt and a directional antenna (four towers, using two towers of the daytime array).<sup>46</sup>

The cost of constructing the full-time facility was estimated at \$43,380.44 in the application. Monroe described his view of the full-time operation:

. . . I felt for not an awful lot of money we could increase the value of the station. There's a hell of a

lot more value in a full-time station than there is a daytimer, as you know. Frankly, I felt that we were fortunate to be able to be number one and number two-- I don't think we were ever worse than number two in the market while I was there--with a daytimer. And frankly, I didn't want to continue being on the air for the rest of my life, and I wanted to have a full-time operation so that we would be in a better position to compete.<sup>47</sup>

Relatively minor interference problems with the day and night proposals required designation of the application for hearing, and apparently some of the Audiocasting stockholders were unwilling to risk the expense. The application was dismissed at Audiocasting's request on May 15, 1959.<sup>48</sup>

Only one real problem occurred in KJOE's first years: in October 1956 Joe and Joyce Monroe were divorced. Under the terms of their property settlement, Joyce received an undivided one-half interest in Joe's 2,000 shares of Audiocasting stock; and in exchange for the right to continue voting the stock, Joe guaranteed Joyce \$4,200 in yearly dividends.<sup>49</sup>

Joe had been the program and sales key to KJOE's success, but Joyce had kept the internal workings of the station smooth. Her first radio job had been in about 1948 as a secretary for C.B.S. in New York. But on a visit to her home, she had taken a job with KWKH and had stayed in Shreveport since. At KJOE her duties included traffic and continuity. After their divorce Joyce went to WNOE in New Orleans as a copywriter. She evidently had a talent for

programming, though, because she later went to work for the Rounsaville stations (she worked in both Atlanta and Miami), and became a program director for that chain.<sup>50</sup>

Audiocasting of Texas, Inc.

Organization

The phenomenal success of KJOE in its first years of operation prompted the Audiocasting stockholders to consider expansion of their radio interests to other markets. Existing stations in several markets were considered for purchase in 1956;<sup>51</sup> but the situation in Waco struck Joe Monroe as an even better opportunity than KJOE had been at the beginning. He said:

The Waco market seemed to me like an ideal market because at that time there were only two stations there--WACO and KWTX. It seemed to me like another station there would be a license to steal. Also, I didn't think that they were making the most of their programming capability at the time. A good, sharp, music operation, I think, should have been able to do very well in the market . . . .<sup>52</sup>

The board of directors authorized the necessary expenditure to conduct a frequency search for Waco, an engineering analysis of broadcast channels which would meet the Commission's allocation standards. Ralph Bitzer of St. Louis was employed to perform the search.<sup>53</sup>

Bitzer turned up two possibilities for full-time operation: 1580 kHz and 1600 kHz. He said that other frequencies would have been available for daytime-only operation, but that Audiocasting was not interested in

another daytime station.<sup>54</sup>

The 1580 kHz facility would be one kilowatt daytime, 500 watts nights, with different directional antenna patterns day and night. Specific data for the 1600 kHz facility are not available, but the locations of other 1600 kHz stations indicate that facilities would have been similar to those required for 1580 kHz.

The Audiocasting stockholders decided to go ahead with an application for a Waco station on 1580 kHz, and Bitzer proceeded with further engineering for the frequency. First he specified the area where the allocation would work. That is, he defined precisely that area where a transmitter could be located to provide the required coverage of Waco, to provide the required protection to co-channel and adjacent channel stations, and to minimize interference to the new station's coverage area from other stations.<sup>55</sup>

When the directors had this information, some of them went to Waco to locate a suitable transmitter site within the area Bitzer prescribed, and they obtained an option on the land. This done, Bitzer prepared the engineering exhibits for the specific site selected.<sup>56</sup> He designed separate directional patterns for day and night, using the same four towers for both patterns.

In the meantime, on May 27, 1957, the Audiocasting directors adopted a formal resolution to form a new corporation to apply for the Waco construction permit

(largely because of tax advantages).<sup>57</sup> The resolution stated:

RESOLVED, that a corporation be formed, as a subsidiary to Audiocasting, Inc., to be named Audiocasting, of Texas; said corporation to be capitalized at \$40,000, \$30,000 of said stock to be subscribed for by Audiocasting, Inc., and the \$10,000 balance to be distributed locally in Waco, and 10% of that \$10,000 balance to be held for employees of the new corporation. It was further resolved that Joe C. Monroe and William M. Cady, III be authorized and empowered to effectuate this resolution.<sup>58</sup>

Cady had on occasion dealt with Waco attorney Harold Clark in legal matters, so Clark was called on to help organize the new corporation.<sup>59</sup> On October 9, 1957, articles of incorporation for Audiocasting of Texas, Inc., were filed with the Texas Secretary of State.<sup>60</sup> On October 15 Cady and Robert E. Johnson (both Audiocasting principals) met in Waco with Clark and Derwood Johnson (another Waco attorney) to elect a board of directors for Audiocasting of Texas; the board consisted of Joe Monroe, Glenn Smith, E.C. Laster, Robert Mitchell, and William Cady.<sup>61</sup>

The next day the directors met in Shreveport. They elected Monroe president of the corporation, Smith vice-president, Laster treasurer, and Cady secretary. A subscription by Audiocasting for 3,000 shares of Audiocasting of Texas stock (\$30,000) was accepted, with \$2,380.66 earmarked for preapplication expenses, \$14,000 to be collected upon grant of the construction permit, and the remaining \$13,619.34 to be paid four months after the

grant.<sup>62</sup>

On December 31, 1957, the application was submitted to the Commission. It was returned on January 17, 1958, because of minor deficiencies; but these defects were corrected and the application was accepted for filing on February 10.<sup>63</sup>

#### Engineering

Figure 5 shows the locations of stations authorized to operate on 1580 kHz on or before the date KBGO received its construction permit in 1961. The one kilowatt daytime pattern was designed to protect the following stations:

|      |                    |                                 |
|------|--------------------|---------------------------------|
| KWED | Seguin, Texas      | 144 miles distant               |
| KGAF | Gainesville, Texas | 143 miles distant               |
| KTLU | Rusk, Texas        | 115 miles distant               |
| KBUS | Mexia, Texas       | 40 miles distant                |
| KHBR | Hillsboro, Texas   | 35 miles distant. <sup>64</sup> |

Figure 6 depicts the 0.5 mv/m service contours of these stations and of the proposed Waco station. The proposal would receive interference from KWED and KBUS affecting 376 of the 3,050 square miles (12.3 percent) within its normally protected (0.5 mv/m) contour; but only 3.5 percent of the 132,104 persons estimated to live within the normally protected contour would receive interference.<sup>65</sup>

Figure 7 shows the interference the proposed station would cause to KBUS and KHBR.

The 500-watt nighttime pattern was designed to protect the border of Canada (which has class I-A priority



Fig. 5.--Stations Authorized on 1580 kHz  
 on August 25, 1961<sup>66</sup>



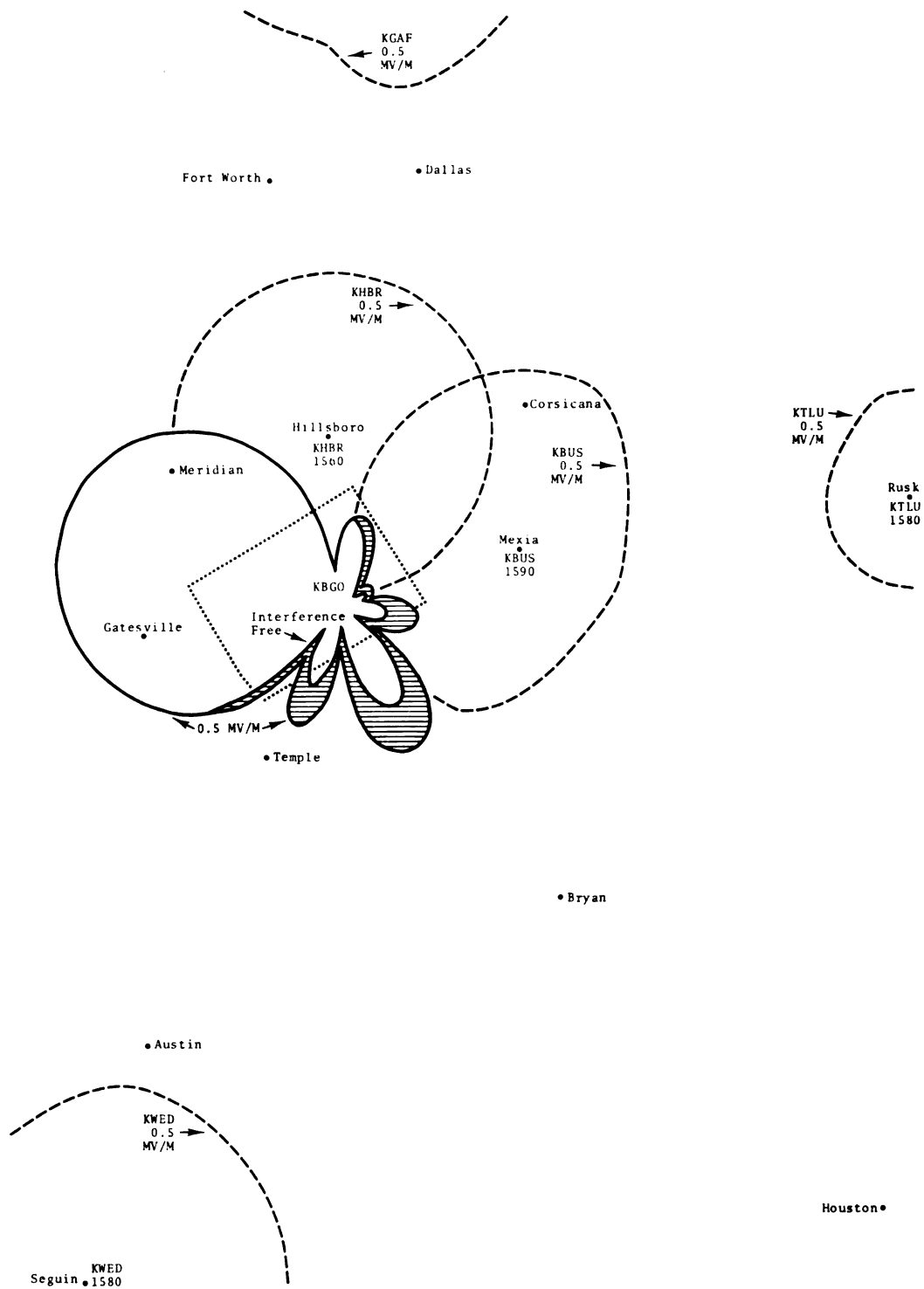


Fig. 6.--Daytime Allocation Study for KBGO<sup>67</sup>

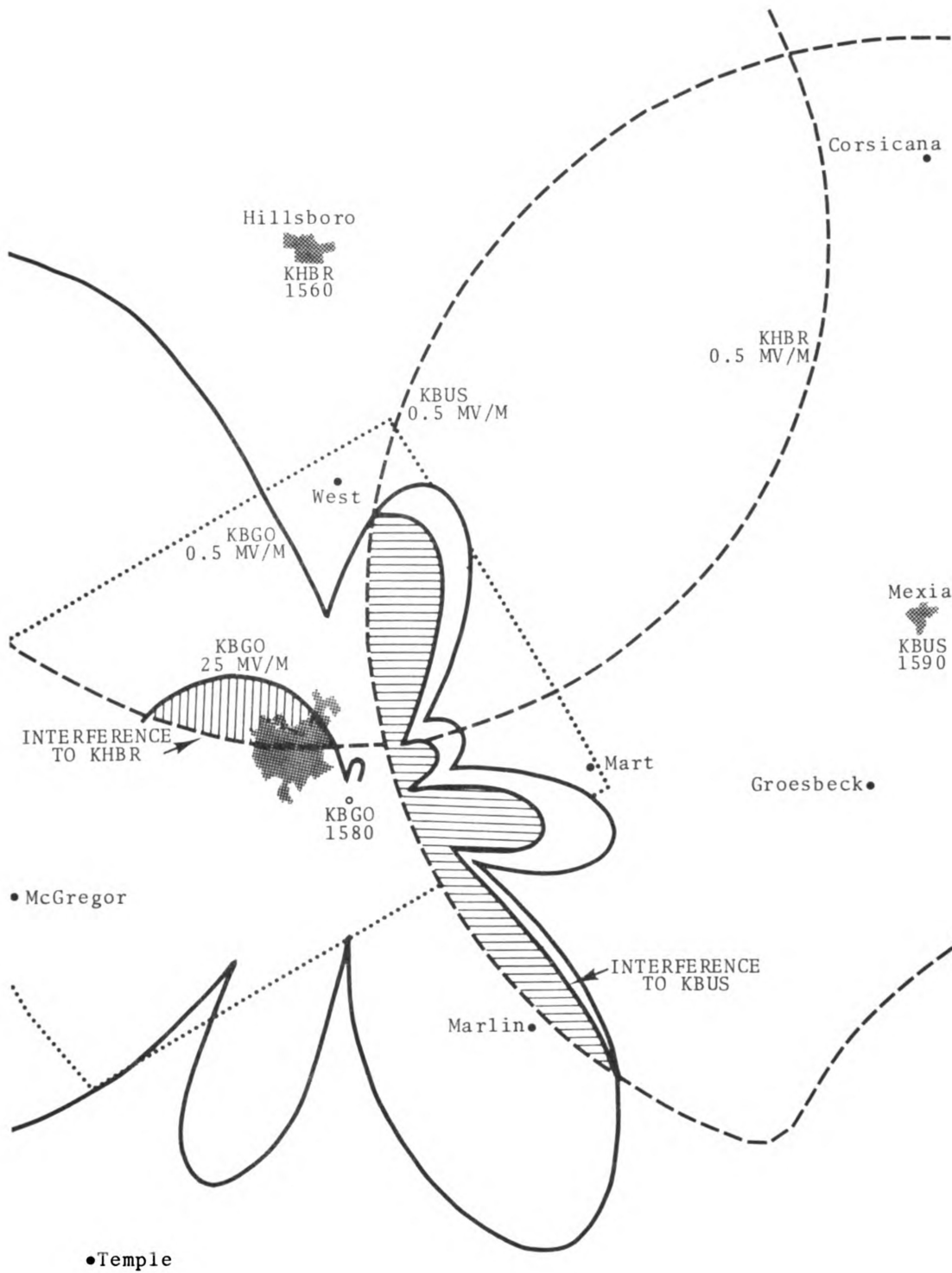


Fig. 7.--Interference to KBUS and KHBR from KBGO<sup>68</sup>

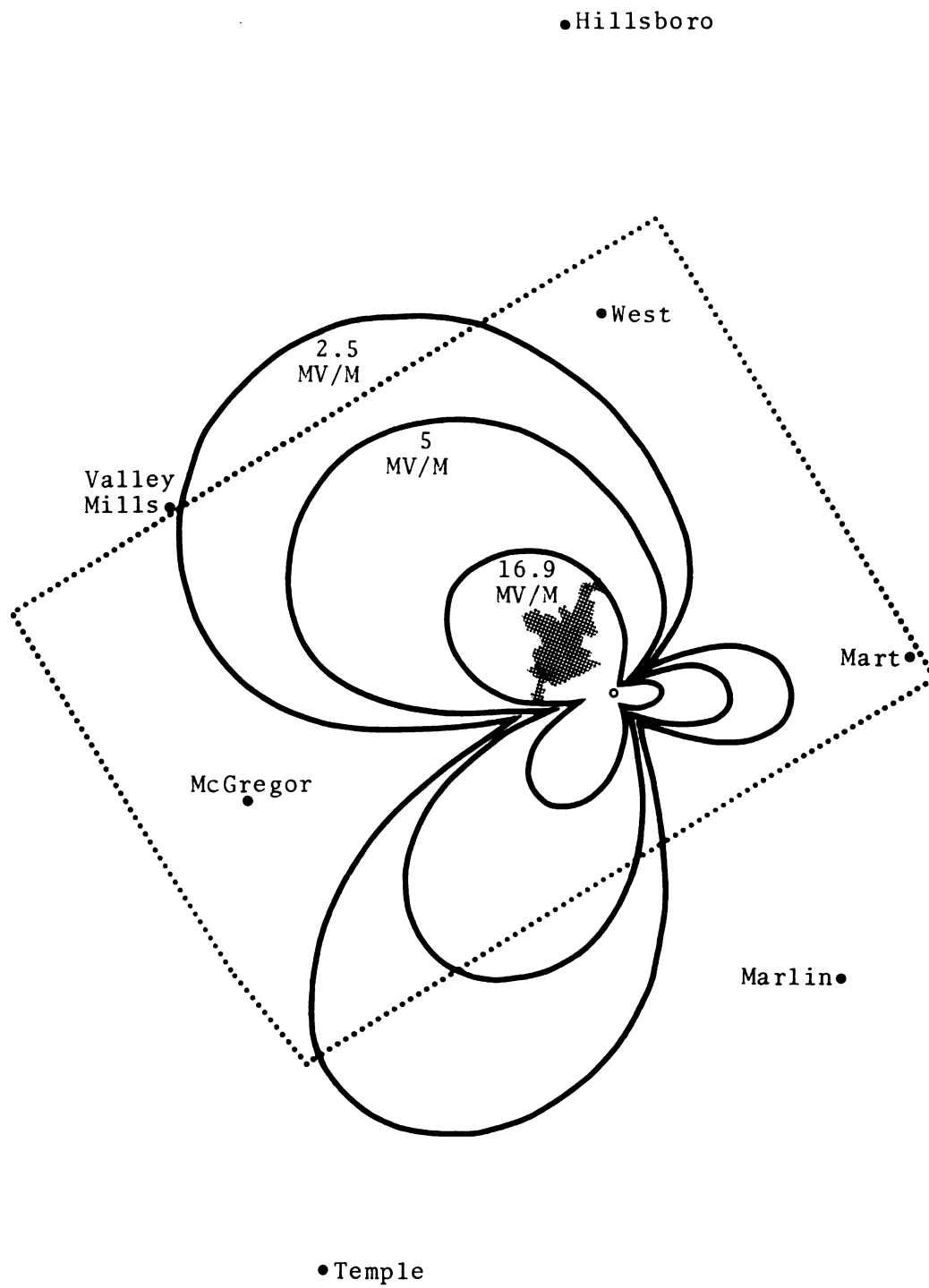


Fig. 8.--Nighttime Service Contours of KBGO<sup>69</sup>

to the channel), XEDM (a fifty-kilowatt class II station in Hermosillo, Sonora, Mexico), and previously authorized KLOU (a one-kilowatt full-time station in Lake Charles, Louisiana).<sup>70</sup> The nighttime interference-free coverage was limited to the 16.9 mv/m contour because of interference from XEDM and KLOU.<sup>71</sup> The contours of the nighttime coverage are illustrated in Figure 8.

#### Programming and Staffing

The application proposed 24-hour operation, except for a four-hour maintenance period early Monday mornings. It proposed programming of 77.3 percent entertainment, 11.19 percent news, 3.57 percent talk, and lesser amounts of discussion, religious, educational, and agricultural programs.<sup>72</sup> The applicant's music policy was stated as follows:

At the present, radio independents are generally following a "Top Thirty" or "Top Forty" format, thus the same musical selections are repeated and duplicated on the various stations. In most instances such record lists are dominantly "rock and roll", or what this applicant calls music with a "primitive beat", completely lacking in quality of lyric, music or presentation. All the music would be carefully screened in an effort to eliminate such abuse of listener's musical senses. Some 40 to 50% of our musical programming would be taken from album selections, with a large percentage of that being made up of show tunes and pop concert type selections. The Waco area is already well covered with "Top Forty" type programming. We feel that there is a community need for a diversified musical programming policy, and that it would receive community commendation.<sup>73</sup>

It was proposed to staff the station initially with 18 or 19 persons. The application specified the following

positions to be filled at the outset:

|                               |                   |
|-------------------------------|-------------------|
| Programming staff:            |                   |
| Program Director              | 1                 |
| Announcers                    | 3                 |
| Newsmen                       | 3                 |
| Copywriter-Announcer          | 1                 |
| Management and Sales Staff:   |                   |
| General Manager               | 1                 |
| Sales Manager                 | 1                 |
| Salesmen                      | 2                 |
| Technical Staff:              |                   |
| Chief Engineer                | 1                 |
| Engineers                     | 3                 |
| Office Staff:                 |                   |
| Traffic Director              | 1                 |
| Bookkeeper                    | 1                 |
| Receptionist-Typist           | 1                 |
| Total Initial Staff Proposed: | 19. <sup>74</sup> |

#### Financing

Construction expenses for the station were estimated to be \$25,956.18, consisting of a transmitter (\$5,571.18), directional antenna system (\$13,250), monitors (\$1,135), studio equipment (\$3,000), and other items (\$3,000). Operating expenses for the first year were estimated to be \$72,000, and first-year revenues of \$110,000 were predicted.<sup>75</sup>

It is obvious from the initial capitalization--only \$40,000--that Audiocasting expected the Waco station to be put on the air with the same success that KJOE had been.

Monroe said:

Audiocasting, Inc., was supposed to be a holding company for Audiocasting of Texas, pure and simple. It was not anticipated that the stockholders would ever have to come up with any extra money. We felt that we could put it on the air out of KJOE's earnings.<sup>76</sup>

Financing for the construction and early operating expenses was to come from the sale of Audiocasting of Texas stock (\$40,000), credit extended by equipment suppliers (\$12,000), and loans from Audiocasting, if needed. To support its loan commitment, Audiocasting submitted statements showing a net worth of \$47,925.91, and net income of \$21,539.84 for its fiscal year ending July 31, 1956, and \$14,622.08 for its year ending July 31, 1957.<sup>77</sup>

#### Audiocasting Problems

While the Waco application had been in preparation, all had not been well in Shreveport. Though Joe Monroe's music-and-personalities format had not been successfully challenged in its first few years, it met an able competitor in 1957. In September 1957 the McLendon chain was assigned the license of KTBS from the Wray group, who reportedly had lost interest in radio since putting a Shreveport television station on the air in 1955.<sup>78</sup>

McLendon changed the station's call letters to KEEL (the television station remained KTBS), and changed KEEL's programming to the same tight, music format he had innovated at KLIF in Dallas--the same format that had inspired Monroe's programming at KJOE.<sup>79</sup> McLendon's full-time operation and expensive promotions could not be matched by daytime KJOE, which soon lost much of its audience. As the audience dropped, profits dropped; and the Audiocasting stockholders began bickering among themselves.<sup>80</sup>

Monroe had wanted to sell KJOE when it was a highly profitable operation--he said Audiocasting had been offered \$180,000 cash for the station--then use the money to buy other stations to build up.<sup>81</sup> However, his idea had been rejected by the other stockholders. Frustrated in his efforts to improve KJOE to a full-time operation or to sell the station (" . . . I felt that we had to do one or the other, or McLendon was going to eventually lick us . . . "),<sup>82</sup> Monroe made an offer he later described:

I left KJOE with a buy-or-sell proposition to the stockholders. I could only offer to buy at a price that I had arranged financing for. If they had said yes, then I would have had to borrow about \$60,000 and buy them out. As a consequence I didn't get nearly what my stock was worth. But by this time I was sick and tired of fighting. I felt like they had given me a bum deal, you know? Because I had operated it successfully financially, and it seemed to me that after three years I had proved I knew what I was doing. I could not understand their not being really willing to continue letting me run it the way I wanted.<sup>83</sup>

Monroe had built up his interest in Audiocasting from one-sixth in 1954 to one-half in mid-1956 through stock options and bonuses provided by his management contract.<sup>84</sup> The property settlement accompanying his divorce from Joyce resulted in her taking an undivided one-half interest in his stock in October 1956, but Joe continued to hold the entire block in his own name.<sup>85</sup> In May 1959 they split the block of stock, then Joe sold his interest and left KJOE.<sup>86</sup>

The situation at KJOE continued to deteriorate with

the Monroes out of station operations. None of the remaining stockholders had any radio experience, and for a time attorney Cady managed the station himself. He described the experience:

I'd come down to the radio station about six o'clock in the morning and play like a station manager until about 8:30 or nine o'clock. And then I'd come to my law office and put on my other hat and be a lawyer until about 4:30 or five o'clock in the evening. And then take off my law hat and put on my radio hat and go back and do that. And I just did that as--you know, I didn't enjoy it--I just did it as a--until we could sell it. I felt if it was a going operation, it would be a lot easier to sell than if it weren't, you know. And that's why I did it.<sup>87</sup>

Finally KJOE was sold for \$100,000 to Armand Kovitz, executive vice-president of the Continental Broadcasters Stations, in November 1959. Audiocasting received \$29,000 cash and a \$71,000, five-year note for the station.<sup>88</sup> Shortly after the sale Audiocasting, Inc., was dissolved.<sup>89</sup>

Joe Monroe thinks he handled the Shreveport situation incorrectly:

I didn't handle it wisely. I didn't handle the stockholders properly. The reason for having control or negative control is so that you can get the people you want on the board of directors. And I didn't exercise my prerogative in that department--in that respect. I let the board get stacked against me.

The only way, really, to be effective, I think, is for one man to--a man who knows the broadcast business to have the power to tell the non-knowledgeable stockholders, "Shut up. We're going to do it my way. This is the way it should be done." And do it that way. Because there are many intricacies in the broadcast business that don't show up on a profit and loss statement. And the average businessman--someone who is not really familiar with the broadcast business--doesn't realize this.<sup>90</sup>



Because of the loss of Joe Monroe and the problems with KJOE, changes had been made in the plan for financing the Waco station. An amendment to the application submitted May 12, 1959, cited loan commitments from five stockholders totaling \$25,000.<sup>91</sup> At a June 25 meeting of the Audiocasting of Texas directors, Milton Burke reported that more than \$6,000 had already been spent on the Waco application.<sup>92</sup>

Part of the additional expenses were incurred responding to an engineering challenge by co-channel KGAF, which had written the Commission in November 1958 to complain that the proposed Waco station would receive interference from KGAF in its normally protected service area.<sup>93</sup> That contention was successfully rebutted by Audiocasting of Texas' consulting engineer; but every Commission filing used more of the capital needed later to put the station on the air.<sup>94</sup>

Notes

<sup>1</sup>"Shreveport," Encyclopedia Americana, 1973, XXIV, 765.

<sup>2</sup>U.S., Department of Commerce, Bureau of Navigation, Radio Service Bulletin, No. 63, July 1, 1922, p. 3. Radio Service Bulletin, No. 77, September 1, 1923, p. 9. Radio Service Bulletin, No. 80, December 1, 1923, p. 8. Radio Service Bulletin, No. 83, March 1, 1924, p. 8. Radio Service Bulletin, No. 92, December 1, 1924, p. 6. Radio Service Bulletin, No. 97, May 1, 1925, p. 9.

<sup>3</sup>Radio Service Bulletin, No. 113, August 31, 1926, p. 5. U.S., Department of Commerce, Radio Division, Commercial and Government Radio Stations of the United States, June 30, 1927, p. 77.

<sup>4</sup>Early records do not clearly distinguish KWKH and WGAQ/KSBA. The description of events given in this text is supported by (1) claims of the present KEEL (formerly KSBA, then KTBS) tracing its history back to 1922, when WGAQ began operations, and (2) the similarity of facilities of WGAQ and KSBA, as listed in Radio Service Bulletins. A literal readings of the Bulletins, however, indicates that WGAQ became KWKH, owned first by Patterson, then by the W.K. Henderson Iron Works & Supply Company; and that Patterson put KSBA on the air as a new station in September 1926. Radio Service Bulletin, No. 113, August 31, 1926, pp. 3 and 5. Radio Service Bulletin, No. 114, September 30, 1926, p. 8. Radio Service Bulletin, No. 144, March 30, 1929, p. 13. Commercial and Government Radio Stations of the United States, 1923-1927 issues. Broadcasting Yearbook, 1971, p. B-92.

<sup>5</sup>Radio Service Bulletin, No. 143, February 28, 1929, p. 12. Radio Service Bulletin, No. 144, March 30, 1929, p. 13.

<sup>6</sup>Census reports, 1850-1970.

<sup>7</sup>Federal Radio Commission, Second Annual Report, p. 178.

<sup>8</sup>Ibid. Commercial and Government Radio Stations of the United States, 1923-1931 issues. Radio Service Bulletin, Nos. 72-183. KRMD history cards, License Division, Broadcast Bureau, FCC. KWEA history cards, License Division, Broadcast Bureau, FCC.

<sup>9</sup>Application of International Broadcasting

Corporation for construction permit, file 3-P-B-3249 (filed June 5, 1934). Application of Radio Station KRMD, Incorporated, for modification of license, file 3-ML-B-1373 (filed June 21, 1934).

<sup>10</sup>KWKH history cards. KEEL (formerly KTBS) history cards, License Division, Broadcast Bureau, FCC. KRMD history cards.

<sup>11</sup>Letter from John C. McCormack to FCC dated April 3, 1936; letter in KTBS ownership file. Staff memorandum to the Commission concerning application of George D. Wray, Allen D. Morris, P.E. Furlow, and John C. McCormack, d/b/a Radio Station KTBS, for assignment of license, file B3-AL-419 (August 1944); mimeo of complete agenda item in KTBS ownership file. Application of International Broadcasting Corporation for transfer of control, file B3-TC-13 (filed April 4, 1935). Application of International Broadcasting Corporation for assignment of license, file 3-AL-B-524 (filed May 29, 1933). FCC ownership reports for KWKH (October 21, 1934, and July 31, 1935).

<sup>12</sup>Order No. 84-A, docket 6165, "Multiple Ownership of Standard and High Frequency Broadcast Stations" (adopted November 23, 1943), 43 Fed. Reg. 18985.

<sup>13</sup>Application of George D. Wray, Allen D. Morris, P.E. Furlow, and John C. McCormack, d/b/a Radio Station KTBS, for assignment of license, file B3-AL-419 (filed May 18, 1944).

<sup>14</sup>Application of International Broadcasting Corporation for modification of special authorization, file B3-MSA-46 (dated January 24, 1939).

<sup>15</sup>KEEL history cards.

<sup>16</sup>Amendment to application of George D. Wray, Allen D. Morris, P.E. Furlow, and John C. McCormack, d/b/a Radio Station KTBS, for construction permit, file B3-P-4720, docket 7598 (application filed April 8, 1946; amendment filed October 31, 1946). See 12 F.C.C. 1088 (1947).

<sup>17</sup>Application of T.B. Lanford, R.M. Dean, Mrs. T.B. Lanford, Sr., and Mrs. R.M. Dean, a partnership d/b as Radio Station KRMD, for construction permit, file BP-5983, docket 8919 (filed February 7, 1947). Amendment to application of Radio Station KRMD for construction permit, file BP-5983 (amendment filed August 26, 1949).

<sup>18</sup>Petition to Dismiss Application without Prejudice of Radio Station KRMD, docket 8919 (petition filed November 1, 1950).

<sup>19</sup>Order, dockets 8543, 8714, and 8919 (November 10, 1950), FCC 50M-1092, FCC Mimeo 56989.

<sup>20</sup>Application of S.A. Chesley tr/as Shreveport Broadcasting Company for construction permit, file BP-8822 (filed March 27, 1953).

<sup>21</sup>Ibid.

<sup>22</sup>KJOE license file, License Division, Broadcast Bureau, FCC.

<sup>23</sup>Kirsch had been interested in putting a station on the air in Shreveport for several years. Unsuccessful in obtaining a construction permit, he became manager of KAPK in nearby Minden, Louisiana. Application of Frequency Broadcasting System, Inc., for construction permit, file BP-5277, docket 8161 (filed September 20, 1946). Telegram from Martin Kirsch, Jr., and others to FCC dated June 2, 1946; telegram in docket 8161 file. Broadcasting-Telecasting Yearbook-Marketbook (Washington: Broadcasting Publications Inc., 1959), p. 159.

<sup>24</sup>Letter from Martin Kirsch, Jr., to Robert D.J. Leahy, FCC, dated February 15, 1954; letter in KJOE license file.

<sup>25</sup>Letter from Harry J. Daly to Martin Kirsch, Jr., dated January 20, 1954; copy in KJOE license file.

<sup>26</sup>Undated memorandum of Martin Kirsch, Jr., summarizing events of December 31, 1953, through February 10, 1954; memorandum in KJOE license file.

<sup>27</sup>Agreement, signed February 5, 1954, by William M. Cady for Audiocasting, Inc., and S.A. Chesley; filed with application of Audiocasting, Inc., for assignment of permit, file BAP-232 (filed February 24, 1954).

<sup>28</sup>Letter from Neville Miller to FCC dated February 5, 1954; letter in KJOE license file.

<sup>29</sup>Joe Cudd Monroe, private interview held at his home, Corpus Christi, Texas, December 1970.

<sup>30</sup>Joe Monroe interview. William M. Cady III, private interview held at his office, Shreveport,

Louisiana, August 1970. Milton P. Burke, private interview held at his office, Shreveport, Louisiana, August 1970.

<sup>31</sup>The original stockholders were Edward Carroll Laster (20.8 percent); Joe Cudd Monroe (16.7 percent); Sinclair B. Kouns (12.5 percent); Frank M. Hardison and Glenn O. Smith (10.4 percent each); William M. Cady III, Robert E. Johnson, Milton Pope Burke, Edward L. Stout, Jr., Robert A. Mitchell, and W.B. Smith, Jr. (4.2 percent each); and David H. Traylor and R.D. Franks (2.1 percent each). Application of Audiocasting, Inc., for assignment of permit, file BAP-232 (filed February 24, 1954).

<sup>32</sup>Application of Audiocasting, Inc., for assignment of permit, file BAP-232 (filed February 24, 1954).

<sup>33</sup>KJOE license file.

<sup>34</sup>Letter from Neville Miller to Bureau of Customs dated April 16, 1954; copy in KJOE license file.

<sup>35</sup>Application of Audiocasting, Inc., for license to cover construction permit, file BL-5401 (filed August 23, 1954). KJOE license file.

<sup>36</sup>Application of Audiocasting, Inc., for license to cover construction permit, file BL-5401 (filed August 23, 1954).

<sup>37</sup>Joe Monroe interview.

<sup>38</sup>Ibid.

<sup>39</sup>Ibid.

<sup>40</sup>Vern Stierman, private interview held in Shreveport, Louisiana, August 1970.

<sup>41</sup>Joe Monroe interview. Vern Stierman interview. See also Decision, dockets 10522, 10523, and 10524 (May 19, 1955), 19 F.C.C. 1014, 10 P&F Radio Reg. 699.

<sup>42</sup>Joe Monroe interview.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid.

<sup>45</sup>Application of Audiocasting, Inc., for construction permit, file BP-12016 (filed May 15, 1958).

<sup>46</sup>Amendment to application of Audiocasting, Inc., for construction permit, file BP-12016 (amendment filed September 4, 1958).

<sup>47</sup>Joe Monroe interview.

<sup>48</sup>KJOE license file.

<sup>49</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851, docket 12876 (filed February 10, 1958), Exhibit Nos. II and IIA.

<sup>50</sup>Joyce Lane Monroe, private interview held at her office at WBJW, Orlando, Florida, May 30, 1972. Joe Monroe interview. Vern Stierman interview.

<sup>51</sup>Joe Monroe interview. Milton Burke interview. William Cady interview.

<sup>52</sup>Joe Monroe interview.

<sup>53</sup>Joe Monroe interview. Milton Burke interview. William Cady interview.

<sup>54</sup>Ralph J. Bitzer, private interview held at his office, St. Louis, Missouri, March 1972.

<sup>55</sup>Joe Monroe interview. Milton Burke interview.

<sup>56</sup>Joe Monroe interview. Milton Burke interview.

<sup>57</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit No. II, p. 5. Joe Monroe interview.

<sup>58</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit No. II, p. 5.

<sup>59</sup>Letter from Harold Clark to this writer dated June 2, 1970. William Cady interview.

<sup>60</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit No. I.

<sup>61</sup>Minutes of First Meeting of Incorporators of Audiocasting of Texas, Inc. (October 15, 1957); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>62</sup>Minutes of Meeting of Board of Directors of Audiocasting of Texas, Inc. (October 16, 1957); minutes in

corporate record book of Audiocasting of Texas, Inc.

<sup>63</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958). Letter from FCC to Miller & Schroeder dated January 17, 1958; copy in KBGO license file.

<sup>64</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit E, p. 3.

<sup>65</sup>Ibid., Exhibit E, Table 1.

<sup>66</sup>Broadcasting Yearbook, all issues from 1947 through 1961-1962.

<sup>67</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit E, "Base Map Showing the Outlying Daytime Service and Interference Contours."

<sup>68</sup>"Engineering for Audiocasting of Texas, Inc.," Exhibit 1 of Audiocasting of Texas, Inc., dockets 12876 and 12877 (submitted September 18, 1959), "Base Map Showing the Interference to KHBR at Hillsboro, Texas and KBUS at Mexia, Texas."

<sup>69</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit E, "Base Map Showing the Outlying Nighttime Service Contours."

<sup>70</sup>Ibid., Exhibit E, pp. 3-4. See also Figure 5.

<sup>71</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit E, p. 3.

<sup>72</sup>Ibid., Section IV, p. 1.

<sup>73</sup>Ibid., Exhibit No. VII, "Statement of Policy," p. 1.

<sup>74</sup>Ibid., Exhibit No. X, "General Plans for Staffing Station."

<sup>75</sup>Ibid., Section III.

<sup>76</sup>Joe Monroe interview.

<sup>77</sup>Application of Audiocasting of Texas, Inc., for

construction permit, file BP-11851 (filed February 10, 1958); Section III; Exhibit No. II, "Statement of Control of Applicant Corporation by Parent Corporation"; and Exhibit No. VI, "Statement of Funds, Property, Etc., to be Furnished by Corporation Connected with Applicant." Amendment to application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (amendment submitted May 12, 1959).

<sup>78</sup>Application of Foster & Associates, Inc., for assignment of license, file BAL-2770 (filed August 20, 1957). Joe Monroe interview.

<sup>79</sup>KEEL license file. Joe Monroe interview. Vern Stierman interview.

<sup>80</sup>Joe Monroe interview. Milton Burke interview. William Cady interview.

<sup>81</sup>Joe Monroe interview. William Cady later said that KJOE had been worth " . . . in excess of \$162,000 . . . ." Record, dockets 12876 and 12877, applications of Audiocasting of Texas, Inc., and Horace K. Jackson, Sr., for construction permits, at 64. (Hereinafter referred to as Record.)

<sup>82</sup>Joe Monroe interview.

<sup>83</sup>Ibid.

<sup>84</sup>Application of Audiocasting, Inc., for assignment of permit, file BAP-232 (filed February 24, 1954), Exhibit I. Application of Audiocasting, Inc., for transfer of control, file BTC-2671 (filed November 26, 1957).

<sup>85</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Exhibit No. II. See also p. 65, above.

<sup>86</sup>Application of Audiocasting, Inc., for transfer of control, file BTC-3130 (filed May 15, 1959). Joe Monroe interview.

<sup>87</sup>William Cady interview.

<sup>88</sup>Application of Armand Kovitz for assignment of license, file BAL-3666 (filed October 8, 1959).

<sup>89</sup>Record, at 126.

<sup>90</sup>Joe Monroe interview.



<sup>91</sup>Amendment to application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (amendment submitted May 12, 1959).

<sup>92</sup>Minutes of Special Meeting of Stockholders of Audiocasting of Texas, Inc. (June 25, 1959); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>93</sup>Letter from Joe M. Leonard, Jr., to FCC dated November 21, 1958; letter in docket 12876 file.

<sup>94</sup>Letter from Ralph J. Bitzer to FCC dated May 5, 1959; letter in docket 12876 file. Letter from FCC to Gainesville Broadcasting Company, Inc., dated May 26, 1959; copy in docket 12876 file.

## CHAPTER V

### THE JACKSON APPLICATION

On November 12, 1958, Horace K. Jackson, Sr., filed the third application for a new standard broadcast station to operate in central Texas on 1580 kHz. His proposed station would serve Gatesville with 250 watts, daytime only.<sup>1</sup>

Jackson was born in Sunset, Texas, on September 2, 1899. He attended Baylor University for four years beginning in 1917, and was at Camp MacArthur (at Waco) for a time during World War I.<sup>2</sup> Jackson moved to Gatesville in 1936. Although his principal business at the time he filed his application was insurance--he was owner and operator of a general insurance agency in Gatesville--he was also stockholder and president of the Gatesville Savings and Loan Association, stockholder and director of the Guaranty Bank and Trust Company of Gatesville, stockholder in the National Bank of Gatesville, and stockholder in the Citizens National Bank and the Citizens Company, both of Waco.<sup>3</sup> In civic pursuits, Jackson was a long-time (since 1944) member of the Board of Trustees of Baylor University, a member of the Executive Committee of that board, and

chairman of the Advisory Committee on Athletics of the board.<sup>4</sup>

In the fall of 1957 Jackson approached A.W. Stewart, a consulting engineer in Brownwood, Texas, to discuss the possibility of establishing a radio service in Gatesville. Stewart performed a frequency search and suggested the 1580 kHz channel.<sup>5</sup>

Jackson later said:

. . . when I first started thinking about [the feasibility of a station in Gatesville] in the survey that we made, at that time it did not look like there would probably be too much in Gatesville. And then when the information came which was authentic in the formative stage of planning of the expansion of Fort Hood, then it seemed to me that it would be profitable operation and an operation that might be of much benefit to the community should Fort Hood develop like at the time it looked that it would.<sup>6</sup>

One writer, discussing the impact of military installations in Texas, said:

The coming of industry and military installations--plus the woes of the small farm--has wrought big changes in rural Texas.

A good example of this is Killeen, the site of Fort Hood, a permanent military establishment. Before the coming of the fort, Killeen was an inconsequential little town in the vicinity of the Texas heart. Well, almost overnight, it surged into a clean, ambitious and enterprising city of around fifteen thousand population, while some other small towns in the region kept dwindling.<sup>7</sup>

The growth of Killeen is summarized in Table 6 (it should be compared with Table 4, on page 52 above, which shows the growth of Gatesville). In July 1955 standard broadcast station KLEN went on the air in Killeen with 250

watts, daytime only, on 1050 kHz.<sup>8</sup> It proved to be a prosperous station, and Jackson must have felt that the proposed development of Fort Hood near Gatesville offered a similar opportunity for broadcast success.

TABLE 6

POPULATION OF KILLEEN<sup>9</sup>

| Year | Population |
|------|------------|
| 1900 | 780        |
| 1910 | 1,265      |
| 1920 | 1,298      |
| 1930 | 1,260      |
| 1940 | 1,263      |
| 1950 | 7,045      |
| 1960 | 23,377     |
| 1970 | 35,507     |

Although Jackson had no experience in broadcasting, he decided to apply for a construction permit. With Stewart's help he prepared and filed the application.<sup>10</sup>

At that time the development of Fort Hood was still a strong possibility:

At the time I made application for the station in Gatesville, it looked like from all reports, through the development at Fort Hood, that there was going to be considerable development at North Fort Hood, that being the north part of the military installation which is adjacent to Gatesville. And had that gone through, Gatesville, in all probability, would have been made a town of 15,000 to 20,000 or 25,000 people. And under those conditions, I felt that a radio station in Gatesville would be something that would be of a material interest to me and at the same time would be a service that would be needed by that local community.<sup>11</sup>

The station was to be owned solely by Jackson. His balance sheet showed a net worth of \$199,000, of which

\$40,000 was in cash. His net income after taxes had been about \$15,000 in both 1956 and 1957. He proposed to capitalize the station with \$40,000.<sup>12</sup>

Construction costs were estimated at \$17,487.73; estimated first-year expenses were \$25,000 and revenues were \$33,000.<sup>13</sup> The station was to operate an average of 85.5 hours a week with eight employees: a manager, a secretary, two salesmen, a program director-announcer, two announcer-engineers, and a chief engineer.<sup>14</sup> The proposed program schedule was 59.0 percent entertainment, 29.6 percent news, 3.5 percent religious, 3.2 percent talks, and smaller percentages of educational, agricultural, and discussion programs.<sup>15</sup>

The proposed operation would receive interference from KWED, Seguin, in 9.6 percent of its coverage area, affecting 18.6 percent of the population within its normally protected service area (see Figure 9). Therefore, Jackson requested a waiver of section 3.28(c) of the Commission's rules. The proposal would cause no interference to existing stations.<sup>16</sup>

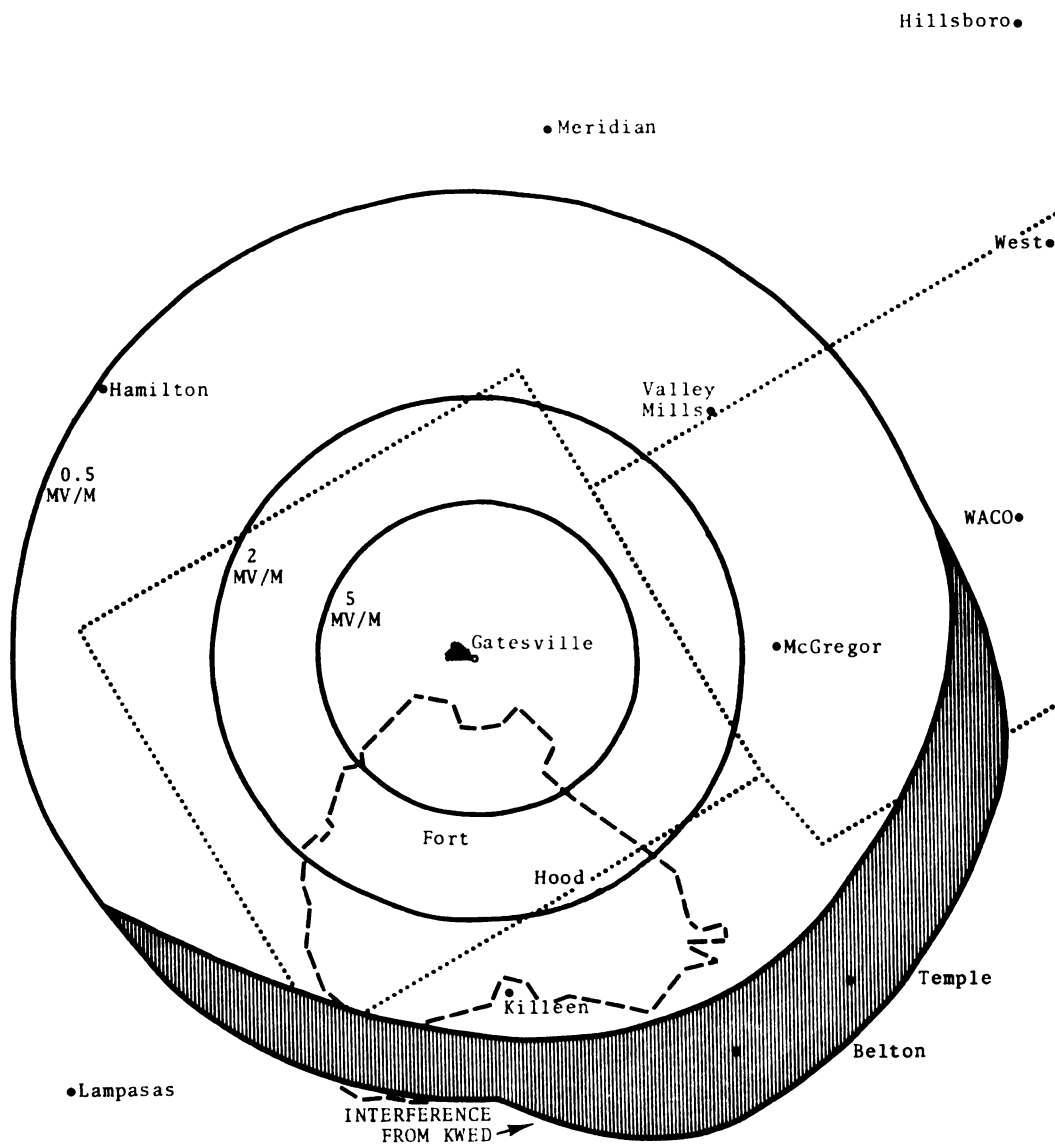


Fig. 9.--Service Contours of Proposed Gatesville Station<sup>17</sup>

Notes

<sup>1</sup>Application of Horace K. Jackson, Sr., for construction permit, file BP-12550, docket 12877 (filed November 12, 1958).

<sup>2</sup>Record, at 30 and 42.

<sup>3</sup>Ibid., at 23-24.

<sup>4</sup>Ibid., at 24.

<sup>5</sup>Ibid., at 32 and 34.

<sup>6</sup>Ibid., at 32-33.

<sup>7</sup>Lewis Nordyke, The Truth About Texas (New York: Thomas Y. Crowell Company, 1957), pp. 227-228.

<sup>8</sup>KIXS (formerly KLEN) license file, License Division, Broadcast Bureau, FCC. A.W. Stewart, Jackson's engineer, was a one-third partner in the KLEN application, but became half-owner of KLEN in 1959 and sole owner in 1964. Previously he had been chief engineer at Wendell Mayes' Brownwood station, KBWD. Application of W.A. Lee, A.W. Stewart, Franklin T. Wilson d/b as Highlite Broadcasting Company for construction permit, file BP-8288 (filed October 25, 1951). Application of Highlite Broadcasting Company for transfer of control, file BTC-3251 (filed September 28, 1959). Application of Highlite Broadcasting Company for transfer of control, file BTC-4527 (filed March 17, 1964).

<sup>9</sup>Census reports, 1900-1970.

<sup>10</sup>Record, at 36.

<sup>11</sup>Ibid., at 27.

<sup>12</sup>Application of Horace K. Jackson, Sr., for construction permit, file BP-12550 (filed November 12, 1958), Section III and Exhibit I.

<sup>13</sup>Ibid., Section III.

<sup>14</sup>Ibid., Section IV, p. 3.

<sup>15</sup>Ibid., Section IV, p. 1.

<sup>16</sup>Ibid., engineering exhibits 5 and 6.

<sup>17</sup>Ibid., Exhibit E-3.

PART III

HEARING AND MERGER



## CHAPTER VI

### MERGER ATTEMPTED

#### Designation for Hearing

On March 10, 1959, the Commission advised the three applicants (Cahill, Audiocasting of Texas, and Jackson) of deficiencies in their applications (interference in all three cases and an inadequate financial showing in the Audiocasting of Texas application), and advised them that, "Because these proposals involve mutual interference, it appears that they must be designated for hearing in a consolidated proceeding to determine which should be granted."<sup>1</sup>

Applicant Cahill first indicated his intention to prosecute his application, then on April 13 requested that it be dismissed.<sup>2</sup> On April 16 his application was dismissed without prejudice, as he requested.<sup>3</sup>

On May 27, 1959, the Commission ordered the remaining applications of Audiocasting of Texas (hereinafter referred to as Audiocasting) and Jackson designated for hearing.<sup>4</sup> It had determined that both applicants were legally, technically, and (with some reservations) financially qualified to receive construction permits. The hearing

would be held:

1. To determine the areas and populations which may be expected to receive primary service from the operation of each of the instant proposals and the availability of other primary service to such areas and populations.
2. To determine whether the proposal of Audiocasting of Texas, Inc. would cause objectionable interference to Stations KBUS and KHBR, Mexia and Hillsboro, Texas, respectively, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected and the availability of other primary service to such areas and populations.
3. To determine whether interference received by the proposal of Audiocasting of Texas, Inc. from the existing operation of Station KGAF, Gainesville, Texas, and by the proposal of Horace K. Jackson, Sr. from the existing operation of Station KWED, Seguin, Texas would affect more than ten percent of the population within their respective normally protected contours, in contravention of Section 3.28(c) of the Commission's Rules and, if so, whether circumstances exist which would warrant a waiver of said section.
4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.<sup>5</sup>

Because of interference questions raised with regard to the Audiocasting proposal, both KBUS and KHBR were made parties to the proceeding. With respect to the Audiocasting application, the Commission also ordered:

. . . That the issues in this proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue.

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.<sup>6</sup>

The principal issue to be determined was the fourth:

which of the proposals " . . . would better provide a fair, efficient and equitable distribution of radio service."

Section 307(b) of the Communications Act states:

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall 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.<sup>7</sup>

The hearing would not be a comparative hearing in the ordinary sense, but a comparative allocation hearing. If Jackson continued to prosecute his application for a first radio service to his community, he would almost certainly be preferred by the Commission.

#### Merger Planned

On June 24, 1959, Audiocasting's communications counsel, Neville Miller, wrote William Cady concerning the outlook for their Waco application. The letter, in its entirety, said:

As requested, we enclose a photostatic copy of the Jackson application, excluding the engineering and technical exhibits. He has retained Smith and Pepper, Washington counsel, to represent him, and evidently is serious about going ahead with the hearing. His application is reasonably well put together and he apparently has sufficient funds so he presents a very formidable opposition.

The hearing is scheduled to start July 27th but will probably go over until early fall. However, decision regarding the hearing should be made at once because if you plan to go ahead with the hearing it will take considerable time to properly prepare for the hearing.

Under date of June 8th, we sent you a copy of the issues and you will notice that the hearing will not be

a comparative hearing between the two applications because of the 307(b) issue, which considers only the need for service and it is almost impossible to beat an application for a town without a station. The issues raise only engineering questions which are primarily three:

- 1) Interference caused by Audiocasting to KBUS and KHBR, both of which stations are made parties;
- 2) Interference received by Audiocasting and by Jackson and whether it would violate the 10% rule;

due to the fact that Jackson has an application for Gatesville which does not now have a station the Commission might very easily waive a violation of the 10% rule unless it was very severe, but it would not waive the 10% rule in our case, since Waco has two stations.

- 3) The 307(b) issue regarding fair, efficient and equitable distribution of service.

As I have stated above, since Gatesville has no station and Waco has two stations, it is practically impossible to defeat the Jackson application on this issue.

In my letter of April 20th, I stated I could not encourage you in regard to the hearing. However, when we last discussed the case on the phone, you indicated that your stockholders felt that they had already invested considerable funds and were interested in giving further thought to the case before coming to a decision. I can realize their views but think it only fair to point out the danger of spending considerably additional funds in a hearing when the chances are so heavily against you.

I have again reviewed the issues and I regard the case as a most difficult case and due to the recent Court decision in the Slaton case, I do not see how it would be possible to prove a greater need in Waco, even though Waco has approximately 90,000 people as compared to Gatesville with only 4,000. The presumption of need is in favor of the town without a station and the proof must be by the applicant for a station in a town with a station, and that proof is long, difficult and expensive and I do not believe as far as I know has ever been successful.

I do not know if there is any possibility of persuading Jackson to drop his application. Under the Commission rules, you can pay him his costs to date but you cannot give him a premium. However, he might be interested in becoming a stockholder in your station. That is a point worth considering and if you have any way to approach him, it might be worthwhile talking

with him. No doubt the local Waco stations may have encouraged him so as to prevent further competition but proving any improper conduct on the part of the local stations is again something that is very difficult.

To get some idea of the cost of a hearing, you might want to check with Ralph Bitzer regarding the probable size of his fee for preparing the engineering and testifying. Also, he might give you an idea as to the violation of the 10% rule by Jackson and also the violation of the 10% rule by your own application.

It is hard to estimate the cost of a hearing but I can see how it can easily run at least \$10,000 and might be more, and certainly you don't want to get into it unless you are prepared to go all the way through. I think you want to give serious consideration to going into a costly hearing when the odds are so heavily against you as they are in this hearing.

I hate to give you a discouraging picture but from my experience in cases of this sort, I think you should realize the facts and the difficulties in such a case.

It might be worthwhile for you to come up here for a day so we could review the case before you make your final decision. Think the whole matter over and if you want to, give me a call on the phone.<sup>8</sup>

As secretary of Audiocasting, Cady immediately called stockholders' and directors' meetings to consider the future of their application. On June 25 Burke, Cady, Hardison, Laster, and Mitchell met in Cady's office in Shreveport. The five elected themselves to the board of directors; then elected Burke president, Smith vice-president, Laster treasurer, and Cady secretary. Burke reported expenses of over \$6,000 in connection with the application to that date.<sup>9</sup>

Cady then read Neville Miller's gloomy letter of the day before, and an agenda memorandum he (Cady) had prepared for the meeting. Part of the memorandum said:

2. A Board of Directors meeting of the Audiocasting of Texas, Inc., should then be held for the following

purposes:

- (a) To elect officers of the corporation;
- (b) To determine whether or not to proceed with the captioned application;
- (c) To formulate, approve, and authorize the officers to implement alternative procedures, such as:
  - (1) Offering to buy out Horace K. Jackson, Sr.'s Gatesville application for the cost which he has already expended.
  - (2) Offering to buy out Jackson on the same basis and offering to sell him a certain percentage of stock in Audiocasting of Texas, Inc., after determining the purpose and seriousness of his application.

The following points might be advanced to encourage Mr. Jackson to sell:

- (a) That the Waco station would cover Gatesville and other areas with 1000 watts daytime and would offer nighttime coverage and, therefore, in the event he intends to promote his insurance company with the station, we might offer to promote it on an even wider basis.
- (b) We might give him some official capacity in the corporation if he is interested in prestige and this might be of more value to him since it is a larger station (like calling it the Horace K. Jackson station of Waco).
- (c) It can be demonstrated to Jackson that stations in small communities have just as many headaches as stations in large communities and they are not nearly so profitable, therefore, he may prefer to have a minority interest in a paying station rather than total ownership of a losing one. The converse is true as to Audiocasting.
- (d) As he is not basically a radio man and there are a myriad of problems which are peculiar to the industry, and Audiocasting has experienced and dealt with these problems in the past (tho they remain unsolved).
- (e) We may be able to offer to find another frequency for him in Gatesville at a later date and aid and abet him in an application for such frequency.
- (f) In the event we take Mr. Jackson to a hearing, he will be faced with an additional expenditure of several thousand dollars and this expenditure might be obviated by joining us.

3. Reasons why offering Jackson some of the Waco station might be profitable to Audiocasting:

- (a) The chances of Audiocasting of Texas being a successful applicant in Waco are practically nil.
- (b) We have already reserved 20% of the stock for sale to local citizens and Mr. Jackson is practically local.
- (c) Jackson would pay the same par value for his stock as Audiocasting would pay for its stock in the Texas corporation. (It might be pointed out that Mr. Jackson's balance sheet showing approximately \$200,000 net worth, \$40,000 of which is cash, can better afford such stock than Audiocasting can.)
- (d) It might be beneficial to the Texas corporation to have a man of the apparent caliber of Mr. Jackson close at hand to lend prestige, to deal with emergencies as a personal representative, and to offset the effect which "radio people" will have on the community.<sup>10</sup>

The matter was discussed, and minutes of the meeting record that:

Pursuant to the recommendations contained in the agenda and in Mr. Miller's letter, the Board authorized Mr. Burke, Mr. Cady and/or Mr. Laster, to arrange, through our Texas attorney, Mr. Harold Clark, a meeting with Horace K. Jackson, Sr., to discuss the possibility of persuading Mr. Jackson to drop his Gatesville application and sell him a percent of the stock in Audiocasting of Texas, Inc., at par value.

The Board authorized such negotiations but it was stipulated that the negotiators would report back to the Board for ratification of their negotiations. Mr. Cady was instructed to call Mr. Clark to arrange the conference and to write Mr. Miller to advise him of our progress toward making a decision as to whether to take the application to a hearing.<sup>11</sup>

#### Merger Arranged

After Waco attorney Clark found Jackson receptive to a merger (they were acquainted before this contact), Burke and Clark went to Gatesville to negotiate the details in early July 1959.<sup>12</sup> Jackson described the conference:

They [came] to my office and discussed the fact that we

were both applying for the same frequency, and that there might be some way we could work out whereby there would not be a conflict there, where we would take a long process of working it out, and that if I would be interested in a merger with them.<sup>13</sup>

Burke first proposed that Jackson subscribe for 20 percent of the Audiocasting stock, to be paid for in cash.<sup>14</sup> In addition Jackson was to perform for Audiocasting:

. . . administrative duties, public relations, assistance in financing the project. My knowledge of business in Waco, the connections that I have with many of the business concerns in Waco will place me in a position where I can render a service to the station.<sup>15</sup>

Jackson made a counterproposal that he receive a 25 percent interest in Audiocasting. He proposed that he receive 250 shares as reimbursement for his application expenses (later listed as \$2,530.50), and 750 shares as payment for the duties he would perform. He proposed to receive the "salary" stock in advance of the services performed, 375 shares upon grant of the application and 375 shares a year later.<sup>16</sup>

According to later testimony, it was not suggested that Jackson simply be paid off to drop his application; all the discussions concerned taking Jackson into Audiocasting as a stockholder.<sup>17</sup>

Burke returned to Shreveport with Jackson's counterproposal. There was no formal meeting of the Shreveport people, but a week or ten days after the meeting with Jackson, Audiocasting accepted Jackson's offer.<sup>18</sup>



At a prehearing conference on July 27, counsel for the applicants advised Hearing Examiner Thomas H. Donahue that they were " . . . looking toward a resolution of the conflict . . . " between the two applications that would leave the proceeding with only one application.<sup>19</sup>

A contract setting out terms of the merger agreement was prepared in late August, and it was signed on September 5.<sup>20</sup> Audiocasting submitted the contract and a petition to amend its application to reflect the proposed merger on September 16. The contract contained the following substantive terms:

1. Upon dismissal by the COMMISSION of JACKSON's pending application for a new standard broadcast station in Gatesville, Texas, CORPORATION will immediately thereafter issue to JACKSON two hundred and fifty (250) shares of the authorized and unissued common shares of the CORPORATION with a par value of \$10.00 per share in partial reimbursement of his expenses to date in prosecuting his application for Gatesville, Texas.

2. CORPORATION will employ JACKSON and JACKSON will act as supervisor of the affairs of the CORPORATION in Waco, Texas, for a period of two (2) years from the date of grant of CORPORATION'S application for a new standard broadcast station in Waco, Texas. In the event that CORPORATION'S application is not granted by the COMMISSION, the parties agree that this contract is of no force and effect. JACKSON will devote eight (8) hours, or approximately one working day per week to the business of the CORPORATION; he will provide financial and programming advice; and he will assist in obtaining advertising contracts and developing good will for the CORPORATION.

3. JACKSON shall be entitled by way of remuneration for his services to the CORPORATION to an annual salary of three thousand, seven hundred and fifty dollars (\$3,750.00) and this shall be paid to him in advance each year in the form of authorized and unsubscribed common stock of CORPORATION, three hundred and seventy five (375) shares to be issued by

CORPORATION to JACKSON on the date that CORPORATION'S application for a new standard broadcast station in Waco, Texas, is granted and three hundred and seventy five (375) shares to be issued on the day one year later, or the first business day thereafter.

4. CORPORATION agrees that it will take no action or cause no action to be taken to increase the number of shares of its authorized capital stock without the consent of JACKSON until the issuance to JACKSON of shares as provided for in Paragraph 1 of this AGREEMENT. After issuance of the shares as provided for in Paragraph 1, CORPORATION agrees that it will take no action or cause no action to be taken which would prevent JACKSON from becoming a twenty five percent (25%) stockholder in the CORPORATION upon completion of issuance of CORPORATION'S shares as provided for in Paragraph 1 and 3 of this AGREEMENT. It is further agreed that thereafter both of CORPORATION'S shareholders will have continuous and cumulative preemptive rights to purchase the stock of CORPORATION on a pro rata basis for the life of CORPORATION.<sup>21</sup>

#### The Hearings

The first hearing date was September 18, 1959. No witnesses were heard, but Audiocasting presented engineering exhibits detailing the extent of interference to be received and caused by the Waco station, and listing other broadcast services available within the interference-free contours of the proposed station.<sup>22</sup> (These exhibits were required in response to hearing issues 1, 2, and 3; see page 96, above.)

In addition, Jackson submitted an itemized statement of expenses he had incurred in connection with his Gatesville application. It listed the following expenses:

|                         |                           |
|-------------------------|---------------------------|
| Local Attorney          | \$ 250.00                 |
| Communications Attorney | 680.00                    |
| Engineer                | 1,468.00                  |
| Personal Expenses       | 132.50                    |
| Total Expenses          | \$ 2,530.50 <sup>23</sup> |

The only other occurrence at that day's hearing session was an indication by the Broadcast Bureau's counsel that the Bureau desired more information about the proposed merger.<sup>24</sup> Section 1.363(c) of the Commission's rules required that the hearing examiner determine whether the merger agreement was in the public interest. The pertinent portions of section 1.363 provided as follows:

Retention of applications in hearing status after designation for hearing. (a) After an application for a broadcast facility is designated for hearing, it will be retained in hearing status upon the dismissal or amendment and removal from hearing of any other application or applications with which it has been consolidated for hearing.

(b) Where the applicants in a consolidated hearing for a broadcast facility by option, merger, or like arrangement effect a consolidation of their respective interests, the application which is to be prosecuted should be amended to reflect the arrangements between or among the applicants, and as amended will be retained in hearing along with the other applications, which will be dismissed by the hearing examiner's initial decision.

(c) In all cases arising under paragraphs (a) and (b) of this section, the hearing examiner will consider in the initial decision the issue of whether a grant of the remaining application or applications to be prosecuted would be in the public interest in light of the arrangement whereunder the parties effected a consolidation of their respective interests or the competing applications were either dismissed or amended and removed from hearing.<sup>25</sup>

The hearing was resumed on November 20, when Jackson, Burke, and Cady went to testify in support of the merger.

Jackson said that his original enthusiasm for a Gatesville station had been cooled by news that the anticipated development of North Fort Hood would not take place, but that he would have continued to prosecute his

application through a hearing had the merger not been arranged.<sup>26</sup>

He was questioned by the Broadcast Bureau counsel and by the hearing examiner about the availability of frequencies other than 1580 kHz at the time he prepared his application, apparently to discover whether the frequency applied for might have been chosen to block the Waco application; but Jackson testified that his engineer had never mentioned the possibility of other frequencies.<sup>27</sup>

Both Jackson and Burke were closely questioned about negotiations leading to the merger agreement, and about the agreement itself. Broadcast Bureau counsel suggested that Jackson might in fact be receiving considerably more than his legitimate application expenses, since Audiocasting's application projected a first-year operating profit of \$38,000.<sup>28</sup> Neville Miller pointed out, though, that " . . . the station may also not make as great a success as they anticipate." <sup>29</sup>

Cady explained the reason Audiocasting had set aside 25 percent of the stock for sale in the Waco area by mentioning the recent trouble at KJOE:

In our operations in Louisiana, of Audiocasting, Inc., the parent corporation, we have found that the professional management and the ownership, that their views do not always necessarily coincide, nor are they always coincidental. And we feel that ownership--resident ownership is important.

We have had a series of transient managers, and the value of our station in Shreveport deteriorated in a short time from a value in excess of \$162,000 to

\$100,000, I would say. And that is why I say our projected values, our projected figures for profit and net profit are tied in to a--to management, and to a continuity of good, sound management. And we do not think that continuity can be maintained by absentee owners. And we have had it very vividly demonstrated to us.<sup>30</sup>

No other witnesses were heard, and at the conclusion of the session the hearing record was closed. The Broadcast Bureau filed proposed findings of fact and conclusions on January 19, 1960, and Audiocasting filed its findings and conclusions the next day. Both proposed similar findings and conclusions.<sup>31</sup>

With respect to the engineering issues, both found that KGAF would cause no interference to the Waco station, and that while interference would be received from KWED and KBUS within more than ten percent of the area of the normally protected contour, less than ten percent of the population within the contour would receive interference. Both concluded, therefore, that section 3.28(c) of the rules was satisfied.<sup>32</sup>

Both also found that, while the Waco proposal would cause interference to parts of the KBUS and KHBR service areas, the need for the new service outweighed the need for the service that would be lost. They noted that the interference areas were relatively small and far-removed from KBUS and KHBR, that the new Waco service would be added where the KBUS and KHBR service would be lost, and that there were between 13 and 17 other stations that served the

interference areas.<sup>33</sup>

With respect to the proposed merger, both Audio-casting and the Broadcast Bureau found the agreement proper. The Broadcast Bureau discussed the matter at some length. It noted first that the Commission had said it was unwilling to permit the use of its hearing procedures " . . . as a device for enabling one party to a proceeding, who admittedly has no further interest in the proceeding, to exact moneys from another party as the price for the former's withdrawal." (The quotation was drawn from the case of Four States Broadcasters, Inc., 12 F.C.C. 271, 3 P&F Radio Reg. 1545 (1947).) It observed, though, that such a situation did not seem to be the case since Jackson stated he would have proceeded with his application had the merger not been worked out.<sup>34</sup>

The Bureau went on to note that in the 1953 case of John Poole Broadcasting Co., 17 F.C.C. 915, 9 P&F Radio Reg. 547, and in many subsequent cases, the Commission had approved dismissals where the consideration paid the dismissing applicant did not exceed his out-of-pocket expenses. While it hinted that the stock compensation for Jackson's employment at least raised questions of his receiving more than out-of-pocket expenses, it said that " . . . in the light of Jackson's contacts and standing in Waco we do not believe it can clearly be said that he is being compensated to an unreasonable extent by Audiocasting

or that the latter will not realize benefits from his services commensurate with the amount of compensation."<sup>35</sup>

Both Audiocasting and the Broadcast Bureau recommended acceptance of the merger amendment filed the previous fall, and grant of the application.<sup>36</sup>

#### The Initial Decision

Hearing Examiner Donahue's Initial Decision was made on April 6. It paralleled the proposed findings and conclusions of Audiocasting and the Broadcast Bureau in finding that there were no interference problems serious enough to impede grant of the application.

With respect to the merger agreement, however, it sharply disagreed with the parties to the hearing:

4. With the proposed "drop-out" of Jackson, issue 4 is rendered moot but, as previously noted, Section 1.363 of the Commission's rules . . . acts to insert an issue seeking determination of whether in light of the circumstances under which the proposed merger was effected, the public interest will be served by grant of the Audiocasting application. The Examiner concludes affirmatively for the applicant on this issue on the basis of a considerable body of Commission precedent pointing to that conclusion, see Peninsula Broadcasting Corp., 18 RR 781; Cherry & Webb Broadcasting Co., 11 RR 859, 14 RR 891; The Enterprise Co., 17 RR 48, 19 RR 67. It should be made clear, however, that the conclusion is arrived at in the firm belief that the Commission has no policy that would preclude approval of merger arrangements when a proposed "mergee" is to receive in excess of out-of-pocket expenses for dismissal of a competing application. One has only to realistically appraise the facts here to appreciate that Jackson is going to get a good deal more than his out-of-pocket expenses for dismissing his application. He is going to receive a 25% interest in Audiocasting. The value of the station when built is estimated to be \$150,000. Its net first year profit is estimated at \$38,000. It would take a credulity that

this Examiner does not possess to accept as an offset to such a substantial property the modest sum of \$2,530 plus the rather perfunctory and nebulous services Jackson, not a resident of Waco and a newcomer to broadcasting, is to perform for Audiocasting. But, as review of such cases as those cited above will show, simply because a party to a proceeding is going to profit through dismissal of an application does not constitute a bar to approval of the arrangement under which the party will so profit. It might be added that it is not necessary to rely solely on the cases cited above and others like them to obtain the policy applied here. The question of the propriety of pay-offs in excess of out-of-pocket expenses for dismissal of applications has been a controversial one for the past several years. During this period the problem has been presented to the Commission on numerous occasions. Never to the knowledge of this Examiner has the Commission, during this period, ever held that arrangements involving payments in excess of out-of-pocket expenses for dismissal of applications constituted abuse of Commission processes or were contrary to the public interest. The Commission's silence under such circumstances also speaks with authority as precedent. It might be further noted in this connection that in June 1958 the Commission issued a notice of proposed rule making, looking toward the abolition of "pay-offs" for dismissal of competing applications (Docket No. 12509, 1 RR 51 xiii). No action was ever taken.<sup>38</sup>

In addition to the expected issues, the hearing examiner discussed a matter not raised previously. He observed that the Audiocasting engineering exhibits failed to establish that the proposed station would provide a sufficient signal (10 to 50 mv/m) over the business and factory areas of Waco, as required by section 3.182(f) of the Commission's rules.<sup>39</sup> He apparently was satisfied that this defect was not serious, though, because he concluded his initial decision by accepting the amendment relating to the merger, dismissing Jackson's application, and granting that of Audiocasting.<sup>40</sup> Unless appealed by one of the



parties or reviewed by the Commission on its own motion, the decision would take effect 50 days later.

Exceptions to the Initial Decision were filed by both Audiocasting and the Broadcast Bureau on May 16. Both parties argued that since the Commission in its designation order had found Audiocasting's proposal technically satisfactory except for the issue of interference, the question of adequate service to Waco and its business and factory districts was not at issue.<sup>41</sup> Both parties also argued that the examiner's conclusions were deficient in not concluding that the loss of service to portions of the KBUS and KHBR service areas was outweighed by the provision of the new service.<sup>42</sup>

The greatest disagreement, however, was reserved for the finding and conclusion dealing with the merger agreement. The Broadcast Bureau argued that, contrary to the examiner's statements, the Commission was indeed concerned with the amount of consideration paid the dismissing applicant:

The unspoken premise behind the Examiner's approach would appear to be a "my hands are tied" concept of his power whereunder he has no choice under previous decisions of the Commission but to conclude that a grant of this application would be in the public interest, irrespective of what the evidence shows with respect to the amount of consideration.

It may be conceded that in some proceedings the Commission may have approved as in the public interest agreements whereunder a dismissing applicant would receive more than his out-of-pocket expenses as consideration for the dismissal. Such proceedings, however, do not stand as precedent for the proposition

that a hearing examiner or the Commission must approve every such arrangement which may be proposed. On the contrary, we believe that each case must be decided upon the facts of record peculiar to the particular proceeding. And where the record demonstrated that an applicant was improperly motivated or had resorted to questionable tactics in connection with the payment of consideration we have no doubt the Commission could deny the application of the party involved.

To illustrate, if the facts demonstrated that an applicant had paid an excessive price to eliminate a competitor for the purpose of stifling competition in a particular community surely the Commission would be justified in denying the application involved. Again, if it appeared that an applicant had been induced to dismiss by the promise of excessive consideration coupled with a competitor's threats to bleed him dry of financial resources by prolonging the hearing and increasing the cost of pursuing the application, there can be no doubt that denial of the competitor's application would be required.

We recognize that the foregoing examples of instances where an application might be denied are not predicated solely upon the payment of excessive consideration. However, we do contend that where there is reason to believe such consideration may be involved in a proceeding the Commission has not and should not rubber stamp it as not inconsistent with the public interest. That this is the Commission's approach is demonstrated by its adoption of Section 1.363 of its Rules which specifically provides for consideration via hearing of the circumstances surrounding agreements involving payment of consideration to a dismissing competitor and whether, in the light thereof, grant of the remaining application would be in the public interest. And we submit that the Commission would hardly maintain such a rule if it was completely unconcerned as to the amount of consideration paid insofar as protecting its processes from abuse is concerned.

Neither does the fact that the Commission has seen fit to approach the question of the propriety of the amount of compensation to be paid in consideration for dismissal of an application on a case-by-case basis in any way vitiate its authority to condemn a particular arrangement if the facts so warrant. For, as heretofore indicated, we believe each case must be decided upon the facts of record peculiar to it. It would be difficult for the Commission to state some specific formula or policy which would be sufficiently comprehensive to be employed as a means for determining whether every arrangement contemplating the payment of

consideration for the dismissal of a competing application was in the public interest.<sup>43</sup>

Audiocasting objected to the examiner's finding that the station would be worth \$150,000 at the end of its first year of operation as "speculative and irrelevant." It observed that the value was based on estimates in the application form, " . . . which estimates may or may not be realized in actual operation."<sup>44</sup> As for the agreement itself, Audiocasting said:

The statement in Conclusion 4 that "...Jackson is going to get a good deal more than his out-of-pocket expenses for dismissing his application..." does not reflect the record made in this proceeding. Mr. Jackson will receive \$2,500.00 worth of stock at par value in reimbursement for expenses in excess of \$2,500.00. He will also receive \$7,500.00 in ordinary income from Audiocasting for services to be rendered to the Corporation for the first two years of its operation which will be paid in stock at par value. There is a contractual quid pro quo which was bargained for at arm's length by the parties to the merger. The agreement for services is reasonable since Jackson lives near Waco, while the other principals of Audiocasting live elsewhere. The purpose in considering the merger agreements under Section 1.363(c) of the Commission's rules is to determine whether there is anything in the merger arrangements which would result in a grant contrary to the public interest, not to indulge in speculation as to the future worth of the station, and thus the value of its stock at some future time. The Audiocasting people and Jackson consider the payments for services to be reasonable and the Hearing Examiner is not called upon to substitute his judgment for the judgment of the parties unless the parties' judgment appears to be prima facie unreasonable.<sup>45</sup>

Each party had the option to file replies to the other's exceptions. The Broadcast Bureau did not reply, but on May 27 Audiocasting did. It withdrew its previously filed exceptions, adopted the Broadcast Bureau's

exceptions, and requested that the Commission " . . . give immediate consideration to the Initial Decision proposing a grant of Audiocasting's application . . . ." <sup>46</sup>

On July 20 the Commission denied the request for immediate consideration. It said:

To grant Audiocasting's request, it would be necessary to accord its application a priority over other applications which have equal public interest considerations. Upon consideration of the showing made by Audiocasting in support of its request, we are not persuaded that the public interest requires the immediate action requested. <sup>47</sup>

Notes

<sup>1</sup>Letter from FCC to Audiocasting of Texas, Inc., dated March 10, 1959; copy in docket 12876 file.

<sup>2</sup>Letter from Philip Bergson to FCC dated April 9, 1959; letter in BP-11812 application file. Letter from Philip Bergson to FCC dated April 13, 1959; letter in BP-11812 application file.

<sup>3</sup>Letter from FCC to Robert W. Cahill dated April 16, 1959; copy in BP-11812 application file.

<sup>4</sup>Order, dockets 12876 and 12877 (adopted May 27, 1959; released June 1, 1959), FCC 59-480, 24 Fed. Reg. 4571.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Communications Act of 1934, as amended, 47 U.S.C. § 307(b). See 49 Stat. 1475, § 2.

<sup>8</sup>Letter from Neville Miller to William M. Cady III dated June 24, 1959; letter in corporate record book of Audiocasting of Texas, Inc.

<sup>9</sup>Minutes of Special Meeting of Stockholders of Audiocasting of Texas, Inc. (June 25, 1959); minutes in corporate record book of Audiocasting of Texas, Inc. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (June 25, 1959); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>10</sup>Memo to Board of Directors (undated); memo in corporate record book of Audiocasting of Texas, Inc.

<sup>11</sup>Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (June 25, 1959); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>12</sup>Letter from Harold Clark to this writer dated June 2, 1970. Record, at 51.

<sup>13</sup>Record, at 25.

<sup>14</sup>Ibid., at 26.

<sup>15</sup>Ibid., at 27.

<sup>16</sup>Ibid., at 26-29 and 42-43.

<sup>17</sup>Ibid., at 26 and 54.

<sup>18</sup>Ibid., at 36.

<sup>19</sup>Ibid., at 2.

<sup>20</sup>Agreement signed September 5, 1959, by Milton P. Burke for Audiocasting of Texas, Inc., and Horace K. Jackson, Sr.; submitted as amendment to application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (amendment submitted September 16, 1959).

<sup>21</sup>Ibid.

<sup>22</sup>Record, at 8.

<sup>23</sup>"Expenses Incurred on Application for Radio Broadcasting Station at Gatesville, Texas," Exhibit 2 of Audiocasting of Texas, Inc., dockets 12876 and 12877 (submitted September 18, 1959).

<sup>24</sup>Record, at 7-8.

<sup>25</sup>Order, "Amendment of Sections 1.365; 1.373(g); 1.378(e) and the Adoption of a New Section 1.367" (adopted April 24, 1957; released April 29, 1957), FCC 57-414, 22 Fed. Reg. 3113.

<sup>26</sup>Record, at 27 and 39.

<sup>27</sup>Ibid., at 34 and 44-46.

<sup>28</sup>Ibid., at 56-59.

<sup>29</sup>Ibid., at 61.

<sup>30</sup>Ibid., at 63-64.

<sup>31</sup>Proposed Findings of Fact and Conclusions of Broadcast Bureau, dockets 12876 and 12877 (January 19, 1960), FCC Mimeo 83169. Proposed Findings of Fact and Conclusions of Law and Memorandum Brief Filed on Behalf of Audiocasting of Texas, Inc., dockets 12876 and 12877 (January 20, 1960).

<sup>32</sup>Proposed Findings of Fact and Conclusions of Broadcast Bureau, dockets 12876 and 12877 (January 19, 1960), pp. 6-7 and 12. Proposed Findings of Fact and Conclusions of Law and Memorandum Brief Filed on Behalf of Audiocasting of Texas, Inc., dockets 12876 and 12877 (January 20, 1960), pp. 5, 11, and 14-15.

<sup>33</sup>Proposed Findings of Fact and Conclusions of Broadcast Bureau, dockets 12876 and 12877 (January 19, 1960), pp. 5-6 and 12-13. Proposed Findings of Fact and Conclusions of Law and Memorandum Brief Filed on Behalf of Audiocasting of Texas, Inc., dockets 12876 and 12877 (January 20, 1960), pp. 6-7, 12, and 14-15.

<sup>34</sup>Proposed Findings of Fact and Conclusions of Broadcast Bureau, dockets 12876 and 12877 (January 19, 1960), pp. 13-16.

<sup>35</sup>Ibid.

<sup>36</sup>Proposed Findings of Fact and Conclusions of Broadcast Bureau, dockets 12876 and 12877 (January 19, 1960), p. 17. Proposed Findings of Fact and Conclusions of Law and Memorandum Brief Filed on Behalf of Audiocasting of Texas, Inc., dockets 12876 and 12877 (January 20, 1960), pp. 13 and 16.

<sup>37</sup>Initial Decision of Hearing Examiner Thomas H. Donahue, dockets 12876 and 12877 (April 6, 1960; released April 7, 1960), FCC 60D-43, FCC Mimeo 86818, 20 P&F Radio Reg. 212.

<sup>38</sup>Ibid., Conclusions ¶ 4.

<sup>39</sup>Ibid., Conclusions ¶ 1.

<sup>40</sup>Ibid., Conclusions ¶ 5.

<sup>41</sup>Exceptions of Broadcast Bureau to Initial Decision, dockets 12876 and 12877 (May 16, 1960), FCC Mimeo 88628. Statement in Support of Examiner's Initial Decision and Exceptions of Audiocasting of Texas, Inc., dockets 12876 and 12877 (May 16, 1960).

<sup>42</sup>Exceptions of Broadcast Bureau to Initial Decision, dockets 12876 and 12877 (May 16, 1960), exception 7. Statement in Support of Examiner's Initial Decision and Exceptions of Audiocasting of Texas, Inc., dockets 12876 and 12877 (May 16, 1960), exception 7.

<sup>43</sup>Brief of Broadcast Bureau in Support of Exceptions, dockets 12876 and 12877 (May 16, 1960), FCC Mimeo 88627, pp. 2-4.

<sup>44</sup>Brief in Support of Exceptions of Audiocasting of Texas, Inc., dockets 12876 and 12877 (May 16, 1960), p. 2.

<sup>45</sup>Ibid., pp. 3-4.

<sup>46</sup>Statement in Lieu of Reply to Exceptions and Request for Immediate Consideration of Audiocasting of Texas, Inc., dockets 12876 and 12877 (May 27, 1960).

<sup>47</sup>Memorandum Opinion and Order, dockets 12876 and 12877 (adopted July 20, 1960; released July 25, 1960), FCC 60-865, FCC Mimeo 90948.



## CHAPTER VII

### MERGER THWARTED

Since Audiocasting, the Broadcast Bureau, and the hearing examiner all concluded that the Waco application should be granted, issuance of a construction permit should have been only a matter of waiting for the Commission to review the case. Fate provided another obstacle, though: an amendment to the Communications Act that required resubmission of the case to the hearing examiner.

One matter that concerned many people in the late 1950's was the frequent occurrence of pay-offs and swap-offs among competing applicants for broadcast facilities. In a pay-off situation, one or more applicants in a hearing would agree to dismiss their applications in exchange for payment of cash or other consideration (see pages 36-37, above, for an example); in some cases the dismissing applicant or applicants would join with the remaining applicant to prosecute a joint application (as with Audiocasting and Jackson). The result was that financial considerations and private negotiations were substituted for Commission scrutiny in the determination of a winning applicant.

In a swap-off, an applicant for a facility in

community A would agree to dismiss his application there (so a competing applicant's grant could be facilitated) if the second applicant would agree to dismiss another application in community B to facilitate a grant there to the first applicant.

The Commission's Annual Report for 1958 reflected the concern the Commission felt about such practices:

In an increasing number of broadcast cases [designated] for comparative hearing, applications are being amended or dismissed upon agreement for the payment of some consideration or merger of interests, leaving the remaining application unopposed for grant. The Commission is concerned that these practices may encourage the filing of marginal or "strike" applications in the hope of receiving consideration for amendment or dismissal of such applications, and that, in many instances, they may also represent an abuse of the hearing process. To discourage such practices, the Commission instituted rulemaking on June 26, 1958, looking toward revising the rules so that whenever consideration, including an agreement for consolidation of interests, is paid or promised in connection with the default, dismissal, or amendment of an application in hearing status, the applications of all parties to the agreement will be dismissed with prejudice.<sup>1</sup>

The rulemaking proceeding was instituted less than five months after Audiocasting filed its application (in February 1958), and before Jackson filed his (in November 1958). FCC Chairman Frederick W. Ford, in testimony before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, described reaction to such a rule:

In the filed comments to such notice of proposed rulemaking, virtual unanimity was expressed in opposition to the proposed rules, primarily because such proposed new rules would in effect prohibit all

compromises after applications are designated for hearing and overlook the fact that most compromises are negotiated in good faith between the parties in the public interest and have as one important purpose the expedition of needed broadcast service to the public.<sup>2</sup>

The 1959 Annual Report noted that:

The principal objection raised to this proposal is that it would bar compromises in broadcast hearing cases which often hasten the advent of new broadcast service. Several alternative proposals made in the comments would eliminate or penalize the filing of "strike" applications and the making of excessive payments.<sup>3</sup>

The Federal Communications Bar Association filed comments in the rulemaking proceeding that said:

The FCBA is thoroughly in accord with the Commission's objective of eliminating all types of "strike" applications. We believe that "strike" applications include not only those filed for the sole purpose of delaying or hindering the grant of another application, but also any application filed for the purpose of receiving payment in return for the dismissal of such application or in the hope of securing an interest in a competing applicant as the consideration for dismissal. In each such case the essential element of a "strike" application is present, i.e., the absence of a bona fide intention to construct and operate the facilities applied for.<sup>4</sup>

In the meantime, Congress was examining proposals to correct abusive practices by amending the Communications Act. On May 11, 1959, Senator Warren Magnuson of Washington, chairman of the Senate Interstate and Foreign Commerce Committee introduced a bill (S. 1898) " . . . to amend the Communications Act with respect to the procedure in obtaining a license and for rehearings under such Act," at the request of the Federal Communications Bar Association.

The bill as introduced would make substantive changes in sections 309 and 405 only.<sup>5</sup>

On March 23, 1960, Representative Oren Harris of Arkansas, chairman of the House Interstate and Foreign Commerce Committee, introduced a bill (H.R. 11341) to amend section 309, in part by granting authority " . . . to regulate 'pay-offs' and 'swap-offs' between applicants for such licenses . . . ." <sup>6</sup> It provided, in part:

Before the earliest date on which an order of the Commission granting a broadcasting station license or a permit for construction of a broadcasting station is no longer subject to rehearing by the Commission or review by any court, no applicant for such license or permit, as the case may be, shall directly or indirectly pay or promise to pay to any other applicant for the same license or permit any money or other thing of value as consideration for such other applicant's withdrawal as such an applicant, unless the applicant proposing to make such payment and the applicant to whom it is proposed to be made both first file with the Commission a petition for Commission approval of such proposed payment and the Commission thereafter approves such proposed payment. The Commission shall approve any proposed payment to an applicant, pursuant to a petition filed under this paragraph if, but only if, the amount or value of the payment is not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of the application for the license or permit sought by him.

If the Commission approves any proposed payment to an applicant pursuant to a petition filed under paragraph (1) of this subsection, it shall give public notice of such approval, and (unless an order of the Commission has been issued granting such license or permit, as the case may be, to an applicant other than the applicant proposing to make such approved payment) the Commission (A) shall set aside any order granting such license or permit which was issued before the date on which such notice is given and permit the person to whom such grant was made to file a new application, and (B) during the period of 30 days after the date on

which such notice is given, shall accept applications which may be filed by other persons for such broadcast station license or permit for construction of a broadcast station, as the case may be.<sup>7</sup>

In hearings before the House Subcommittee on Communications and Power on April 12, 1960, FCC Commissioner Rosel H. Hyde testified:

. . . I think it is the position of the Commission that the proposed law is too rigid, too inflexible, to permit the Commission to handle the problems that come before it in the way that conditions would require.

Absolute prohibition against any compromise settlement would certainly be directly in conflict with the principle that is encouraged in all the courts of the land in getting out of court, cutting down litigation where it can be done without abuse of procedures or prejudice to the rights of individuals or the public.<sup>8</sup>

He added:

The Commission's efforts in this direction have been designed to prevent and correct abuses by requiring full disclosure and by doing what you have suggested or mentioned, that is, the practice in the courts of requiring that all arrangements worked out in this regard should be submitted on the record for examination by the Commission before any approval would be given.<sup>9</sup>

The Subcommittee heard testimony and received written comments from several sources. C.B.S. supported the pay-off provision of H.R. 11341 and suggested that the following sentence should be added to it: "If a payment is made or promised to be made by an applicant to any other applicant for the same license or permit without the approval of the Commission as herein required, the application of the applicant making the payment or promise shall be dismissed with prejudice."<sup>10</sup>

Vincent T. Waselewski, speaking as manager of the Government Relations Department of the National Association of Broadcasters, testified that:

In regard to the proposed language in H.R. 11341 concerning reimbursement of out-of-pocket expenses by one applicant in return for another's withdrawal as an applicant for a license, we believe that the Commission already has sufficient authority to adopt such rules to treat with the subject matter as the public interest might require. We believe the procedures proposed in the bill treating with this, and also the procedures governing "swapoffs," involve subject matter which more properly should be handled as regulatory problems by the Federal Communications Commission, and not by detailed legislative enactment.<sup>11</sup>

A.B.C. submitted a detailed analysis of the pay-off and swap-off proposals. It differentiated between legitimate pay-offs and strike applications, and concluded:

Thus, ABC is of the view that the propriety of compromises between applicants for a given facility turns on the facts of each case and that statutory provisions along the lines contemplated by section 1 (d) and (e) of H.R. 11341 are undesirable at this time. To the extent that categorical provisions are desirable, the Commission should be permitted to work them out in the proceeding now pending before that agency and on which a report and order has been promised shortly (Docket No. 12509).<sup>12</sup>

A.B.C. also commented on mergers, such as that Audiocasting and Jackson proposed:

Section 1(d) is silent on mergers and options-- which are sometimes legitimate and sometimes not. Not infrequently B agrees to dismiss his application if C allows him to become a 50-percent stockholder in C's application. There can be no question that this 50-percent option greatly exceeds the actual out-of-pocket expenditures incurred by B on an application filed only a week or two previously. However, such mergers between bona fide applicants are not necessarily contrary to the public interest. A consolidated group might under some circumstances be a better applicant

than either group by itself. Accordingly, if a statute merely prohibited cash payments in excess of reasonable out-of-pocket expenditures, it could be circumvented in many instances by according such person a stock interest in the undismissed application. Excess payments can be camouflaged in other ways--by sale of land and other property on which it is next to impossible to place a precise cash value.<sup>13</sup>

On June 28, 1960, the House passed S. 1898, amending it by adding provisions from other bills, including H.R. 11341.<sup>14</sup> The amended bill proposed a completely new section 311 containing provisions regarding (1) local announcement of filings and hearings, (2) locations of hearings, and (3) pay-offs. The new section 311 was titled "Special Requirements with Respect to Certain Applications in the Broadcasting Service." Section 311(c), dealing with pay-offs, read:

(1) If there are pending before the Commission two or more applications for a permit for construction of a broadcasting station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications.

(2) The request for Commission approval in any such case shall be made in writing jointly by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall by rule require.

(3) The Commission shall approve the agreement only if it determines that the agreement is consistent with the public interest, convenience, or necessity. If the agreement does not contemplate a merger, but contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, is

not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

(4) For the purposes of this subsection an application shall be deemed to be "pending" before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.<sup>15</sup>

Both houses approved the final language; and on September 13, 1960, it was signed into law by President Eisenhower.<sup>16</sup>



Notes

<sup>1</sup>U.S., Federal Communications Commission, Annual Report (Washington: Government Printing Office, 1958), p. 126.

<sup>2</sup>Hearings before a Subcommittee of the House Committee on Interstate and Foreign Commerce on Conditional Grants, Pregrant Procedure, Local Notice, Local Hearings, Payoffs, Suspension of Licenses, and Deceptive Practices in Broadcasting, 86th Cong., 2d Sess., at 33 (1960). (Hereinafter referred to as Hearings.)

<sup>3</sup>Federal Communications Commission, Annual Report (1959), p. 47.

<sup>4</sup>"Bar Association Files Comments on Proposed Change in Rules on Consolidations and Dismissals," 16 Fed. Com. B.J. 124, 124-125 (1958).

<sup>5</sup>S. 1898, 86th Cong., 1st Sess. (1959).

<sup>6</sup>H.R. 11341, 86th Cong., 2d Sess. (1960).

<sup>7</sup>Ibid., § 1(a).

<sup>8</sup>Hearings, at 50.

<sup>9</sup>Ibid., at 52.

<sup>10</sup>Ibid., at 113.

<sup>11</sup>Ibid., at 77.

<sup>12</sup>Ibid., at 143.

<sup>13</sup>Ibid., at 144.

<sup>14</sup>106 Cong. Rec. 14761 (1960).

<sup>15</sup>Communications Act of 1934, as amended, 47 U.S.C. § 311(c). See 74 Stat. 889, § 5(a).

<sup>16</sup>106 Cong. Rec. 17617 (1960). 106 Cong. Rec. 18357 (1960). Communications Act Amendments, 1960, Pub. L. No. 86-752, 74 Stat. 889.

## CHAPTER VIII

### MERGER APPROVED

On December 7, 1960, the Commission adopted a Memorandum Opinion and Order which noted the recently enacted section 311(c) of the Communications Act. With respect to the Audiocasting application, the Commission said it had " . . . reviewed the record and the Initial Decision herein and is unable to make a determination as to whether the agreement between the [two] applicants is permissible under Section 311 of the Act, as recently amended."<sup>1</sup>

It therefore ordered the record reopened, and remanded the proceeding to the hearing examiner for further hearing on the following issue: "To determine whether the agreement between the applicants herein is permissible under 47 USC 311(c)."<sup>2</sup>

Commissioner Bartley concurred, but added that he would have added " . . . an issue as to whether the agreement is consistent with the public interest in light of the fact that it would remove artificially, through payment of consideration, a demand for service in the community specified by the withdrawing applicant and, thus, avoid a determination of fair, efficient and equitable distribution

of radio service pursuant to Section 307(b) of the Communications Act."<sup>3</sup>

On January 10, 1961, Examiner Donahue set for January 16 a pre-hearing conference on the matter.<sup>4</sup> The conference was scheduled to begin at ten o'clock, but was not called to order until 10:50. During that fifty minutes a considerable off-the-record discussion was held to identify the issues raised by the Broadcast Bureau and the hearing examiner in light of the new section 311(c) of the Communications Act. It was agreed to hold a further hearing conference on January 24, and to hold a hearing " . . . on the Issue designated by the Commission in its remand order . . . " on January 27.<sup>5</sup>

Immediately after the pre-hearing conference Neville Miller and John P. Bankson, Jr. (representing Audiocasting), and Vincent A. Pepper (Jackson's attorney) began a discussion in the conference room of the points that had been raised.<sup>6</sup> Miller later described the discussion:

We initiated the revision, trying to arrive at the result that we thought would be in line with the discussion we had had.

. . . . .  
We sat here and discussed it after the hearing was closed, and the examiner and Mr. Ely had left. We continued to sit here for quite some time and to discuss how the agreement could be revised . . . .

. . . . .  
We felt that in the first place although you promise a thousand shares of stock under certain conditions, and you give him stock in place of payment of money, there is a little psychological problem there. So we decided

that we will pay him the money. So we decided we would pay him the money. I repeat it. Then came up the question of stock. Should he be favored over any other party about when he paid for his stock. We decided to put that on the basis like anything else--to make him subscribe.

Mr. Pepper thought that was perfectly fair as a provision.

So we decided we would ask him to subscribe those shares of stock.

We further questioned the question of employment. We knew from the standpoint--I drew up the original application--at that time there were 4,000 shares of stock that they subscribed for three thousand and had one thousand left there for local people. And having talked with Mr. Burke and Mr. Cady, they were perfectly happy to have Mr. Jackson as their local contact. We thought that from their standpoint we ought not to tie in the employment contract with the payment of stock, realizing the fact that the figures originally looked as if he was going to get his stock for his services, which he was not, because after he got paid for his services and paid his income tax on it he would have to go down in his own pocket for payment for part of the stock that he agreed to pay for.

We decided to eliminate that. We felt those were the things that would eliminate them.<sup>7</sup>

Miller told how the new agreement was then drawn up:

We went back to the office. Mr. Bankson drew up the agreement. I discussed it and made a few changes. Then took it over to Mr. MacDonald. And I think that I talked to Mr. Pepper on the telephone about it and that was it.<sup>8</sup>

The main points of the new agreement were: (1)

Jackson would dismiss his application upon grant of the Audiocasting application; (2) Jackson would receive \$2,530 as reimbursement of expenses incurred in prosecuting his application; (3) Jackson would subscribe for 1,000 shares (25 percent) of the stock of Audiocasting, to be paid for at par value; and (4) Jackson would perform certain services for the station " . . . so long as it is

satisfactory to him, and so long as it is satisfactory to the company," with a salary of \$3,750 per year, " . . . maybe one day a week of his time."<sup>9</sup>

Miller said he did not know if the old agreement might have violated the amended section 311, and explained the reason for the new agreement:

. . . when we made the original agreement we felt the original agreement was in the rules and the regulations at that time, and that a grant was given on that. The rules were changed. There seemed to be doubt in your mind and some doubt in the examiner's mind about the old agreement. And it is our desire not to litigate and raise the questions. There was nothing to be gained by standing on the old agreement and going to court and showing that we are right. What we want to do is get service to another 100,000 people in Waco, and without raising the question whether that agreement was or was not correct would be raised now. We just decided that we would, certainly, eliminate any question.<sup>10</sup>

The agreements were mailed by special delivery to Cady on Thursday, January 19 (three days after the pre-hearing conference). Miller and Cady discussed them by telephone the morning of January 20, and the latter said, "Well, if you think that is the solution, that is all right with me--you are my counsel."<sup>11</sup>

Cady and Burke were to sign the agreements, then mail them to Jackson for his signature. One of Jackson's attorneys, Donald P. MacDonald, spoke with Jackson by telephone on Monday, January 23. The latter had not yet received the new agreements, but he indicated that if they were satisfactory he would sign them.<sup>12</sup> On the same day

Miller sent the agreements to Cady (the nineteenth), he sent copies to Examiner Donahue and the Broadcast Bureau's attorney in the hearing, Richard E. Ely.<sup>13</sup>

By the date of the further hearing conference, January 24, the new agreements had not been returned to Washington. However, their contents were discussed thoroughly. Attorney Miller stated his understanding that the conference was held to specify what would be required for the January 27 hearing.<sup>14</sup>

For the Broadcast Bureau, Ely requested affidavits from Jackson, his Gatesville attorney, and his engineer, itemizing the \$2,530 in expenses Jackson was to be reimbursed for; and from a principal of Audiocasting establishing " . . . that the only consideration promised or paid Mr. Jackson for abandoning his Gatesville application was that described in the agreement between Audiocasting and Jackson, the employment contract and Jackson's subscription agreement."<sup>15</sup>

Ely also requested information on the motivation of the new agreement:

. . . we have a new agreement between the parties and as I am sure we all remember the last agreement and the motivation therefore and the understanding of the parties with respect thereto, which was explored on the record during the last hearing session, we think that a similar explanation should be made as to the new agreement, most specifically, the basis therefore, who initiated it, why the agreement was changed, why they adhered to certain figures, particularly the \$3,750 per annum figure.<sup>16</sup>

Ely declined to specify any objections the Broadcast Bureau might have to the new agreement, noting that:

. . . nothing I have said was intended in any way to indicate what the Broadcast Bureau's views on this and other agreements might be. We will subsequently express our views in proposed findings of fact and conclusions.

We believe that it is incumbent upon the applicants to enter into such agreements as they may see fit.

This is the burden that they have.

. . . . .  
The Broadcast Bureau does not feel that it is in any position to advise as to whether or not it believes the changed agreements, or the provisions in the agreement meet the standards proposed in section 311 of the Communications Act as amended.<sup>17</sup>

Examiner Donahue discussed consideration of any excessive cash reimbursement and stated his chief concern:

I am not too concerned about the \$2,530 being legitimate and prudent out of pocket expenses. I would almost officially note under circumstances such as we have here the amount of work that very obviously has had to be done by professional persons in connection with the prosecution of this application. To my own certain knowledge I would almost officially note that \$2,530 is a reasonable prudent sum and does not violate the standards staff in section 311 for reasonable and prudent expenditures, but I am concerned about the propriety of the whole arrangement.<sup>18</sup>

His objections to the new agreement were twofold:

(1) the amended section 311(c) could be interpreted to prohibit the combination of pay-off and merger, and (2) the value of the right to subscribe to 1,000 shares of stock in effect raised the pay-off to more than out-of-pocket expenses.<sup>19</sup> He said:

We do not approach the thing I dislike. We are not getting close to the real tough problem of whether or not an arrangement such as this comes within the sweep of section 311. That is to say, if there was a pay-off

of out-of-pocket expenses, plus something else, such as an employment contract, not to say anything whatever about the significance of the stock acquisition--does that come within the framework of section 311 as amended? That is what I want to get it.

. . . . .  
It seems to me that the real thrust of the amendment to section 311 was to attempt to discourage what I have personally referred to as a kind of commission sanction to the maintenance and encouragement of litigation--encouragement of people to come in, in these proceedings and prosecute the applications and while you could not say they were strike applications, you can say they were motivated by something other than a desire to have a radio station.

And that was the partial motivation, the fact that they were going to have the possibility of getting substantial payoff, that is, to make money merely by using our processes. I think that is what congress was concerned about when it passed the amendment to section 311. They passed it in very stringent terms.

And it talks in terms of merger. The amendment talks in terms of merger. It talks in terms of payoffs of only for legitimate and prudent out-of-pocket expenses.

Does it contemplate any kind of combination? Personally, I presently lean to the view that it does not.<sup>20</sup>

A possible solution to the problem arose in the following exchange. Miller began:

You have a situation here where this is, for all intents and purposes, a merger that a man comes in as a twenty-five percent stockholder. He becomes a stockholder like any other stockholder. I do not know how you could get a much cleaner merger. You say, "Well, his right to subscribe to the stock is of value."

In any merger the stock is of value.

PRESIDING EXAMINER: When you talk about clean mergers the way to clean it up is to drop that pay-off, and then you would have a clean merger.

MR. MILLER: You mean drop the \$2,500?

PRESIDING EXAMINER: Yes. I would not gag at the employment contract. That seems to me that might be very well a legitimate part of a merger, but what troubles me, where I have difficulty is the pay-off in addition.<sup>21</sup>



Later, Miller asked Examiner Donahue:

. . . do I get your view that it is the combination that worries you, in other words, if we drop the \$2,500 you do not see any objection to the merger?

PRESIDING EXAMINER: Because I think--let me say "yes"--that is my current thinking.

MR. MILLER [sic]: Yes. That if the \$2,500 were out of the picture I would have little doubt that it was a legitimate merger, because I think employment contracts are a conventional part of an ordinary merger arrangement.

. . . . .  
PRESIDING EXAMINER: Once you get into this area of having to compute whether or not--you see, a merger can, gentlemen, be a reimbursement for the dropping-out party far in excess of the out-of-pocket expenses you have engaged in. There is not any question about that.<sup>22</sup>

The propriety of changing the merger agreement in light of the amended section 311 was affirmed by the examiner in refusing to make the motivation of the new agreement an issue:

. . . the rules that were applicable at that time were altogether different than they are now. And I think that in fairness he should be permitted to reform his agreement to comply with the thrust of the new amendment. . . . And I permitted him to do it, even encouraged him to do it. That being the case, what is the point in going into why he did it? Obviously, he did it to bring it within the ambit of the amendment of section 311, as amended.<sup>23</sup>

Because of the time required to secure the signed agreements and the affidavits requested by the Broadcast Bureau, and because, "It might be that Mr. Miller would further reform the agreement," the hearing scheduled for January 27 was continued to February 6.<sup>24</sup>

During the week of January 30, Miller learned of the dissolution of Audiocasting, Inc. (former licensee of KJOE

and subscriber to 75 percent of the stock of Audiocasting of Texas, Inc.; see page 78, above). He described the thinking of the Audiocasting stockholders:

. . . they had no desire to conceal anything. They thought it was a tax matter and they thought as long as they picked up the shares proportionately, they were really showing more consideration and more forethought than the average person. And we who deal with those things do not realize some of those people down there who are not familiar with the Commission procedure do not always understand the details.<sup>25</sup>

The situation of new ownership of Audiocasting of Texas raised several problems: (1) an amendment to the application would have to be filed to reflect the ownership change; (2) the financial qualification of the applicant would have to be reestablished; and (3) the change in ownership might require local advertisement, under the then-new section 1.358 of the Commission's rules. In light of these developments, the hearing was recessed until February 28.<sup>26</sup>

On February 27 a petition for leave to amend the Audiocasting application was filed. It specified the changes in ownership of the applicant corporation resulting from the dissolution of Audiocasting, Inc., provided current financial qualification information for the applicant, and presented a revised merger agreement.<sup>27</sup>

Following the contemplated merger, ownership of Audiocasting would be: Joyce Monroe, 40.54 percent; Horace Jackson, 25.00 percent; E.C. Laster, 12.75 percent; William

Cady, 11.40 percent; Milton Burke, 4.69 percent; Robert Mitchell, 2.81 percent; Robert Johnson, 1.87 percent; and David Traylor, 0.94 percent.<sup>28</sup> In addition to cash to be received from the distribution of common stock, loan commitments from stockholders totaling \$21,875 were stated. Total capital available, therefore, would be \$61,875.<sup>29</sup>

The revised merger agreement cancelled the previous agreement (of September 9, 1959), and provided:

1. JACKSON agrees that he will not further prosecute his application and will agree to a dismissal of it by the Federal Communications Commission upon the grant of the Audiocasting application.
2. JACKSON further agrees to subscribe to one thousand shares (1,000) of the ten dollar par value common stock of CORPORATION for which he will pay the par value of ten dollars (\$10.00) a share, such subscription to be paid at the call of the board of directors of the CORPORATION, either in whole or in part.
3. CORPORATION and JACKSON mutually agree that in the event there is an issue of stock of CORPORATION subsequently, that all stockholders will have preemptive rights in such stock.
4. In all respects, it is agreed that this contract shall be governed by the laws of the State of Texas.<sup>30</sup>

Upon oral request of Audiocasting, the hearing scheduled for February 28 was further continued to March 1, the following day.<sup>31</sup> At the March 1 hearing, Broadcast Bureau attorney Ely asked why a balance sheet for Jackson had not been included with the financial qualification statement, and requested additional time to examine the financial data in the proposed amendment.<sup>32</sup>

The examiner noted that Jackson's balance sheet,

filed with his original application in 1958, showed a net worth of over \$190,000, with \$40,000 in cash. Although the balance sheet was more than two years old, the examiner agreed with Audiocasting that, barring good reason to believe that Jackson's financial status had changed, there was no need to include a more recent balance sheet.<sup>33</sup>

Examiner Donahue then ruled that the record would stand closed on March 9 unless the Broadcast Bureau filed a pleading " . . . raising any question of financial alternative"; and the hearing was recessed.<sup>34</sup>

The Broadcast Bureau filed no pleading. However, " . . . discussions between counsel for Audiocasting and the Bureau regarding the Audiocasting finances have caused counsel for Audiocasting to determine that it would be advisable to prepare and file an additional amendment concerning the proposed financing of Audiocasting '...so that repose may enfold this litigation.'"<sup>35</sup> On March 9 Audiocasting filed a petition to hold the record open pending filing of a further petition for leave to amend, and Examiner Donahue ordered the date for closing the record extended to April 10, 1961.<sup>36</sup>

On March 24 the petition for further leave to amend was filed. The amendment showed total funds required at the outset of construction as \$31,956.18, and current and liquid funds available and pledged as \$36,197.25. In addition, less liquid funds totaling \$24,319.31 were

pledged by stockholders.<sup>37</sup> The petition stated:

The changes in the financial picture of Audiocasting were simply the result of passage of time since the application was filed in February, 1958, more than three years ago. The financial data filed with the amendment attached hereto simply re-establishes on a current basis the financial qualifications of Audiocasting which were found to be sufficient previously by the Commission in the designation order in this case released June 1, 1959 (FCC 59-480).<sup>38</sup>

On June 30, 1961, Examiner Donahue issued his Supplemental Initial Decision. It concluded:

1. The allegations in support of the petition to amend filed in February are well taken. Congress in amending Section 311 of the Communications Act did establish new standards for determining the propriety of pay-offs-for-drop-outs. Elementary concepts of fairness dictate that parties previously operating under the old law should be afforded opportunity to bring themselves into compliance with the new. Good cause for granting the petition to amend filed in March is not so easy to conclude. It is no earnest of licensee qualifications for an applicant to belatedly disclose a corporate reorganization. On the other hand, the applicants here have, for a considerable period of time, made earnest joint efforts to secure the frequency at issue for Waco, Texas. Numerous impediments, not all of their own creation, have bestrewn their path to that end. Counsel assures that the reporting failure was not motivated by improper considerations. It is at least conceivable that the individual members of the applicant corporation forgot the ponderous turning of the mill of legislative and administrative process in their preoccupation with other business considerations. All things considered, it seems not inappropriate to condone the reporting lapse with an expression of disapproval and conclude that absence of venality and the significance of the amendment to the end sought to be achieved constitute sufficient cause for grant of the latter petition.

2. [Recites section 311(c) of the Communications Act of 1934, as amended; see pages 125-126, above.]

3. As the Examiner reads the above language, agreements under which applicants propose to dismiss applications in order to leave applications of competitors in hearing status unopposed may be approved without regard to quantum of consideration that is to

flow to the dismissing applicant from the remaining applicant if: (1) that consideration springs solely from a bona fide merger; (2) the agreement is otherwise in the public interest. Under the last Audio of Texas-Jackson agreement for dismissal of the latter's application, the corporation is to make available to Jackson for subscription 25% of its corporate stock, payable at the call of the board of directors at par value. No other consideration of any kind is to be paid Jackson. In the view of the Examiner, this constitutes a bona fide merger. As far as the public interest is concerned, there is no evidence of record that the public interest would be injured by approval of the proposed agreement, and by its approval it appears that another radio station will soon be located in Waco. This appears enough to meet the public-interest requirement specified in subparagraph (3) of 47 USC 311.

4. Although financial qualifications are not in issue, it might be appropriate to again note here that questions concerning basic qualifications of Audio of Texas as reconstituted were raised on the record after its counsel's disclosure of its changed stock ownership, that thereafter the record remained open to permit Bureau counsel to seek enlargement of issues if he determined the facts warranted such action, and that later Audio of Texas filed its March petition to amend to furnish additional data concerning its ownership and financing. No motion to enlarge issues was filed. Thus, the Examiner proceeds to the action below without qualms over latent deficiencies in the basic qualifications of the proposed grantee.<sup>39</sup>

Donahue went on to accept the February and March amendments to the Audiocasting application, to direct Jackson to file a petition to dismiss his Gatesville application, and to grant the Audiocasting application. The ruling was to take effect fifty days after the release date (July 6), " . . . unless an appeal to the Commission from this initial decision is taken by any of the parties or the Commission reviews the initial decision on its own motion in accordance with the provisions of Section 1.153 of the rules . . . ." <sup>40</sup>

On July 28 Jackson filed a petition to dismiss his Gatesville application.<sup>41</sup> On August 25, 1961, the Commission issued the following notice:

Hearing Examiner Thomas H. Donahue's Initial Decision in this proceeding (FCC 61D-101) was released on July 6, 1961. No exceptions to the Initial Decision have been filed, and the Commission has not ordered a review of the Initial Decision on its own motion. Fifty days have passed since public release of the Initial Decision. Pursuant to Section 1.153 of the Commission's Rules, the Initial Decision became effective on the date stated below [August 25, 1961] without action by the Commission.<sup>42</sup>

Notes

<sup>1</sup>Memorandum Opinion and Order, dockets 12876 and 12877 (December 7, 1960; released December 13, 1960), FCC 60-1461, 25 Fed. Reg. 12953, 20 P&F Radio Reg. 220a.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., Concurring Statement of Commissioner Bartley.

<sup>4</sup>Notice, dockets 12876 and 12877 (January 10, 1961; released January 11, 1961), FCC 61M-51, FCC Mimeo 99011.

<sup>5</sup>Record, at 70.

<sup>6</sup>Ibid., at 93.

<sup>7</sup>Ibid., at 93-95.

<sup>8</sup>Ibid., at 105A-106.

<sup>9</sup>Ibid., at 77-79.

<sup>10</sup>Ibid., at 97.

<sup>11</sup>Ibid., at 105A.

<sup>12</sup>Ibid., at 106.

<sup>13</sup>Ibid., at 72.

<sup>14</sup>Ibid., at 80.

<sup>15</sup>Ibid., at 81 and 83.

<sup>16</sup>Ibid., at 88.

<sup>17</sup>Ibid., at 80-81.

<sup>18</sup>Ibid., at 91-92.

<sup>19</sup>Ibid., at 90-92.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid., at 101-102.

<sup>22</sup>Ibid., at 108.

<sup>23</sup>Ibid., at 120.



<sup>24</sup>Ibid., at 114 and 117.

<sup>25</sup>Ibid., at 132.

<sup>26</sup>Order, dockets 12876 and 12877 (February 15, 1961; released February 16, 1961), FCC 61M-250, FCC Mimeo 616.

<sup>27</sup>Petition for Leave to Amend Application of Audio-casting of Texas, Inc., dockets 12876 and 12877 (petition filed February 27, 1961).

<sup>28</sup>Ibid., Table I.

<sup>29</sup>Ibid., Exhibit 8.

<sup>30</sup>Ibid., Exhibit 5.

<sup>31</sup>Order, dockets 12876 and 12877 (February 27, 1961; released February 28, 1961), FCC 61M-313, FCC Mimeo 1283.

<sup>32</sup>Record, at 140 and 142.

<sup>33</sup>Ibid., at 141-142.

<sup>34</sup>Ibid., at 143-144.

<sup>35</sup>Petition to Hold Record Open Pending Filing of Further Petition for Leave to Amend by Audiocasting of Texas, Inc., dockets 12876 and 12877 (petition filed March 9, 1961).

<sup>36</sup>Order, dockets 12876 and 12877 (March 9, 1961; released March 10, 1961), FCC 61M-403, FCC Mimeo 1584.

<sup>37</sup>Petition for Leave to Further Amend Application of Audiocasting of Texas, Inc., dockets 12876 and 12877 (petition filed March 24, 1961).

<sup>38</sup>Ibid.

<sup>39</sup>Supplemental Initial Decision of Hearing Examiner Thomas H. Donahue, dockets 12876 and 12877 (June 30, 1961; released July 6, 1961), 31 F.C.C. 509, 20 P&F Radio Reg. 220c.

<sup>40</sup>Ibid.

<sup>41</sup>Petition to Dismiss Application of Horace K. Jackson, Sr., dockets 12876 and 12877 (July 28, 1961).

<sup>42</sup>Notice, dockets 12876 and 12877 (August 25, 1961; released August 29, 1961), FCC Mimeo 9348.

**PART IV**

**STATION OPERATIONS**

## CHAPTER IX

### CONSTRUCTION

#### Facilities

Following grant of the construction permit, a stockholders' meeting was held in Waco on Saturday, October 21, 1961. Stockholders Monroe, Jackson, and Burke were present, as were two engineers (A.W. Stewart, Jackson's engineer, and Elton Chick, chief engineer of Rounsaville's New Orleans station) and two applicants for manager of the new station.<sup>1</sup>

Land for the transmitter site had been bought for \$10,000 (Audiocasting had originally planned to lease it), and Stewart reported that the tower locations were to be surveyed two days later. Equipment proposals from three manufacturers (Collins, Gates, and RCA) showed little price differences, so the stockholders decided to order equipment from whichever suppliers could provide earliest delivery. Stewart was to supervise construction of the technical plant, though another engineer would have to be hired for the actual construction. Chick estimated that, with uninterrupted equipment shipments, construction would take no more than 60 days.<sup>2</sup>

Minutes of the meeting contain the following entry

regarding a building for the operation:

All operations to be housed in one building at the [transmitter] site. Considerable discussion was had concerning this building, and it was decided that Chick and Monroe would develop a rough building floor plan not exceeding 2,000 sq. ft. and submit it for a Waco planning service to properly develop it for submission to prospective contractors. Jackson to make these submissions. This construction to start as soon as possible.<sup>3</sup>

The meeting concluded with interviews of the applicants for manager. Only one seemed a good prospect:

Carter S. Jones was leaving his position as manager of KRZY--Rounsaville's Dallas station, which the chain was selling--for a lower position with Rounsaville's WCIN in Cincinnati.<sup>4</sup> The minutes stated:

Monroe, Jackson and Burke were in accord that his proposal was worth considering until Sunday morning at 6:00 when Jackson called Burke from Gatesville and stated that he had reconsidered and could not go for Jones because he believes that Jones' Negro station background would be known by our competitors and would be used by them against us. Furthermore, Jackson said he did not feel that he could introduce and recommend Jones in higher places in Waco for the same reason.<sup>5</sup>

Several months later, in February 1962, John M. Borders was hired as general manager. Borders was a native of Waxahachie, Texas, a small town about 60 miles north of Waco. He had worked summers at Waxahachie's local radio station, KBEC, beginning in 1956; and when he began college at Baylor University, worked at the campus carrier-current station. In 1957 he became an announcer at WACO, working evenings while attending classes during the day. In 1959 he left college to become an announcer at KBOX, a popular

rock-and-roll station in Dallas. He was promoted to production director there, then left in 1961 to become program director at WIL, a rock-and-roll station in St. Louis.<sup>6</sup>

Monroe interviewed Borders in December 1961. She described him as a "compromise": though he had no management or sales experience, he was a good programmer--WIL was the top-rated rock-and-roll station in St. Louis while he was program director--and he was familiar with Waco.<sup>7</sup> His employment contract called for a \$12,000 annual salary, plus five percent of net profits before taxes, and an option to buy ten percent of the corporation's stock at its market price after one year.<sup>8</sup>

The engineer hired to build the station was a long-time friend of Jackson, Donnell D. Dickson, Jr. Dickson had just completed constructing the KAWA ten-kilowatt facility (see note 70, page 45, above). He generally left stations after building them, but since his home was Waco, he planned to stay as assistant manager and chief engineer of KBGO.<sup>9</sup> He was hired for \$650 per month.<sup>10</sup>

Dickson started working for Audiocasting in early January 1962.<sup>11</sup> By then it had been decided to operate with downtown studios, separated from the transmitter.<sup>12</sup> Dickson prepared studio and office plans for several downtown buildings, then worked out a lease agreement with a friend, Nate Chodorow, owner of the Liberty Building. The

lease gave KBGO a large area of the second floor of the building for only \$3,600 yearly; and it was later arranged that half the rental would be paid for in advertising rather than cash.<sup>13</sup>

Construction proceeded through the spring of 1962 at both the studio and transmitter sites, and the transmitter was completed by early June. Because of discussions with Commission engineers, Dickson expected trouble adjusting the nighttime directional pattern--the construction permit specified almost complete suppression of radiation to the southeast--but he estimated that the station could go on the air by July 1.<sup>14</sup>

At Dickson's suggestion, Ken Hyman of San Antonio was retained as radio consultant to adjust the directional antenna system. The two had worked together on several other jobs.<sup>15</sup> Non-directional operation to check the transmitter and to make field measurements began on June 6, and tests and field measurements with the directional antenna system began June 26.<sup>16</sup> Problems developed with the nighttime pattern, then installation of a new electric power line near the antenna necessitated readjustment of both the day and night patterns.<sup>17</sup>

Adjustments and measurements continued through mid-August; but work was slowed because Dickson (a Reserve Air Force officer) was called to active duty in early August, and Hyman was spending considerable time in Puerto Rico on

another job.<sup>18</sup> When the nighttime pattern could not be brought within the construction permit limits, an application was filed September 6 requesting relaxation of the limits to permit slightly more radiation in certain directions of the nighttime pattern; the modification was authorized October 17.<sup>19</sup>

A proof of performance of the antenna system and an application for license--indicating that construction was complete--were filed on September 25.<sup>20</sup> Consultant Hyman's technical report stated in part:

It is felt that it must be pointed out to the commission that it was an extremely difficult task to obtain the final adjustment of these two directional patterns. Such things as very low driving point impedances, large adjacent channel fields from a station not much over 30 miles away. A large overhead transmission line less than a half mile from the antenna system, etc. Conditions were further aggravated by the extreme difficulty in obtaining permission to make field measurements in the close up areas. In spite of these difficulties, it is believed that the directional antenna systems meet all of the requirements as set forth in the commission's standards. The two patterns have been observed over a period of two weeks and have been found to be quite stable.

. . . . .  
 . . . it should be pointed out that this transmitter site is in an area which is highly cultivated in farm land. This condition made it very difficult to obtain all of the measuring points at all. The reason was the owners of the property refusing to give the measuring team permission to go into these fields which in most cases were ready for harvest. As a result it was not possible to get as many measuring points as is recommended in the Commissions standards.

It should also be pointed out there is as many as 74% of the points measured, overhead wires of some kind were a constant source of trouble. This made it very difficult to obtain good accurate readings. However, it is believed that a sufficient number of points were measured on each radial to get a fair idea of the

conductivity and inverse field on each radial.<sup>21</sup>

Because of the deficiencies in the engineering report indicated by Hyman's comments, the Commission found the proof of performance unsatisfactory, and refused to authorize program tests.<sup>22</sup> Audiocasting was understandably unhappy with Hyman's work,<sup>23</sup> and promptly fired him and hired Raymond E. Rohrer, a consulting engineer from Washington, to re-proof the antenna system. Additional measurements were made, and on October 16 a new engineering report was submitted.<sup>24</sup> Program test authority was granted on October 17; and at midnight that night, the station began regular programming.<sup>25</sup>

#### Financing

Audiocasting's 1958 application had estimated construction costs of almost \$26,000: equipment costs of \$23,000 and miscellaneous expenses of \$3,000. It had been planned to lease land for the transmitter site.

As it turned out, pre-air-time expenses were considerably greater. It cost \$18,535.44 in legal, engineering, and other expenses just to obtain the construction permit. Land for the transmitter site was bought for \$10,000; and it was necessary to erect a transmitter building (\$4,636) and to remodel the studio/office space (\$4,623). The equipment purchased from Gates cost \$42,232.61, with a down payment of \$7,631.57 and first-year payments of more than \$10,000.<sup>26</sup>



Other expenses of the construction phase cannot be specified, but they include a payment of at least \$737.67 to Hyman,<sup>27</sup> \$5,213.85 for engineers employed by the station, \$4,112.21 for Rohrer's consulting services, and \$1,569.20 for legal services. Other salaries (administrative, programming, and sales) paid between April 1 and October 10, 1962, amounted to \$12,213.63.<sup>28</sup> Including furniture and other miscellaneous expenses, pre-air-time expenses appear to have totaled a minimum of \$77,000.<sup>29</sup>

Donnell Dickson said that cash was so short during the construction period that at one time he personally paid for required supplies for five weeks, on Jackson's assurance that he would be repaid when the stockholders raised more money.<sup>30</sup>

It soon became obvious that the original financial plan would not be adequate, though as late as March 1961 Audiocasting had proposed to finance construction and early operation with just \$60,500 in equity capital and stockholder loans.<sup>31</sup> The originally authorized capitalization of 4,000 shares (\$10 par) was increased to 8,000 shares on June 11, 1962, and to 10,000 shares on October 1.<sup>32</sup> By the time KBGO went on the air, 7,102.92 shares were issued, and stockholders had loaned \$10,000 to the corporation (the notes bore interest of six percent).<sup>33</sup>

## Ownership

There were changes in stockholders as the years passed. Franks, Kouns, W.B. Smith, and Stout had dropped out of Audiocasting by mid-1959, and Hardison and Glenn Smith sold their stock in September 1959.<sup>34</sup> In late 1961 Cady and Johnson began selling their stock to new investors --for \$40 a share--and by April 1962 they were no longer stockholders.<sup>35</sup> In December 1961 and January 1962, Jackson interested two of his Masonic friends in buying 100 shares each from Cady and Johnson.<sup>36</sup> In April 1962 two of Joyce Monroe's acquaintances each bought 203 shares from Burke, Cady, and Johnson.<sup>37</sup> Stock holdings changed regularly as more money was required. By October 25, 1962, 7,102.92 shares had been issued, as listed in Table 7.

TABLE 7

STOCKHOLDERS OF AUDIOCASTING OF TEXAS, INC.,  
OCTOBER 25, 1962<sup>38</sup>

| Stockholder            | Shares   | Percent |
|------------------------|----------|---------|
| Joyce Lane C. Monroe   | 2,769.75 | 38.99   |
| Horace K. Jackson, Sr. | 1,566.73 | 22.06   |
| E.C. Laster            | 510.00   | 7.18    |
| Dr. James D. Carter    | 500.80   | 7.05    |
| Lee Lockwood           | 500.80   | 7.05    |
| Shirley Wexler         | 495.63   | 6.98    |
| Fred Bienstock         | 363.43   | 5.12    |
| Milton P. Burke        | 153.12   | 2.16    |
| Robert A. Mitchell     | 153.12   | 2.16    |
| Dr. David H. Traylor   | 89.54    | 1.26    |

New directors and officers were elected on May 4, 1962, following the resignations of Cady and Johnson. Jackson was elected director and named chairman of the board; Monroe was elected director and president; Borders was named vice-president; Carter, director and secretary; and Burke, director and treasurer.<sup>39</sup>

On September 17, 1962, an executive committee composed of Carter (chairman), Jackson, and Lockwood (the local stockholders) was created with the following duties:

. . . that said executive committee be and it is hereby authorized to exercise full control over the affairs of the corporation, and that no expenditure of the funds of the corporation not previously provided in the budget to be adopted by the Board of Directors shall be made without specific approval from the executive committee and that no business other than the usual and regular routine of the operation of radio station KBGO should be transacted without specific approval from the executive committee.<sup>40</sup>

Remuneration was provided Jackson and Carter for their corporate duties. At the May meeting a \$6,000 yearly salary was adopted for the chairman of the board (Jackson); at an August meeting a \$50 monthly fee was approved for the secretary (Carter); and at the September meeting Carter was voted an additional \$25 monthly as chairman of the executive committee.<sup>41</sup>

At an October 25, 1962, meeting, Jackson resigned as director, " . . . stating that the condition of his health made the action necessary." Audiocasting's Waco attorney, Pat Beard, was appointed to the vacant director's seat.

Jackson remained as chairman of the board, however; and though he never again participated actively in the station, the \$6,000 yearly salary continued.<sup>4 2</sup>

#### Call Letters

Shortly after grant of the construction permit, it was necessary for Audiocasting to select call letters for the new station. Monroe recalled that their communications attorney prepared a list of available call letters for consideration, and that she selected KBGO as the best of the list. A slogan, "The Big Go," was matched with the call letters for promotional use. By October 21, 1961, the call letters were requested, and they were assigned in December 1961.<sup>4 3</sup>

There was no problem with the call letters until March 24, 1962, when WACO protested their assignment. Lee Glasgow wrote the Commission:

It has come to my attention that a new AM radio station, operating on 1580 kilocycles, in Waco, Texas, has been assigned the call letters K-B-G-O. As you will note, we operate Radio Station WACO and we feel that the call letters will be confusing to the public, due to the fact that both of them end in the letter O. Actually, when both of the call letters are pronounced as they will be on the air, they sound very similar and this could be a continuing problem, both for the new station and for our station that has been on the air since 1922.

Since this station has not been built and it will be some time before they will be ready to broadcast, I would like to suggest that they be given another call letter that does not sound so much like W-A-C-O and one that does not end in the letter O. Also, since we are on 1460 and they are on 1580, the kilocycles are very close to each other on the dial, which would also contribute to confusion.<sup>4 4</sup>

The Commission requested Audiocasting's comments on the complaint on April 18;<sup>45</sup> and attorney Pepper filed a response on May 9. He wrote, "It is impossible to conceive how confusion could be occasioned between the call letters WACO and KBGO." He noted that there was no phonetic similarity, since only the last letter was identical; that the two had different first letters, with WACO spelling the name of the city; and that there was little possibility of confusion since KBGO was only the third station in the city. He also said that the stations were separated on receiver dials by 120 kHz, and that Audiocasting had already spent money on promotional materials using the letters KBGO.<sup>46</sup>

On June 20 the Commission ruled against the WACO complaint; it said:

In issuing call letters to broadcast stations, the Commission has limited itself to a determination that the desired identification is available, is in good taste, and will not confuse the listening public because of phonetic similarity with the call letters of other stations in the same general area.

Upon careful consideration of the information of record, we conclude that our assignment of the call letters KBGO was consistent with the above criteria and should therefore not be disturbed. The likelihood of public confusion appears particularly remote, inasmuch as the WACO call letter combination is the only one in Waco (and one of the few west of the Mississippi River) with a "W" prefix.

Accordingly, the relief requested in your letter of March 24, 1962, is hereby denied.<sup>47</sup>

Notes

<sup>1</sup>Audiocasting of Texas, Inc., Stockholders Meeting in Waco, October 21, 1961, Business Done and Results Obtained; minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid. The other applicant was Mart R. Cole of Waco, son of one of Jackson's friends. Donnell D. Dickson, Jr., telephone interview from San Antonio, Texas, October 19, 1974. The minutes described Cole: " . . . not employed, experience, moving picture theater experience and some small town radio station experience. His interview did not result in the impression that he was strong enough to fully take over an operation for absentee owners."

<sup>5</sup>Audiocasting of Texas, Inc., Stockholders Meeting in Waco, October 21, 1961, Business Done and Results Obtained; minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>6</sup>John M. Borders, private interview held at his office at KFJZ, Fort Worth, Texas, June 6, 1972.

<sup>7</sup>Joyce Lane Monroe, private interview held at her office at WBJW, Orlando, Florida, May 30, 1972.

<sup>8</sup>Employment Contract dated May 15, 1962, signed by William M. Cady III for Audiocasting of Texas, Inc., and John M. Borders. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (May 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>9</sup>Donnell Dickson interview.

<sup>10</sup>Letter from Milton P. Burke to stockholders dated February 17, 1962.

<sup>11</sup>Donnell Dickson interview.

<sup>12</sup>Burke wrote the stockholders: " . . . we originally planned studio housing at the site and planned on financing it 100%. We have had to abandon this plan and situate our studios downtown on a rental basis, leaving about \$2000 to be invested in a transmitter house on the site." Letter from Milton P. Burke to stockholders dated February 17, 1962.

<sup>13</sup>Donnell Dickson interview.

<sup>14</sup>Ibid. Letter from Joyce Monroe to John M. Borders dated February 21, 1962.

<sup>15</sup>Donnell Dickson interview. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas (May 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>16</sup>Telegram from Donnell D. Dickson, Jr., to FCC dated June 4, 1962; telegram in KBGO license file. Telegram from Donnell D. Dickson, Jr., to FCC dated June 24, 1962; telegram in KBGO license file.

<sup>17</sup>Stockholders Report, Audiocasting of Texas, Inc., August 4, 1962. Donnell Dickson interview.

<sup>18</sup>Donnell Dickson interview.

<sup>19</sup>Application of Audiocasting of Texas, Inc., for modification of construction permit, file BMP-10551 (filed September 6, 1962).

<sup>20</sup>Application of Audiocasting of Texas, Inc., for license to cover construction permit, file BL-9704 (filed September 25, 1962).

<sup>21</sup>Ibid., Exhibit 2, "Engineering Statement of Kenneth R. Hyman."

<sup>22</sup>Telegram from FCC to Audiocasting of Texas, Inc., dated October 4, 1962; copy in KBGO license file.

<sup>23</sup>As Donnell Dickson noted (see pages 148-149, above), Hyman had not devoted his full attention to the KBGO job. It is interesting to note that on July 17, 1963, Hyman was enjoined from holding himself out as an engineer. See "Order of Permanent Injunction," Exhibit 20 of Howard W. Davis tr/as The Walmac Company, dockets 18223 and 18224; see also Record, dockets 18223 and 18224, at 898-931.

<sup>24</sup>Amendment to application of Audiocasting of Texas, Inc., for license to cover construction permit, file BL-9704 (amendment filed October 16, 1962).

<sup>25</sup>Telegram from FCC to Audiocasting of Texas, Inc., dated October 17, 1962; copy in KBGO license file. Roger D. Thomas, private interview held at his home, Grand Prairie, Texas, June 6, 1972. Telegram from John M. Borders to FCC dated October 18, 1962; telegram in KBGO license file.

<sup>26</sup>Letter from Robert E. Johnson to stockholders dated February 5, 1962. Letter from Milton P. Burke to stockholders dated February 17, 1962. Balance Sheet of Audiocasting of Texas, Inc. (December 31, 1962).

<sup>27</sup>Report: April 1, 1962 through October 10, 1962, Expenses paid by check (undated). It was not determined what Hyman's total bill was--though a January 31, 1963, list of payables showed \$2,180 still owed him. Because of the deficiencies in his work noted on pages 148-150, Audiocasting refused to pay the complete fee. Letter from John M. Borders to Kenneth R. Hyman dated November 23, 1962.

<sup>28</sup>Report: April 1, 1962 through October 10, 1962, Expenses paid by check (undated). Accounts payable as of December 31, 1962 (undated).

<sup>29</sup>December 31, 1962, financial statements indicate the pre-operation expenses may have been about \$86,750.

<sup>30</sup>Donnell Dickson interview.

<sup>31</sup>Amendment to application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (amendment submitted March 24, 1961).

<sup>32</sup>Meeting of the Shareholders of Audiocasting of Texas, Inc. (June 11, 1962); minutes in corporate record book of Audiocasting of Texas, Inc. Stockholders Meeting (October 1, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>33</sup>Meeting of The Stockholders of Audiocasting of Texas, Inc. (October 25, 1962); minutes in corporate record book of Audiocasting of Texas, Inc. Balance Sheet of Audiocasting of Texas, Inc. (September 18, 1962).

<sup>34</sup>FCC ownership report for KJOE (September 4, 1959).

<sup>35</sup>Undated, untitled worksheet listing stock certificates 1 through 37 of Audiocasting of Texas, Inc. FCC ownership report for KBGO (February 15, 1962). FCC ownership report for KBGO (August 3, 1962).

<sup>36</sup>Undated, untitled worksheet listing stock certificates 1 through 37 of Audiocasting of Texas, Inc. FCC ownership report for KBGO (February 15, 1962). Jackson's two friends were Dr. James D. Carter and Lee Lockwood, both of Waco. Carter was a Masonic librarian; Lockwood was an officer of the Waco Savings and Loan Association and operated a lumber yard and construction company.



<sup>37</sup>Undated, untitled worksheet listing stock certificates 1 through 37 of Audiocasting of Texas, Inc. FCC ownership report for KBGO (August 3, 1962). Monroe's acquaintances were New Yorkers Shirley Wexler (wife of Atlantic Records' Jerry Wexler) and music publisher Fred Bienstock.

<sup>38</sup>Meeting of The Stockholders of Audiocasting of Texas, Inc. (October 25, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>39</sup>Minutes of Special Stockholders Meeting of Audiocasting of Texas, Inc (May 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (May 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>40</sup>Meeting of the Directors of Audiocasting of Texas, Inc. (September 17, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>41</sup>Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (May 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc. Meeting of the Directors of Audiocasting of Texas, Inc. (August 4, 1962); minutes in corporate record book of Audiocasting of Texas, Inc. Meeting of the Directors of Audiocasting of Texas, Inc. (September 17, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>42</sup>Meeting of The Stockholders of Audiocasting of Texas, Inc. (October 25, 1962); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>43</sup>Joyce Monroe interview. Audiocasting of Texas, Inc., Stockholders Meeting in Waco, October 21, 1961, Business Done and Results Obtained; minutes in corporate record book of Audiocasting of Texas, Inc. Letter from Vincent A. Pepper to FCC dated May 9, 1962; letter in KBGO license file.

<sup>44</sup>Letter from R.E. Lee Glasgow to FCC dated March 24, 1962; letter in KBGO license file.

<sup>45</sup>Letter from FCC to Audiocasting of Texas, Inc., dated April 18, 1962; copy in KBGO license file.

<sup>46</sup>Letter from Vincent A. Pepper to FCC dated May 9, 1962; letter in KBGO license file.

<sup>47</sup>Letter from FCC to WACO Broadcasting Corporation dated June 20, 1962; letter in KBGO license file. See FCC Report No. 4235 (June 20, 1962).

## CHAPTER X

### OPERATION

#### Staff

KBGO's sign-on was delayed until October 18, 1962, by technical problems, but in every other respect the station was ready weeks earlier. Borders was hired as general manager in February 1962, and was on the job in May.<sup>1</sup> Also in February, Monroe hired a program director, Bid Causey.<sup>2</sup>

Causey--whose legal name was Dean Grossman--began his broadcasting career in about 1956, and quickly moved into major markets. He worked at both principal rock-and-roll stations in Baltimore; and when contacted by Monroe for the Waco job, was production director at WAKE in Atlanta, working under program director Bill Drake. Causey moved to Waco in August or early September 1962 to set up the station's programming.<sup>3</sup>

KBGO's sales manager was Lloyd George. George had met John Borders while general sales manager at KBOX in Dallas, and after that worked as sales manager at KJEM in Oklahoma City, then as a salesman at KXOL in Fort Worth. Borders hired him in June or July 1962 for a fixed salary

(apparently \$800 per month) plus five percent of the station's profits. George came to Waco in mid-September, and hired two other salesmen, Oscar Dupre, Jr., and David W. Small. Dupre worked for a Waco advertising agency, and Small was a Baylor student who had sales experience with the campus station.<sup>4</sup>

The chief engineer was H. Gene Garrison. He worked for Collins Radio in Dallas for six years, and was chief engineer of an unnamed Austin radio station for two. He came to KBGO from KWTX-TV, where he was a staff engineer.<sup>5</sup>

The announcing staff consisted of: Bob Dean (six to ten, mornings), Tom Sanders (ten to two), Bid Causey (two to six), Jack Foshee (who later called himself Steve Lundy, six to midnight), and Jim Oldham (midnight to six). The news director was Mark Reeves.<sup>6</sup>

#### Programming

Although Audiocasting's 1958 application criticized rock-and-roll as "music with a 'primitive beat,'" it was never seriously thought that the station would play any other type of music.<sup>7</sup> KJOE featured popular music in the mid-1950's; Joyce Monroe became a program director for the Rounsaville stations; and both Borders and Causey had most of their experience at rock-and-roll stations.<sup>8</sup>

The other stations in Waco were not strongly oriented toward contemporary programming. WACO was the major rock-and-roll station, but it was not aggressively programmed.

KAWA, just establishing itself as a Waco station, played rock-and-roll and was more programming-conscious than WACO, but was hampered by its daytime hours. KWTX aimed for an older audience, with popular, almost mid-road music.<sup>9</sup>

Joyce Monroe described the approach to programming she wanted in a letter to Borders:

. . . when you and Bid [Causey] get together on what you both want for the sound of the station, contests, etc., there are only 2 points I strongly recommend: first, that you broaden the music policy beyond strictly Top 40, and that you do not establish the sound as "hard rock". That teenage image (which as you know, is the reputation you immediately get) is too hard to fight with agencies and advertisers . . . and we don't need it to capture that market. The other station's music policies are so loose and sloppy we can afford to restrict the rock to certain segments, and still sound like the music leader in town. Second, I am in favor of some initial "attention-getting" promotions or contests, and after that, small clever things, but don't trap yourselves into big costly promotions as part of the format. Again, as I'm sure you know, once you back yourself into that corner you have to live with it forever, as the audience comes to expect it, and then turns up its nose at any small prize or "fun" game. We [Rounsaville] have spent 1/4 of a million dollars buying the audience in this market [WFUN, Miami], and it has worked fine . . . we got the #1 rating within 6 months. The only trouble is that we are spending more than we can possibly make, and we are stuck with it. Now we either have to raise rates, or cut down on the big give-aways and maybe lose some ratings.<sup>10</sup>

Monroe's advice about the music policy was not followed. While some songs were banned from midday play, they were but a small fraction of the playlist. The music featured the top hits (from a playlist of fifty songs) and two "oldies" an hour; the sound was tight and well-produced, of a much higher quality than was needed for a market the

size of Waco. Said Causey, " . . . I programmed it from my experiences with WAKE in Atlanta, WCAO in Baltimore, and WITH in Baltimore. I just patterned it after the big stations I had worked at."<sup>11</sup>

The advice about contests and promotions was followed better. The sign-on of the station was preceded by a fairly modest billboard and taxi-card campaign. The "attention-getting" contest was the KBGO Treasure Chest: a pirate's chest containing coins, bills, and merchandise prizes was placed in a window of the department store across the street from the station, and the chest was awarded to the person who guessed the total value of the prizes. This was followed by an auto window-sticker contest reminiscent of a contest Joe Monroe had pirated from Gordon McLendon years before.<sup>12</sup>

KBGO operated 24 hours a day. The 1958 application had proposed full-time service and Borders decided not to cut back from that promise, though Washington attorney Pepper wrote him that 24-hour operation was not necessary. The only time the station was not on the air was a five-and-one-half-hour maintenance period Monday mornings.<sup>13</sup>

KBGO's news was dubbed "Authentic News," and continued Joe Monroe's idea of scheduling news before the competition's. WACO carried A.B.C. news at :55, with local news at :25; KBGO scheduled its five-minute newscasts at :50, with one-minute headlines at :20. The news, like the

rest of the programming, was highly formatted and produced. Electronic-key sound effects separated each story, and segments of the newscasts (weather, sports, and so forth) were announced by jingles, dramatic drum rolls, and deep-voiced-prerecorded introductions.<sup>14</sup> It sounded impressive when the cartridge tape machines worked properly.

#### Audience and Sales

The major-market polish of KBGO quickly attracted an appreciative audience. Causey later said:

In a matter of 30 days we felt we were number one. We based this on some surveys taken by the local college [Baylor], and also by comment around town and everything. We felt within 30 days--we honestly felt that we were number one.<sup>15</sup>

Borders felt that the audience was developing satisfactorily, and by early January 1963 was planning to buy a one-week Hooper survey in March.<sup>16</sup> The survey by a nationally-recognized organization would, if KBGO turned out to be the number one or two station, bring in business from national and regional advertisers.

The 1958 application projected first-year sales of \$110,000, or about \$9,200 a month. Pre-operation sales were largely trade-outs for furniture, office supplies, and similar items; but even as early as August 1962, Borders had arranged for over \$2,000 in local advertising.<sup>17</sup> Early sales seemed respectable for a new, unproven station: billings for the October 18 through November 30 period were \$5,703.22, and December sales were \$6,076.93.<sup>18</sup> Had sales

continued to increase linearly, the station would have crossed the break-even point by mid-1963.

#### Budget and Financing

KBGO's original application had predicted first-year operating costs of \$72,000, or \$6,000 a month. The tentative budget when the station went on the air was \$12,400 a month. The principal expense items are listed below:

|                                     |                          |
|-------------------------------------|--------------------------|
| Sales Expenses:                     |                          |
| Salaries                            | \$ 1,555                 |
| Outside Commissions                 | 1,000                    |
| Program Expenses                    |                          |
| Salaries                            | 2,533                    |
| Promotion                           | 400                      |
| News Service                        | 215                      |
| Royalties                           | 200                      |
| Other                               | 50                       |
| Technical Expenses                  |                          |
| Salaries                            | 1,180                    |
| Line Charges                        | 50                       |
| Utilities                           | 50                       |
| Other                               | 75                       |
| General and Administrative Expenses |                          |
| Salaries                            | 1,770                    |
| Depreciation                        | 750                      |
| Amortization                        | 550                      |
| Rent                                | 300                      |
| Taxes                               | 525                      |
| Other                               | 1,195                    |
| Total Expenses                      | \$ 12,398. <sup>19</sup> |

Actual expenses were very close to the projected budget: \$14,190.73 for October-November, \$11,840.95 for December, and \$12,256.27 for January.<sup>20</sup> KBGO apparently went on the air with about 17 employees; the budgeted salaries for the payroll were as follows:



|                       |                               |
|-----------------------|-------------------------------|
| General Manager       | \$ 230 weekly (\$1,000/month) |
| Sales Manager         | 185 weekly (\$800/month)      |
| Salesman              | 90 weekly                     |
| Salesman              | 85 weekly                     |
| Program Director      | 140 weekly                    |
| News Director         | 125 weekly                    |
| Announcer             | 106 weekly                    |
| Announcer             | 105 weekly                    |
| Announcer             | 85 weekly                     |
| Announcer (part-time) | 24 weekly                     |
| Chief Engineer        | 100 weekly                    |
| Engineer              | 58 weekly                     |
| Engineer              | 58 weekly                     |
| Engineer              | 55 weekly                     |
| Bookkeeper/Typist     | 65 weekly                     |
| Traffic/Receptionist  | 64 weekly                     |
| Copywriter            | 50 weekly. <sup>21</sup>      |

KBGO's initial budget was not what Joe Monroe had had in mind when he prepared the application for the station in 1957. He described his concept of how to put a new station on the air this way:

[Q: What kind of operation did you have in mind?]  
I intended to poor-boy it until we got to making money.

[Q: Combination studio-transmitter?]  
Possibly. I wasn't concerned about studios. Plush studios are really not needed. It's a luxury. If you can afford it, fine; but you really don't need it. Hell! I could put a radio station right here [in the living room] and operate it if I knew what I was doing! As far as the people that are picking it up, they don't know but what--they couldn't care less about your studio facilities, so long as you had everything you needed for a good, tight on-the-air operation.

[Q: Did you really plan for four announcers and three newsmen, as indicated in your application?]

Well, as you know, in an application you put a lot of things that you--and everybody does this--I'm not saying it's right--but you put in a lot of things that you would like to do down the line. I don't think it says we're going on the air with that many, does it?

[Q: What would you have planned to hit the air with, then?]

I had intended to go over there myself. And I had figured on hitting the air with, probably with about eight people.

[Q: Twenty-four hours?]

No, eighteen hours: six to midnight. Future operations, we might have gone 24 hours. But future operations depended on what our competitors did. If they didn't throw a bunch of contests and expensive contests at us, we wouldn't have either.<sup>22</sup>

KJOE had been just the sort of operation Joe Monroe described: operating expenses for the first five months on the air were \$32,261, or just about \$6,000 a month. When the station was established as a profitable operation, expenses were increased--though KJOE apparently never had more than 14 employees.<sup>23</sup> KBGO's backers obviously expected it to be the same sort of immediate success, and prepared an initial budget as if KBGO were an established station. Their thinking was reflected in their hiring a staff from major-market stations.

Because KBGO went on the air with almost no working capital--Audiocasting had only about \$100 in its bank account on October 15, 1962--the station's failure to reach an early break-even point forced the stockholders to raise additional funds to keep it going.<sup>24</sup> In November it was decided that additional capital would be raised by the issuance of convertible debentures, bonds convertible into common stock and unsecured by corporate assets. The debentures were three-year bonds, bearing interest at ten percent, and convertible into common stock at the rate of one share for each \$10 face value.<sup>25</sup>

The first set of debentures was issued during the

first two weeks of December 1962, and raised \$18,200. By the end of January 1963, \$24,000 had been raised in this fashion.<sup>26</sup>

### Crises

Because of the negative cash flow during the first months of operation, KBGO put off paying many of its accounts. These included several local accounts: local payables totaled \$3,765.33 by the end of December 1962, and \$8,081.21 by the end of January 1963.<sup>27</sup> WACO, KWTX, and KAWA used this situation to support rumors they were spreading that KBGO was about to go off the air.<sup>28</sup>

As the financial situation deteriorated--two payrolls were delayed because of cash shortages<sup>29</sup>--employees began leaving the station. Three of the announcers went to WACO; there was a complete turnover in salesmen; the copywriter was discharged to cut expenses.<sup>30</sup> Morale was aggravated by complaints by Dr. Carter about the station. Monroe wrote him on January 15:

I have just received a call from John Borders, who was in a very disturbed state over your visit to him this morning. He tells me that your criticism of the station's programming was bitter, and loud enough for several staff members to hear ... that your personal remarks regarding his job were intimidating ... and that you even went to far as to question the station engineer regarding our sales!

Dr. Carter, it should not be necessary to point out to you first, that one of John's most constant problems has been to keep up employee morale and enthusiasm in the face of continuous rumors our competitors are spreading that we are about to "fold". We have already lost key personnel because of it. To have permitted the employees to hear a stockholder "chew out" the

Manager, can only have furthered their fears, strengthened the erroneous rumors, and weakened John's over-all position.

Second, we had a clear understanding from the beginning regarding our programming policy. You were warned that the music would not suit your personal taste, or that of your friends, and you agreed not to interfere. Every investor in KBGO, even including, I believe, Mr. Jackson, and Mr. Lockwood, who recently complimented John on the sound of the station, understands the commerciality of "Top 40" programming. The pilot survey recently taken for us by the University indicates that we have already achieved close to a #1 rating, which certainly substantiates our programming theory, and we do not intend to deviate from it.

Finally, John quotes you as saying that "you and the other stockholders intend to take a long, close look at his contract". At its expiration, John certainly expects us to do so, and will stand or fall on his managerial record at that time. Meanwhile, your intimidation serves no purpose except to worry and distract him from doing his job. Considering the many handicaps put upon him by our financial condition, I would say that the job he has done to date deserves a vote of confidence .. not threats.

To sum up, Dr. Carter, I must say that your lack of diplomacy and interference can jeopardize KBGO, and is contrary to the interest of every stockholder. Since I have received your (and Mr. Lockwood's) written resignation from the Board of Directors, you are not acting in any official capacity. As a minority stockholder, you are not entitled to dictate policy. If you so desire, we will call a stockholders' meeting to revote, and reaffirm, these previously established matters of policy. Meanwhile, John Borders is instructed to adhere to them.<sup>31</sup>

Two weeks later, on January 29, Borders submitted his resignation, to be effective one month later. His letter to Monroe explained his view of the station's problems:

For some time now, I have looked with displeasure at the corporate financing of K-BGO, believing that the stockholders individually have made serious mistakes in their thinking and planning.

As you know, we are in a highly competitive market, which we entered six months on the heels of another new station. Even so, we have managed to promote

ourselves on the air, and through trade-outs in other media, into a dominant number one position as reflected by studies by the Baylor Marketing Department. We have now entered the important battle of acceptance vs. audience. You cannot legitimately expect to take away business from old-line stations in any great abundance in a short period of time. This will be a slow process, hampered because:

- (1) We have had over 45 local bills outstanding for over two and three months, which we were unable to pay. It is difficult to put a dollar value on the amount of business that this has cost us ... This has seriously damaged our effectiveness, since in my opinion it is absolutely imperative to reflect a healthy financial position in order to gain local respect. Our competitors have used this against us to good advantage.
- (2) The fact that we were unable to meet our payroll on two occasions hurt the morale of the employees, and gave more credence to the rumors about our financial difficulties, which I have tried to discount.
- (3) As you know, I have spent many hours buffering creditors, and among important outstanding debts to be paid are:
  - (1) \$4,112.21 to Washington Consultant.
  - (2) \$1,236.91 to Washington Attorney.
  - (3) \$5,171.85 in note payments to Gates Radio Company.
  - (4) \$4,769.67 in State and Federal Taxes.

Requests for payment are continuing, and these bills need to be paid.

We have not as yet had time to get much national or regional business, because we are a relatively new station, and the agencies take a "wait and see" attitude as I had anticipated. They, of course, must justify their buys to their clients. I have called on 21 agencies in Dallas and Fort Worth, and they cognizant [sic] of the fact that we are going strong, but they want a Hooper or Pulse to prove it. Otherwise, they will stick to the stations that they have bought in the past, with exceptions in the case where a local recommendation affects a national or regional buy.

After insistence, we dropped a copywriter from our staff to cut costs. We now must add a girl to this position, since there was a noticeable drop in billing, and sales enthusiasm, when we made this move. We had been using spec production to our advantage.

Unfortunately, though I admire and respect our local stockholders, their experience in owning

broadcast property is nil, and this makes it difficult for them to understand our problems.

On the basis that I and my staff have been subjected to unusually trying circumstances with a new station, we have done a tremendous job. And, I personally will not accept the responsibility of making the station an immediate financial success with such limited tools of competition, and past and present hardships. And, obviously, this is necessary for the corporation to exist.<sup>32</sup>

The crises of January were reflected in the station's sales for the month: only \$2,824.29.<sup>33</sup> Sales figures for individual months are not available for later months, but total sales for February through June 1963 totaled just \$6,000.97, only \$1,200 a month.<sup>34</sup>

The stockholders generally seemed unwilling to try to make it through this difficult period, since that would have required pouring additional capital into what they saw as a sinking ship. Instead they contacted a media broker to try to sell the station.<sup>35</sup> To keep the station on the air until a buyer could be located--thereby keeping the value of the station greater--Monroe herself loaned KBGO \$3,400 more in February and March to meet payroll and tax deadlines.<sup>36</sup>

Causey was appointed general manager when Borders left in February. He was ordered by Monroe to eliminate all possible expenses; one of his first acts was to dismiss most of the staff, and move the broadcast studio to the tiny transmitter building.<sup>37</sup> Engineer Roger Thomas described the move:

They called everybody, had the people deluge on the Liberty Building. We stripped all this stuff out, took the board out of the production room, and took it out to the transmitter, and put a fast job together out there, and started broadcasting from out there, all in the same night.<sup>38</sup>

The staff was reduced to Causey, Garrison, Thomas, and two announcer/engineers; the station schedule was reduced to 6:00 a.m. to 10:00 p.m.; and the UPI news service was suspended.<sup>39</sup> Additional money to keep KBGO on the air was raised by \$6,000 in short-term bank loans in May and June 1963. The loans were secured by all the stock and debentures of the corporation, since virtually all physical assets secured other loans and equipment credit.<sup>40</sup>

About the same time, the search for a buyer succeeded. In April a purchase offer was made by the Arkadelphia Broadcasting Company, backed by Shreveport broadcasters Lawrence Brandon and Marvin B. Kosofsky.<sup>41</sup> Monroe described Arkadelphia's offer as follows:

Total purchase price \$140,000. Down payment \$15,000.00, which will be entirely applied to delinquent bills currently amounting to more than that amount. When these bills have been paid, the corporation's remaining obligations are \$27,000, Gates Radio; \$6,000, bank loan due this fall. The purchasers agree to assume these payments for us, deducted from total price of course, and will pay them out over the next three years. Following that he will begin monthly payments to the stockholders. The total terms are ten-year pay-out at 5%.<sup>42</sup>

Monroe and the three Shreveport stockholders accepted the Arkadelphia offer, but others apparently wanted to hold out for a higher price. The offer was held

open until July 13, and when the Audiocasting stockholders would not unanimously accept the offer and Arkadelphia would not increase it, the tentative sale fell through.<sup>43</sup>

By mid-June Causey had left KBGO, going to Rounsaville's WCIN in Cincinnati.<sup>44</sup> Garrison was named general manager to succeed him.<sup>45</sup> The only other employees at that time were George Johnston (program director), Roger Thomas (chief engineer), and this writer (announcer/engineer). There was no organized sales effort, and little advertising was aired during the summer of 1963.



Notes

<sup>1</sup>Letter from Joyce Monroe to John M. Borders dated February 21, 1962. John Borders interview.

<sup>2</sup>Letter from Joyce Monroe to John M. Borders dated February 21, 1962.

<sup>3</sup>Bid Causey (Dean Grossman), private interview held at his office at WEEP, Pittsburgh, Pennsylvania, March 15, 1971.

<sup>4</sup>Lloyd George, telephone interview from Baytown, Texas, October 18, 1974.

<sup>5</sup>Stockholders Report, Audiocasting of Texas, Inc., August 4, 1962.

<sup>6</sup>John Borders interview.

<sup>7</sup>Joe Monroe interview. Bid Causey interview.

<sup>8</sup>Joyce Monroe interview. John Borders interview. Bid Causey interview.

<sup>9</sup>Bid Causey interview. Lloyd George interview.

<sup>10</sup>Letter from Joyce Monroe to John M. Borders dated February 21, 1962.

<sup>11</sup>Bid Causey interview.

<sup>12</sup>Bid Causey interview. Vern Stierman described how Joe Monroe had used a McLendon promotion at KJOE: McLendon was running a bumper-sticker contest. Joe decided to do the same thing in Shreveport. McLendon claimed he had it copyrighted. . . . Joe just said, "To hell with you. I can do it. You can't copyright it." And I did hear the story--how much truth there was to it, I don't know, I never heard it from McLendon himself--but I did hear that he was highly upset with Joe, that he really wasn't interested in Shreveport, but that he was just going to teach Joe Monroe a lesson, by buying [KTBS] and coming in. Vern Stierman interview.

<sup>13</sup>Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851 (filed February 10, 1958), Section IV, p. 1. John Borders interview. Letter from Vincent A. Pepper to John M. Borders dated August 13, 1962. Roger Thomas interview.

<sup>14</sup>Bid Causey interview.

<sup>15</sup>Ibid. An FCC investigation later revealed that of the surveys taken by two Baylor students--the surveys were not taken by the University--KBGO placed fourth in the earlier survey, and third in the later, December 1962 survey.

<sup>16</sup>Letter from John M. Borders to Joyce Monroe dated January 3, 1963.

<sup>17</sup>Stockholders Report, Audiocasting of Texas, Inc., August 4, 1962.

<sup>18</sup>Audiocasting of Texas, Inc., Waco, Texas, Profit and Loss Statement, Month of November, 1962. Audiocasting of Texas, Inc., Waco, Texas, Profit and Loss Statement (December, 1962).

<sup>19</sup>Audiocasting of Texas, Inc., Waco, Texas, Tentative Budget--Expense.

<sup>20</sup>Audiocasting of Texas, Inc., Waco, Texas, Profit and Loss Statement, Month of November, 1962. Audiocasting of Texas, Inc., Waco, Texas, Profit and Loss Statement (December 1962). Radio Station KBGO, Waco, Texas, Profit and Loss Statement (January 1963).

<sup>21</sup>Audiocasting of Texas, Inc., Waco, Texas, Tentative Budget--Expense. Undated memo titled Outstanding October [1962] Checks. Salesmen worked for commissions, with guaranteed minimums; the figures listed for salesmen are presumably estimates of their commissions. The figures listed for announcers are the budgeted amounts; payroll checks indicate that gross weekly salaries for announcers were approximately \$130 for the morning announcer, \$105 for the midday man, and \$85-\$90 each for the evening and all-night announcers.

<sup>22</sup>Joe Monroe interview.

<sup>23</sup>FCC Annual Financial Reports (1954-1959) for KJOE.

<sup>24</sup>Handwritten notation dated October 15, 1962, on an October 1, 1962, balance sheet for Audiocasting of Texas, Inc.

<sup>25</sup>Bond numbers 88 through 216, Certificate No. 4, \$100 par value convertible debentures of Audiocasting of Texas, Inc., issued December 1, 1962.

<sup>26</sup>Audiocasting of Texas, Inc., Waco, Texas, Balance Sheet, December 31, 1962. Audiocasting, Inc. of Texas [sic] Waco, Texas, Analysis of Stockholders' Positions, January 31, 1963.

<sup>27</sup>Accounts Payable as of December 31, 1963 [sic]. Accounts Payable (January 31, 1963).

<sup>28</sup>Letter from Joyce Monroe to Dr. James D. Carter dated January 15, 1963. Bid Causey interview.

<sup>29</sup>Joyce Monroe interview.

<sup>30</sup>Bid Causey interview. Lloyd George interview. Letter from John M. Borders to Joyce Monroe dated January 29, 1963.

<sup>31</sup>Letter from Joyce Monroe to Dr. James D. Carter dated January 15, 1963.

<sup>32</sup>Letter from John M. Borders to Joyce Monroe dated January 29, 1963.

<sup>33</sup>Radio Station KBGO, Waco, Texas, Profit and Loss Statement (January 1963).

<sup>34</sup>Audiocasting of Texas, Inc., Waco, Texas, Profit and Loss Statement, Eight Months Ended June 30, 1963.

<sup>35</sup>Letter from Hub Jackson (Blackburn & Company) to Joyce Monroe dated March 24, 1963.

<sup>36</sup>Cancelled checks of Joyce Monroe dated February 6, February 14, and March 20, 1963.

<sup>37</sup>Bid Causey interview. Letter from Joyce Monroe to the KBGO staff dated February 4, 1963.

<sup>38</sup>Roger Thomas interview.

<sup>39</sup>Bid Causey interview. Roger Thomas interview.

<sup>40</sup>Undated memo from Pat Beard to the stockholders of Audiocasting of Texas, Inc.

<sup>41</sup>Notice from Joyce Monroe to stockholders of Audiocasting of Texas, Inc., dated April 23, 1963. At the time, Brandon owned KREB in Shreveport, and Kosofsky owned KCIJ in Shreveport. Later in 1963, they received Commission approval to turn in the KCIJ license and each become 50 percent owner of KREB. Application of Universal

Broadcasting Corporation for assignment of license, file BAL-4711 (filed January 7, 1963). They later bought several other stations.

<sup>42</sup>Notice from Joyce Monroe to stockholders of Audio-casting of Texas, Inc., dated April 23, 1963.

<sup>43</sup>Lawrence Brandon, telephone interview from New York, October 11, 1974. On February 9, 1963, Milton Burke wrote the stockholders that, "For KBGO to be sold with everyone getting his total investment back . . . we would--as of now--need . . . a total sale price of \$150,000.00 . . . .: Letter from Milton P. Burke to stockholders of Audio-casting of Texas, Inc., dated February 9, 1963.

<sup>44</sup>Bid Causey interview.

<sup>45</sup>Letter from Charles M. McDonald to Milton P. Burke dated October 1, 1963.

## CHAPTER XI

### TRANSFER OF CONTROL

McDonald and Tirey

The problems Audiocasting faced in mid-summer 1963 were critical: the station's operating staff was but a skeleton, there were almost no revenues, corporate-level personnel were abandoning the enterprise, and creditors were closing in. In addition to current and long-term equipment notes of \$30,275, current liabilities included the following: trade accounts of \$17,105, short-term bank notes of \$11,587, federal payroll taxes of \$4,526, and federal and state unemployment taxes of \$2,010.<sup>1</sup>

By mid-July, Joyce Monroe was the only director or officer of the corporation. Carter and Lockwood resigned in mid-January; Beard resigned as secretary, director, and corporate attorney by mid-June; and Burke quit on July 12.<sup>2</sup> Largely because of the risk of exposing themselves to personal liability for the corporation's debts (especially overdue taxes), none of the other stockholders was willing to serve with Monroe.

Upon Beard's resignation as attorney, Garrison searched for a new lawyer for Audiocasting, and was referred to Charles M. McDonald. On May 25 Garrison

contacted McDonald and asked him if he would represent Audiocasting and Monroe. A day or two later, after discussions at Garrison's apartment, McDonald said he was willing to. He spoke with Monroe by telephone, and on June 24 she retained him to represent both Audiocasting and her own interests in it.<sup>3</sup>

After the Arkadelphia sale fell through, McDonald's principal problem was to deal with the corporation's anxious creditors. The first three days of August, he and Audiocasting's Washington attorney (Donald E. Bilger) met in Waco with Monroe and the station's staff to analyze the situation and decide on a course of action. At some point in the discussions, it was suggested that McDonald might acquire a minority interest in Audiocasting and loan the corporation money to pay off the most pressing debts.<sup>4</sup>

McDonald discussed the matter with a former law partner, Frank B. Tirey, Jr., and they both decided to make the investment.<sup>5</sup> They bought 10.572 percent of the outstanding stock on August 15;<sup>6</sup> but they were interested in more than a minority interest, and soon made arrangements to acquire most of Audiocasting's issued stock. They apparently made a similar arrangement with each stockholder: stock was purchased for substantially less than par value, and the buyers guaranteed later repayment of debentures and notes held by the sellers.<sup>7</sup> Consummation of the purchases would result in the stock ownership listed in Table 8.

TABLE 8

STOCKHOLDERS IN AUDIOCASTING OF TEXAS, INC.,  
AFTER PROPOSED STOCK SALES<sup>8</sup>

| Stockholder            | Shares   | Percent |
|------------------------|----------|---------|
| Charles M. McDonald    | 2808.045 | 39.447  |
| Frank B. Tirey, Jr.    | 2808.045 | 39.447  |
| Horace K. Jackson, Sr. | 500.800  | 7.035   |
| Dr. James D. Carter    | 500.800  | 7.035   |
| Sam Jack McGlasson     | 500.800  | 7.035   |

Because the proposed stock sales would shift control from the original group of stockholders to McDonald and Tirey, it was necessary to apply for Commission approval of the transfer of control. Preparation of the application began in late September; it was tendered on October 11, and accepted for filing on November 6, 1963.<sup>9</sup>

In the meantime it was necessary to deal with the station's creditors. McDonald tried to negotiate extensions of the loans, but was only partly successful. Gates Radio agreed to a resumption of monthly payments, with overdue interest to be paid off in separate payments. In late August, McDonald and Tirey loaned Audiocasting \$12,112.09 to pay off the bank notes and taxes; they made additional loans of \$31,800 during the remainder of 1963 to keep KBGO on the air.<sup>10</sup>

### Station Operations

With the restoration of stable corporate management<sup>11</sup> and a more secure financial base, station personnel returned their attention to operating a radio station. Experienced announcers were hired in August and early September, and a sales staff was organized.<sup>12</sup> Garrison proved to be an ineffective manager,<sup>13</sup> and after discussing the situation with Monroe, he submitted his resignation on October 25. Monroe decided to appoint Donald H. French, the station's morning announcer, temporary manager; he was promoted on November 11.<sup>14</sup>

French served until February, but then left town for a short vacation and did not return.<sup>15</sup> His replacement, David W. Small, was appointed on February 17.<sup>16</sup> Small had worked as a KBGO salesman in 1962 while a student at Baylor, and since then had been a salesman for McLendon's KILT in Houston.<sup>17</sup> Small was KBGO's first sales-oriented manager, and by March, revenues began to rise significantly: sales for the last eight months of 1964 averaged \$7,000 per month, compared with the 1963 monthly average of \$2,045.<sup>18</sup>

George Johnston was put in charge of programming and engineering. In November 1963 he retained a Fort Worth consulting engineer, William B. Carr, to readjust the directional antenna system, which had been neglected for almost a year.<sup>19</sup> The recently reinvigorated programming began to attract an audience again; and a November Hooper



survey reported the audience shares listed in Table 9.

TABLE 9  
WACO RADIO AUDIENCE SHARES,  
NOVEMBER 1963 <sup>20</sup>

| Station                                     | Total Audience | Under 18 | 18-39 | Over 39 |
|---------------------------------------------|----------------|----------|-------|---------|
| Monday through Friday, 7:00 a.m.-12:00 noon |                |          |       |         |
| WACO                                        | 38.3           | 15.8     | 36.7  | 38.5    |
| KWTX                                        | 21.9           | 15.8     | 12.2  | 31.9    |
| KBGO                                        | 17.2           | 52.6     | 23.5  | 8.9     |
| KAWA                                        | 6.0            | 10.5     | 4.1   | 5.9     |
| WACO-FM                                     | 2.3            | ---      | 4.1   | 1.5     |
| KEFC (FM)                                   | 1.5            | ---      | 5.1   | 0.7     |
| Monday through Friday, 12:00 noon-6:00 p.m. |                |          |       |         |
| WACO                                        | 35.4           | 32.1     | 29.1  | 49.3    |
| KWTX                                        | 18.2           | ---      | 18.4  | 26.1    |
| KBGO                                        | 25.4           | 53.6     | 21.4  | 5.8     |
| KAWA                                        | 1.7            | ---      | 3.4   | 1.5     |
| WACO-FM                                     | 2.2            | ---      | 3.9   | 1.4     |
| KEFC (FM)                                   | 2.4            | ---      | 5.8   | ---     |

#### Opposition to Transfer

KBGO's competitors did not sit idly by while the new station reestablished itself. Beginning in April 1963, Lee Glasgow of WACO made a series of complaints about KBGO to the Commission. The complaints alleged engineering violations, misuse of audience surveys, news pirating, and unauthorized transfer of control to McDonald and Tirey.<sup>21</sup> On the basis of these complaints, a field investigation was

conducted by the Commission's Complaints and Compliance Division in late September and early October 1963,<sup>22</sup> and KBGO was inspected by the Commission's Dallas District Office in January 1964.<sup>23</sup> Also, KWTX filed a formal petition to deny the transfer application on December 6, 1963. The petition alleged unauthorized transfer of control to McDonald and Tirey, and the broadcast of lottery information.<sup>24</sup>

The most serious allegation was that of unauthorized transfer of control, a violation of section 310(b) of the Communications Act. WACO and KWTX both based their complaints on the activities of McDonald and Tirey: their election to the positions of president and chairman of the board of directors; the replacement of all previous officers and directors; the loan of large sums of money to Audiocasting without adequate security when the corporation was insolvent; and the terms of the contracts to purchase Monroe's and Jackson's stock, terms that provided that the stock was to be placed in escrow with all dividends payable to McDonald and Tirey until their loans were repaid, whether or not the transfer application was granted by the Commission. The complaints alleged that these circumstances constituted an abandonment of KBGO by its stockholders, and assumption of control by McDonald and Tirey.<sup>25</sup>

Audiocasting filed an opposition to the KWTX petition to deny on January 2, 1964.<sup>26</sup> Dealing principally

with the transfer of control issue,<sup>27</sup> it recited the financial woes of the corporation, the unwillingness of stockholders to fill corporate positions, the disability of Jackson due to his ill health, and that of Monroe due to her distance from Waco (she was then living in Miami). It justified the involvement of McDonald and Tirey as providing interested local persons to " . . . fully advise [Monroe] of happenings in and around Waco so that she could make thoughtful decisions in the over-all operation of radio station KBGO." <sup>28</sup> It continued, "Because of the distance involved relative to the place of residence of Mrs. Monroe and the location of radio station KBGO, her policies and dictates must be carried out through persons in Waco, Texas. Mrs. Monroe exercises her responsibilities in the control and operation of radio station KBGO through extensive correspondence and telephone calls with Mr. McDonald." <sup>29</sup>

As for the escrow provisions of the stock purchase agreements with Monroe and Jackson, Audiocasting said, "Sound business judgment dictates certain safeguards in a loan, and if the [transfer] application were not granted the transaction stands merely as a protective measure to realize the money invested in Audiocasting as a loan that was made to assure the continued operation of the station in the public interest." <sup>30</sup>

The opposition contended that there had been no

concealment of facts as to the involvement of McDonald and Tirey, and argued that " . . . the mere recitation of these factors [alleged in the petition to deny] and the inferences drawn therefrom by the Petitioner [KWTX] fall short of establishing a premature transfer of control in the corporate licensee."<sup>31</sup>

KWTX filed a reply to the opposition on January 20.<sup>32</sup> It asserted that, with the election of new officers and directors on August 24, 1963,<sup>33</sup> " . . . Joyce Monroe and Horace Jackson completed their abandonment of their licensee responsibilities for Station KBGO."<sup>34</sup> The reply continued:

"The existence of actual control is best established by evidence of overt facts, such as program decisions, commercial practices, participation in policy making, and similar matters. Although the intent of the parties cannot always be ignored, it must depend on something more than mere assertions and may be interpreted from conduct." Jefferson Radio Co., [35 F.C.C. 331, 348,] 24 Pike and Fischer RR 1033, 1051 (1962). See also Eleven Ten Broadcasting Corp., [32 F.C.C. 706,] 22 Pike and Fischer RR 699 (1961). At the moment the only overt facts in this record indicate that there has been a premature unauthorized transfer of control of Audiocasting of Texas, Inc. and in view of these facts a grant of the application would be prima facie inconsistent with Section 309(a) of the Communications Act. Accordingly, a hearing must be held to determine, among other things, who at KBGO has been making program decisions, establishing commercial practices, participating in policy making, hiring employees, meeting payrolls, and paying off station obligations. If, as Audiocasting claims, there has been extensive correspondence and many telephone calls between Miss Monroe in Miami, Florida, and Mr. McDonald in Waco, Texas, the correspondence and calls should be made a part of the record and evaluated with a view to determining who has been exercising control of KBGO in these and other particulars.<sup>35</sup>

On January 21 the Commission requested Audiocasting

to submit further information regarding the alleged transfer of control.<sup>36</sup> In its February response, Audio-casting submitted detailed affidavits from McDonald, Tirey, French, and Johnston about control of Audiocasting by Monroe and Jackson.<sup>37</sup> The response also included copies of telephone bills, correspondence, and other materials to show the extent of Monroe's and Jackson's involvement in the station. They revealed there were 36 calls made between Waco and Miami between May 23, 1963, and January 20, 1964, and 7 calls between Waco and Gatesville; of the letters concerning KBGO business, 12 were from Monroe to McDonald and 18 from McDonald to Monroe.<sup>38</sup>

On June 26, 1964, KWTX submitted a supplement to its petition to deny.<sup>39</sup> It repeated the earlier allegation of unauthorized transfer of control and raised two new points. In light of what it characterized as a major problem with the KBGO directional antenna system requiring costly correction, it questioned the financial qualifications of the transferees, particularly McDonald.<sup>40</sup> Second, it pointed out that no specification of stock distribution between McDonald and Tirey had been made, and maintained that " . . . this must be clarified before the Commission can grant the application and clarification is possible only through the hearing process . . . ." <sup>41</sup>

KWTX also stated:

When this complex of factors is considered in the

light of the patent and admitted insolvency of Audio-casting, Miss Monroe's total lack of resources, Mr. Jackson's disinterest and physical inability to contribute to the station, the obvious abandonment of the station by the two transferors, it can only be concluded that control of the licensee and of KBGO has already passed to the transferees, without Commission consent and in violation of Section 310(b) of the Communications Act. Since the Commission has already recognized that "power over the purse" is a principal indicia of control (See Wireline Radio, Inc., 23 Pike & Fischer R.R. 647, 661 [32 F.C.C. 1127, 1140]), it is difficult to understand why designation of the Audio-casting application for hearing has been so long delayed.<sup>42</sup>

Audiocasting promptly moved to strike the supplement, blasting it as " . . . a blatant example of 'a multifarious and repetitive pleading' about which the Commission expressed concern when it provided [in section 1.45(c) of its Rules] that in addition to oppositions and replies to oppositions, 'no other pleadings may be filed with the Commission unless specifically requested by the Commission.'"<sup>43</sup>

KWTX filed an opposition to the Audiocasting motion, contending that its supplement was not a pleading within the meaning of section 1.45, but a " . . . presentation of new facts that have developed since the filing of the original petition . . . ."<sup>44</sup> Since under section 1.580(i) a petition to deny could be filed any time prior to grant of an application for standard broadcast facilities, KWTX argued, it could file a completely new petition to deny at that time. Therefore, it maintained, it was free to supplement its earlier petition to deny with newly

developed matters.<sup>45</sup>

#### Approval of Transfer

On November 12, 1964, the Commission granted the transfer application.<sup>46</sup> The charges of engineering violations, misuse of audience surveys, news pirating, and the broadcast of lottery information were found not to warrant revocation-of-license proceedings or denial of the transfer application.<sup>47</sup>

The only serious engineering problem found was variation of the station's directional antenna system from its licensed values. As indicated above, in November 1963 KBGO retained a consulting engineer to readjust the antenna (see page 182, above).

Misuse of surveys conducted by two Baylor students (see note 15, page 176, above) was conceded by Audio-casting. Although it was a matter of concern to the Commission, the misuse had occurred several months before it issued a public notice cautioning licensees to act responsibly in the use of such surveys.<sup>48</sup>

The news pirating had involved the station's reading of news stories from the local newspaper during that period (February through November 1963) when the United Press International news service was suspended because of the station's failure to pay its bill. Audiocasting paid its delinquent balance and the service was resumed in November 1963, and no copyright suit was filed as a result of the

pirating.<sup>49</sup>

The broadcast of lottery information involved commercials for a dance at which an admission was charged and prizes awarded. The commercials contained the statement: "Some of your favorite radio personalities will be giving away free silver dollars and lots of records there." Although the circumstances apparently involved the three elements of a lottery (prize, chance, and consideration), the Commission found that the incident was an isolated one that did not raise a public interest question.<sup>50</sup>

With respect to the alleged unauthorized transfer of control, the Commission found two unauthorized transfers. The first, it said, occurred when Jackson, Carter, and Lockwood acquired 30 percent of the Audiocasting stock, reducing Joyce Monroe's interest from 53.512 percent to approximately 41 percent.<sup>51</sup> The second, according to the Commission, occurred when McDonald's and Tirey's purchase of the Burke-Laster-Traylor stock shifted majority control from the original stockholders to seven others.<sup>52</sup>

In both cases, however, the transactions had been reported to the Commission, if not always within the 30-day period allowed by section 1.615 of the Commission's rules. Also, changes in officers and directors had similarly been reported.<sup>53</sup>

The Commission concluded:

In sum, the information already before the



Commission substantially confirms the allegations of WACO and KWTX which underlie the charge of unauthorized transfer of control, and we accordingly conclude that the evidentiary hearing requested by KWTX would serve no useful purpose. It is clear from the Commission's files that KBGO has repeatedly failed to observe the requirements of Section 310(b) of the Communications Act and §1.615 of the Commission's Rules, in that transfers of control have been effected without prior consent of the Commission and ownership reports have been filed late or otherwise not in accordance with the rule. It also seems clear that the violations were technical in nature and did not constitute an attempt to misrepresent or conceal actual ownership and control, since all actions taken with respect to stockholder and officer changes have been reported to the Commission by the licensee. While the station's financial and managerial difficulties . . . do not serve to excuse these continuing albeit technical violations, we note that it is only those original stockholders that sold their stock and resigned as officers and directors, thereby increasing the burden on those remaining, who are subject to any reasonable charge of abandoning the station and the responsibilities commensurate with such ownership. During the period that majority stock ownership or de jure control was shifting to the hands of the newcomers, Monroe and to some extent Jackson appear to have retained decisional responsibility in efforts to keep the station on the air, as reflected by the numerous telephone calls and letters between Monroe or Jackson and McDonald between May 1963 and January 1964. On balance, we feel it more appropriate to apply a forfeiture of \$1,500 for the repeated technical violations of Section 310(b) and our rule than to deny the transfer application under Section 309 procedures or to institute revocation proceedings, as requested by WACO and KWTX.<sup>54</sup>

## Epilogue

Consummation of the transfer to McDonald and Tirey occurred quickly, and the era of the Monroes ended.<sup>55</sup> The advantages of local ownership, however, were offset by the disadvantages of inexperienced ownership, and KBGO did not become the financial success hoped for. The station had several managers in the following years;<sup>56</sup> the music format

was changed from rock to country in March 1969;<sup>57</sup> but nothing worked. As shown in Table 10, KBGO continued to operate at a loss.

TABLE 10  
REVENUES AND LOSSES OF KBGO,  
1965 THROUGH 1970<sup>58</sup>

| Year | Local<br>Advertising<br>Revenues | Other<br>Advertising<br>Revenues | Operating<br>Losses |
|------|----------------------------------|----------------------------------|---------------------|
| 1965 | \$ 72,373                        | \$ 35,530                        | \$ 31,272           |
| 1966 | 71,064                           | 21,294                           | 47,280              |
| 1967 | 84,392                           | 20,537                           | 50,720              |
| 1968 | 73,250                           | 11,346                           | 15,030              |
| 1969 | 76,614                           | 12,576                           | 17,889              |
| 1970 | 71,659                           | 29,781                           | 23,225              |

Finally, McDonald and Tirey sold the station to a new group of broadcasters. Application for assignment to KBGO Radio, Inc., was filed on May 10, 1972, and granted on March 16, 1973.<sup>59</sup> In April 1973 the station's call letters were changed to KRZI,<sup>60</sup> and KBGO was no more.

Notes

<sup>1</sup>Audiocasting of Texas, Inc., Waco, Texas, Balance Sheet, June 30, 1963.

<sup>2</sup> Letter from Joyce Monroe to Dr. James D. Carter dated January 15, 1963. Minutes of Special Meeting of Shareholders of Audiocasting of Texas, Inc. (August 24, 1963); minutes in corporate record book of Audiocasting of Texas, Inc. Letter from Milton P. Burke to Joyce Monroe dated July 12, 1963. Letter from Joyce Monroe to Leonard L. Gorin dated July 16, 1963.

<sup>3</sup>Affidavit of Charles M. McDonald dated December 23, 1963, at 1. Charles M. McDonald, private interview held at KBGO, Waco, Texas, February 4, 1969. Letter from Joyce Monroe to McLaughlin, Clark, Fisher, Gorin & McDonald dated June 24, 1963.

<sup>4</sup>Affidavit of Charles M. McDonald dated December 23, 1963, at 2. Charles McDonald interview.

<sup>5</sup>Affidavit of Charles M. McDonald dated December 23, 1963, at 2-3. Charles McDonald interview.

<sup>6</sup>FCC ownership report for KBGO (September 10, 1963).

<sup>7</sup>On August 15, McDonald and Tirey acquired all the stock of Burke, Laster, and Traylor, 752.67 shares, for one dollar per share. On August 22, Monroe agreed to sell them her 2,769.75 shares for a total price of one dollar, and Jackson 1,065.93 of his 1,566.73 shares for one dollar per share. On September 3, Mitchell gave them an option on his 168.75 shares for \$703.73 (\$4.17 per share). On September 20, Bienstock and Wexler sold them their 859.06 shares for \$4,204.18 (\$4.89 per share). Application of Audiocasting of Texas, Inc., for transfer of control, file BTC-4403 (filed November 6, 1963). FCC ownership reports for KBGO (September 10, 1963; September 20, 1963; July 26, 1964; and November 14, 1964).

<sup>8</sup>Application of Audiocasting of Texas, Inc., for transfer of control, file BTC-4403 (filed November 6, 1963). McGlasson, a Waco land developer, purchased Lockwood's stock for one dollar per share on December 31, 1963. FCC ownership report for KBGO (February 4, 1964).

<sup>9</sup>Application of Audiocasting of Texas, Inc., for transfer of control, file BTC-4403 (filed November 6, 1963). Charles McDonald interview.

<sup>10</sup>Charles McDonald interview. Affidavit of Charles

M. McDonald and Frank B. Tirey, Jr., dated January 26, 1964, at 1-2. Minutes of Special Meeting of Shareholders of Audiocasting of Texas, Inc. (August 24, 1963); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>11</sup>Except for Garrison and his wife, Helen, all the officers and directors elected at the August 24, 1963, meeting served at least one year.

<sup>12</sup>Affidavit of Donald H. French dated January 27, 1964. At the end of 1963, KBGO had ten full-time and two part-time employees. FCC Annual Financial Report for KBGO (1963). Letter from Charles M. McDonald to Joyce Monroe dated November 27, 1963.

<sup>13</sup>An unsigned draft memo from the KBGO staff to Charles M. McDonald dated October 1963 severely criticized Garrison for his lack of management and sales ability, and for his failure to take action in such important areas as sales and engineering. Its sharpest criticism, though, was of his attitude toward employees:

Outbursts of temper influenced by alcohol results in extremely degrading, demoralizing remarks and statements to personnel resulting in discontent, thereby hindering all concerned personnel from performing at maximum efficiency.

Has on numerous occasions threatened various employees with termination based on no reasonable cause, once again causing general demoralizing conditions to persist.

Constantly causing turmoil over minute problems while important ones go unattended.

<sup>14</sup>Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (November 11, 1963); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>15</sup>Charles McDonald interview.

<sup>16</sup>Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (February 17, 1964); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>17</sup>David W. Small, private interview held at KLIF, Dallas, Texas, June 6, 1972.

<sup>18</sup>FCC Annual Financial Reports for KBGO (1963 and 1964). Letters from Charles M. McDonald to Joyce Monroe dated February 25, March 23, April 20, and May 22, 1964.

<sup>19</sup>Letter from Charles M. McDonald to Joyce Monroe

dated November 27, 1963. Engineer Roger Thomas said that weekly monitoring point measurements, required by the station license to determine stability of the directional antenna system, were not taken between December 1962 and September 1963. Roger Thomas interview.

<sup>20</sup>Special Radio Hooperatings Report, Waco, Texas, November, 1963.

<sup>21</sup>Memorandum Opinion and Order and Notice of Apparent Liability, "In Re Application for Transfer of Control of Audiocasting of Texas, Inc." (adopted November 12, 1964; released November 20, 1964), FCC 64-1044, FCC Mimeo 59285, 3 P&F Radio Reg. 2d 1035, ¶ 3 and n. 8. (Hereinafter referred to as Memorandum Opinion and Order.)

<sup>22</sup>Ibid., ¶ 4. Letter from Charles M. McDonald to Joyce Monroe dated October 1, 1963.

<sup>23</sup>Memorandum from FCC staff to the Commission dated August 20, 1964, recommending grant of application of Audiocasting of Texas, Inc., for transfer of control, ¶ 13.

<sup>24</sup>Petition to Deny application of Audiocasting of Texas, Inc., for transfer of control, filed by KWTX Broadcasting Company (petition filed December 6, 1963). (Hereinafter referred to as Petition to Deny.)

<sup>25</sup>Memorandum Opinion and Order, ¶ 8. Petition to Deny, at 3-5 and 8-9.

<sup>26</sup>Opposition to Petition to Deny, filed by Audiocasting of Texas, Inc. (opposition filed January 2, 1964). (Hereinafter referred to as Opposition to Petition to Deny.)

<sup>27</sup>The Opposition to Petition to Deny also challenged KWTX's standing to petition for denial of the application. The Commission ultimately considered the KWTX charges, but did not address the question of standing.

<sup>28</sup>Opposition to Petition to Deny, at 8.

<sup>29</sup>Ibid., at 9.

<sup>30</sup>Ibid., at 11.

<sup>31</sup>Ibid., at 9-10.

<sup>32</sup>Reply to Opposition to Petition to Deny, filed by KWTX Broadcasting Company (reply filed January 20, 1964). (Hereinafter referred to as Reply to Opposition.)

<sup>33</sup>As instructed by Monroe, the directors elected were McDonald, Tirey, Beard, Garrison, and William M. Hayner (a Waco architect). Also as Monroe directed, the officers elected were Tirey, vice-president and chairman of the board; McDonald, president; Garrison, vice-president; and Helen G. Garrison, secretary-treasurer. Monroe was not elected officer or director until November 11, 1963, when she was elected director and vice-president. Minutes of Special Meeting of Shareholders of Audiocasting of Texas, Inc. (August 24, 1963); minutes in corporate record book of Audiocasting of Texas, Inc. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (August 24, 1963); minutes in corporate record book of Audiocasting of Texas, Inc. Minutes of Special Meeting of Board of Directors of Audiocasting of Texas, Inc. (November 11, 1963); minutes in corporate record book of Audiocasting of Texas, Inc.

<sup>34</sup>Reply to Opposition, at 4-5.

<sup>35</sup>Ibid., at 5-6.

<sup>36</sup>Letter from FCC to Audiocasting of Texas, Inc., dated January 21, 1964; copy in KBGO license file.

<sup>37</sup>Also included was an affidavit from French concerning the allegation that KBGO had broadcast information concerning a lottery. Letter from Audiocasting of Texas, Inc., to FCC dated February 11, 1964.

<sup>38</sup>Memorandum Opinion and Order, ¶ 12.

<sup>39</sup>Supplement to Petition to Deny, filed by KWTX Broadcasting Company (supplement filed June 26, 1964).

<sup>40</sup>The pleading asserted that:  
Neither transferee has shown that he has liquid assets sufficient to meet substantial commitments and neither has explained how he plans to liquidate the assets listed in his balance sheet to obtain cash for required advancements. In the case of McDonald, the great majority of his listed real estate holdings are shared with others and there is no indication that the others would cooperate in converting the property or in making it available for security purposes. McDonald's other assets, in light of his liabilities, would produce very little, if any, cash to advance to KBGO. Ibid., at 5.

<sup>41</sup>Ibid., at 5-6.

<sup>42</sup>Ibid., at 3.

<sup>43</sup>Motion to Strike Supplement to Petition to Deny, filed by Audiocasting of Texas, Inc. (motion filed June 30, 1964), at 3.

<sup>44</sup>Opposition to Motion to Strike Supplement to Petition to Deny, filed by KWTX Broadcasting Company (opposition filed July 13, 1964).

<sup>45</sup>Ibid.

<sup>46</sup>Memorandum Opinion and Order.

<sup>47</sup>Ibid., ¶ 4.

<sup>48</sup>Ibid., ¶¶ 6-7.

<sup>49</sup>Ibid., ¶ 5.

<sup>50</sup>Ibid., ¶ 14. Affidavits of Wilmer D. Earhart dated December 17, 1963, and Donald H. French dated January 27, 1964.

<sup>51</sup>Memorandum Opinion and Order, ¶ 10. The stock sales had been made in late 1961 and early 1962 (see page 152, above). Arguably, there was in fact an unauthorized transfer of control, for Jackson's stock acquisition was recognized by Hearing Examiner Donahue's Supplemental Initial Decision granting Audiocasting's application for construction permit. Further, Jackson's qualifications to be a licensee had been affirmed in the Commission's designation order (see page 95, above).

<sup>52</sup>Memorandum Opinion and Order, ¶ 10. Prior to August 15, 1963, Monroe, Burke, Laster, Mitchell, and Traylor had held 52.52 percent of the stock; and Jackson, Carter, Lockwood, Bienstock, and Wexler had held the remaining 47.48 percent. With the August 15 purchase of stock from Burke, Laster, and Traylor by McDonald and Tirey, the original stockholders held only 41.378 percent; and Jackson, Carter, Lockwood, Bienstock, Wexler, McDonald, and Tirey held 58.722 percent. As indicated in the previous note, however, if Jackson were considered an original stockholder, the relevant percentages would have been 74.53 percent and 25.47 percent before August 15; and 63.96 and 26.04 percent after; with no transfer of control.

<sup>53</sup>Memorandum Opinion and Order, ¶¶ 10 and 13.

<sup>54</sup>Ibid., ¶ 13.

<sup>55</sup>FCC ownership report for KBGO (November 14, 1964).

<sup>56</sup>Charles McDonald interview.

<sup>57</sup>Letter from Donald E. Bilger to FCC dated March 20, 1969; letter in KBGO license file.

<sup>58</sup>FCC Annual Financial Reports for KBGO (1965-1970).

<sup>59</sup>Application of KBGO Radio, Inc., for assignment of license, file BAL-7586 (filed May 10, 1972).

<sup>60</sup>Letter from Donald E. Bilger to FCC dated November 21, 1972; letter in KBGO license file. Telegram from FCC to Kenneth Hobbs dated April 16, 1973; telegram in KBGO license file.



PART V

ANALYSIS

## CHAPTER XII

### EXCUSES FOR FAILURE

The people involved with KBGO offered several explanations for the KBGO troubles. The suggested reasons fall into two categories: those relating to the market and the competition (such as entry of KAWA just months before KBGO, the size of the market as not large enough to support four stations, and the political influence of KWTX), and those relating to the management of KBGO (undercapitalization, overspending, inexperienced operating management, and corporate squabbles).

#### Delay and Political Influence

First, the political influence of KWTX: Was it used to delay grant of KBGO applications, draining Audiocasting of operating capital? Several people connected with KBGO said they believed action on the applications for construction permit and transfer of control was unnecessarily delayed. The delays were blamed on the political power of the Lyndon Johnson family, but no one could point to specific evidence that such was the case. Since there is no overt evidence of chicanery, the question is: Was there in fact unusual delay in grant of the applications?

The application for construction permit was filed in February 1958, and the permit was issued in September 1961. Commission procedures require that applications be initially processed by the Broadcast Bureau in the order in which they are filed. When applications appear to require a hearing, the applicants are sent a so-called "section 309(b) letter" informing them of the problems with their applications; if the problems are not promptly resolved, the applications are designated for hearing.

The public notice announcing that Audiocasting had been sent such a letter listed 149 applicants for new construction permits who were sent a section 309(b) letter. The file numbers of the applications (assigned serially as applications are accepted for filing) ranged from BP-9497 to BP-12321 (the median number was BP-11854, compared with Audiocasting's BP-11851), indicating that Audiocasting's application was acted on with its contemporaries.<sup>1</sup> During this initial period, then, there is no indication of unusual delay.

Jackson's application might have been filed as a strike application--one submitted not with a bona fide intention to construct and operate the facilities applied for, but to delay or prevent the grant of Audiocasting's application--since Jackson presumably had banking contacts with several of the KWTX principals, and since his engineer was a former employee of WACO's Wendell Mayes. But Jackson

did not act as a strike applicant would be expected to; instead of continuing to block the Audiocasting application, he quickly agreed to join with it, especially since the North Fort Hood expansion had failed to develop.

The next period was spent in the hearing process, as the hearing examiner considered the propriety of the merger. Hearings began in July and ended in November 1959 (the actual merger proposal was presented in September); proposed findings and conclusions were filed in January 1960; and the initial decision proposing approval of the merger and grant of the application was released in April 1960. This does not seem an unusual delay in light of the widespread concern about merger agreements.

The next period passed while the Commission considered the initial decision and exceptions filed to it. The eight-month period involved is long, but not compared with other broadcast cases where the Commission had to resolve exceptions to hearing examiners' initial decision; in the period November 1960 through January 1961, such cases took an average of almost ten months from release of the initial decision to adoption of a Commission decision.<sup>2</sup>

The final period was the six months from when the Commission remanded the case to the hearing examiner until the supplemental initial decision was released in June 1961. The total process of granting the construction permit took 43 months, but each stage had a specific purpose, and none

consumed an unusual amount of time.

At this point a comparison with other applications for construction permits would be instructive. The KWTX application to increase daytime power to one kilowatt--processed when the Johnson family had an ownership interest in KWTX--was pending for 27 months, though it involved only relatively straightforward engineering issues.<sup>3</sup> The original KMLW application for construction permit was granted 47 months after it was filed; and its application for power increase was pending for 28 months.<sup>4</sup> The KRMD application to switch from 1340 to 1480 kHz was before the Commission for 45 months before it was withdrawn when a hearing became unavoidable.<sup>5</sup> Alex Chesley's experience--his application was granted just 10 months after it was filed<sup>6</sup>--was clearly an atypical case.

Was there unusual delay in grant of the KBGO transfer of control application? It was filed in November 1963 and granted in November 1964. Under section 310(b) of the Communications Act, the Commission may grant an application for transfer of a broadcast station license only if it finds that the "public interest, convenience, and necessity" will be served.<sup>7</sup> Beginning in early 1963, allegations of serious misconduct were made against KBGO. The Commission investigated KBGO in September and October 1963, inspected it in January 1964, and requested Audiocasting to submit detailed information in response to the allegations the

same month. KWTX filed a petition to deny the transfer application in December 1963, and filings relating to the petition were made through July 1964.

Thus, only four months elapsed from the time the Commission had the information it required until it issued its decision. While that may have seemed a long time to a station backed into a financial corner, it was a relatively quick resolution of a fairly complicated case.

To summarize, neither of the KBGO applications experienced unusual delays in its processing. It is true that the transfer application was delayed by complaints filed by KWTX and WACO; but the complaints did not deal with frivolous matters, and they were resolved with reasonable speed. While earlier grant of the KBGO applications would have been preferable, the Commission decision-making process takes time. Hints by KBGO principals of political pressure to delay Commission processes seem to have their basis in lack of familiarity with those processes.

#### Technical Facilities

Second, the competitive potential of KBGO: Did the technical facility sought offer the possibility of successful competition? Figures 10 and 11 compare the day and night interference-free service contours of the Waco standard broadcast stations.<sup>9</sup> At first glance it appears that KAWA has a clear daytime advantage, with KWTX and WACO

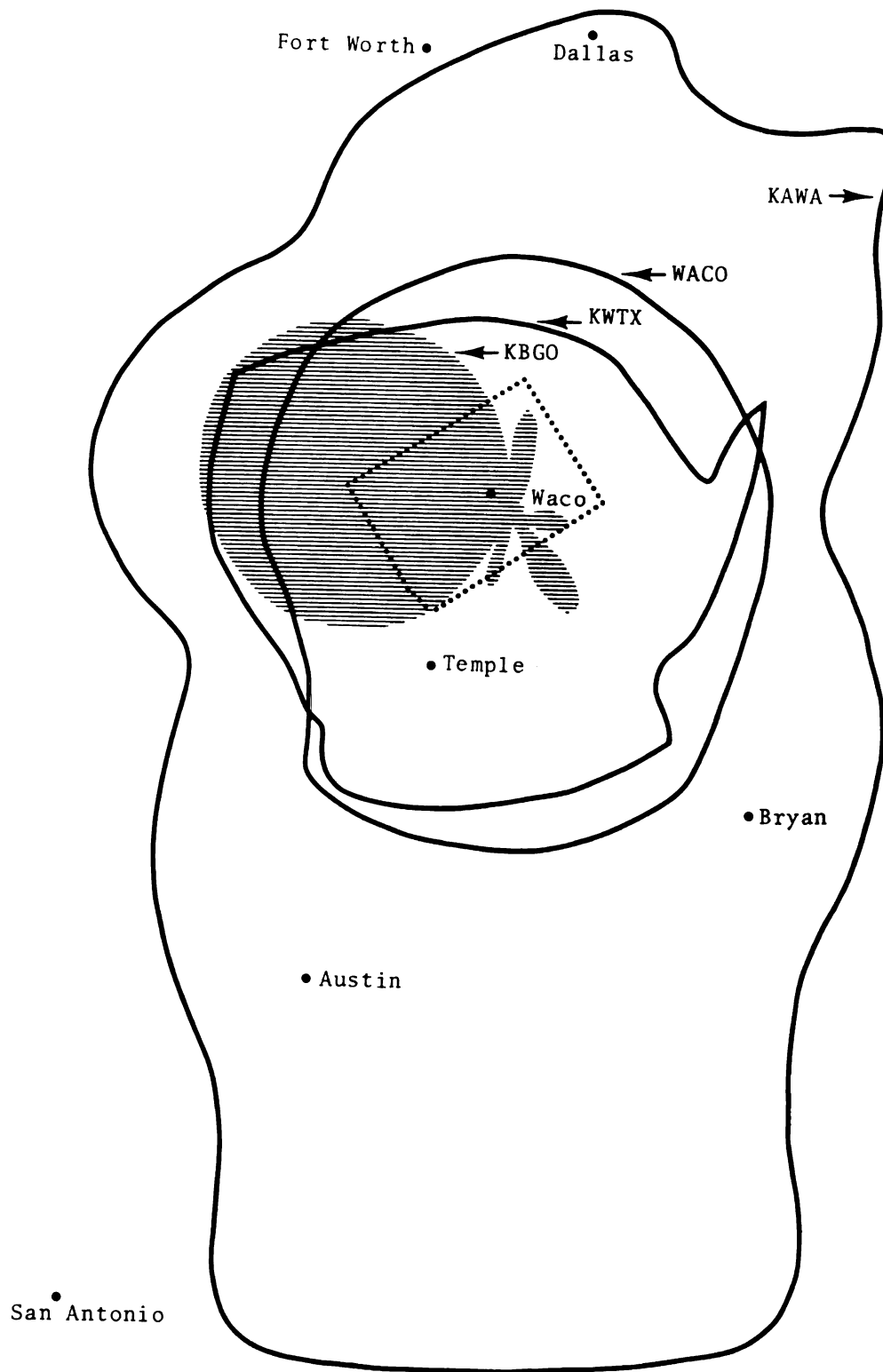


Fig. 10.--Daytime Interference-Free Service Contours  
of Waco Standard Broadcast Stations

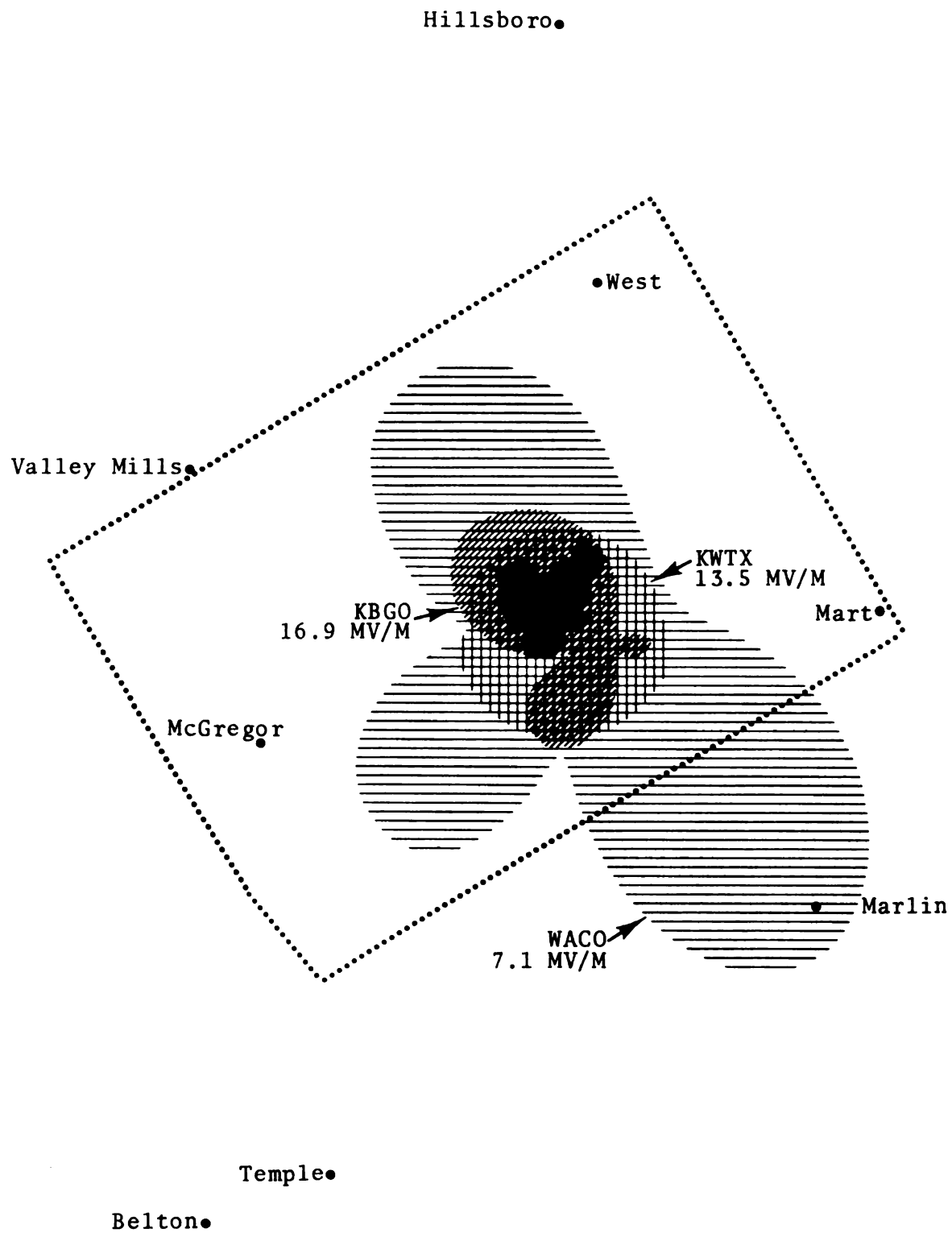


Fig. 11.--Nighttime Interference-Free Service Contours  
of Waco Standard Broadcast Stations



roughly comparable, and KBGO at a severe disadvantage. Nighttime, it would appear that WACO has a clear advantage, with KWTX and KBGO roughly equivalent.

These first impressions are misleading, though. It must be kept in mind that, in spite of its expansive daytime coverage, KAWA is not a local station outside the Waco-Marlin area (and perhaps Temple-Belton-Killeen to some extent, since Bell County has only three standard broadcast stations). Its listenership presumably declines not only with its signal strength, but with the availability of alternative, more local stations. From an economic standpoint, its practical potential listenership is thus not significantly different than that of KWTX and WACO. Further, its daytime hours severely hamper its efforts to build a regular audience (as KJOE learned; see pages 76-77, above).

On the other hand, all the stations (including KBGO) adequately cover the Waco urbanized area--the area where most local advertisers are (who thus cannot distinguish technical coverage differences) and the area with such a large portion of the county population that its listenership determines the audience ratings used by regional and national time buyers (who buy by cost-per-thousand and are not generally interested in coverage of sparsely populated areas).

All this is to say that the four stations compete

during the day on an approximately equal technical footing since they all cover the key population center adequately. For the same reason, KBGO, KWTX, and WACO are essentially equivalent at night. It is therefore suggested that the KAWA advantage is largely illusory in economic terms, and the KBGO disadvantage is not economically significant.

#### Economic Base

Third, the economic potential of Waco: Was the market large enough to support four standard broadcast stations? To answer this question, populations and radio station revenues were compared for those Standard Metropolitan Statistical Areas (SMSA's) with three or four standard broadcast stations.

Table 11 summarizes these comparisons. There appears to be little to distinguish three-station and four-station SMSA's based on these factors. Further analysis shows that three-station SMSA's are on average more profitable--this is to be expected since markets of essentially the same size and with similar revenues are supporting three sets of expenses rather than four--as summarized in Table 12. But the great majority of three- and four-station SMSA's consistently show an aggregate profit.

Since Waco is close to the median of both three- and four-station SMSA's in population and radio revenue for all three years analyzed, it is concluded that Waco is not

TABLE 11

POPULATIONS AND RADIO REVENUES OF WACO, TEXAS,  
 COMPARED WITH THOSE OF THREE-  
 AND FOUR-STATION SMSA'S<sup>10</sup>

|                                            | Waco<br>SMSA         | Median for<br>Three-Station<br>SMSA's | Median for<br>Four-Station<br>SMSA's |
|--------------------------------------------|----------------------|---------------------------------------|--------------------------------------|
| <u>1960</u><br>Population<br>Radio Revenue | 150,091<br>\$516,648 | 130,772<br>\$472,034                  | 141,286<br>\$572,424                 |
| <u>1965</u><br>Population<br>Radio Revenue | 159,500<br>\$767,669 | 158,500<br>\$603,930                  | 146,150<br>\$699,279                 |
| <u>1970</u><br>Population<br>Radio Revenue | 147,553<br>\$880,898 | 144,272<br>\$890,140                  | 141,416<br>\$882,269                 |

TABLE 12

THREE- AND FOUR-STATION SMSA'S SHOWING  
 AGGREGATE PROFIT OR LOSS<sup>11</sup>

|                                                      | Three-Station<br>SMSA's | Four-Station<br>SMSA's |
|------------------------------------------------------|-------------------------|------------------------|
| <u>1960</u><br>Median Profit<br>Percent Showing Loss | \$ 26,316<br>14         | \$ 28,579<br>15        |
| <u>1965</u><br>Median Profit<br>Percent Showing Loss | \$ 56,223<br>17         | \$ 35,047<br>18        |
| <u>1970</u><br>Median Profit<br>Percent Showing Loss | \$ 72,098<br>15         | \$ 41,701<br>31        |

atypically small for a four-station market. On the other hand, Table 13 indicates that there has not been a consistently high profit level for the market, even though the average year that four standard broadcast stations operated in the market showed an aggregate profit. This suggests that the stations would compete aggressively for a satisfactory return on their investments, with the weaker stations showing consistent losses. In Waco, the weaker stations are the newcomers, KAWA and KBGO.

TABLE 13

AGGREGATE RADIO PROFIT OR  
LOSS, WACO, TEXAS<sup>1 2</sup>

| Year | Aggregate<br>Profit |
|------|---------------------|
| 1962 | (\$12,366)          |
| 1963 | (109,021)           |
| 1964 | (26,039)            |
| 1965 | 41,080              |
| 1966 | 18,508              |
| 1967 | 33,205              |
| 1968 | 105,579             |
| 1969 | 78,786              |
| 1970 | 48,127              |
| 1971 | (44,889)            |
| 1972 | (875)               |
| 1973 | (40,605)            |

Notes

<sup>1</sup>Public Notice, "Standard Broadcast Applications Ready and Available for Processing Pursuant to Section 1.354(c) of the Commission's Rules (adopted April 8, 1959; released April 9, 1959), FCC 59-316, FCC Mimeo 71087, 24 Fed. Reg. 2842.

<sup>2</sup>Analysis of Commission decisions reported between 29 F.C.C. 988 and 30 F.C.C. 103.

<sup>3</sup>See page 25, above.

<sup>4</sup>See pages 28-32, above.

<sup>5</sup>See page 58, above.

<sup>6</sup>See page 59, above.

<sup>7</sup>Communications Act of 1934, as amended, 47 U.S.C. § 310(b). See 66 Stat. 716, § 8.

<sup>8</sup>KWTX seems unusually prone to filing petitions to deny applications of its competitors. On July 14, 1965, it petitioned to deny the application of Morbro, Inc., for renewal of license of KAWA, file BR-2806; see 2 F.C.C. 2d 483, 6 P&F Radio Reg. 2d 821 (1966). On September 4, 1968, it petitioned to deny the application of Centex Radio Co. for transfer of control of the licensee of KEFC(FM), file BTC-5690; see 16 F.C.C. 2d 873, 15 P&F Radio Reg. 2d 935 (1969).

<sup>9</sup>Figures 10 and 11 combine the service contours of the stations; the contours are shown separately in Figures 2, 3, 4, 6, and 8.

<sup>10</sup>Federal Communications Commission, Annual Report (1971), pp. 191-196. Broadcasting, October 24, 1966, pp. 74-76. Broadcasting, November 13, 1961, pp. 90-93. Census reports, 1960 and 1970. "Survey of Buying Power," Sales Management, June 10, 1966. FCC Annual Financial Reports for KWTX and WACO (1960).

<sup>11</sup>Federal Communications Commission, Annual Report (1971), pp. 191-196. Broadcasting, October 24, 1966, pp. 74-76. Broadcasting, November 13, 1961, pp. 90-93.

<sup>12</sup>Broadcasting; November 25, 1963, p. 49; October 12, 1964, p. 40; October 25, 1965, p. 40; October 24, 1966, p. 76; December 25, 1967, p. 32; February 10, 1969, p. 48; October 20, 1969, p. 28; December 14, 1970, p. 30;

January 10, 1972, p. 78; January 1, 1973, p. 62; December 31, 1973, p. 62. FCC Annual Financial Reports for KAWA, KRZI, KWTX, and WACO (1973).

## CHAPTER XIII

### CONCLUSIONS

#### The Causes of Failure

It is suggested that KBGO's problem was that it did not compete effectively for its share of the Waco radio revenue. By 1965, it captured only 13 percent of that revenue, much less than any other standard broadcast station in Waco.<sup>1</sup> The problem is illustrated by Figures 12 and 13, which show total revenue of the Waco radio stations (standard and FM broadcast) from 1946 to 1965, and each station's share of the total.

The reasons for KBGO's failure to achieve a fair market share were market inertia and unbalanced management. The first--the reluctance of businessmen and media buyers to change established advertising habits--should have been anticipated. Unfortunately, the people who controlled KBGO showed no understanding of the problem; they apparently expected KBGO to show a profit as quickly as KJOE had. Because of this serious miscalculation, adequate financial arrangements were not made for the station. As unpaid local bills added up, KBGO destroyed its chance to become a respectable advertising medium, further aggravating the

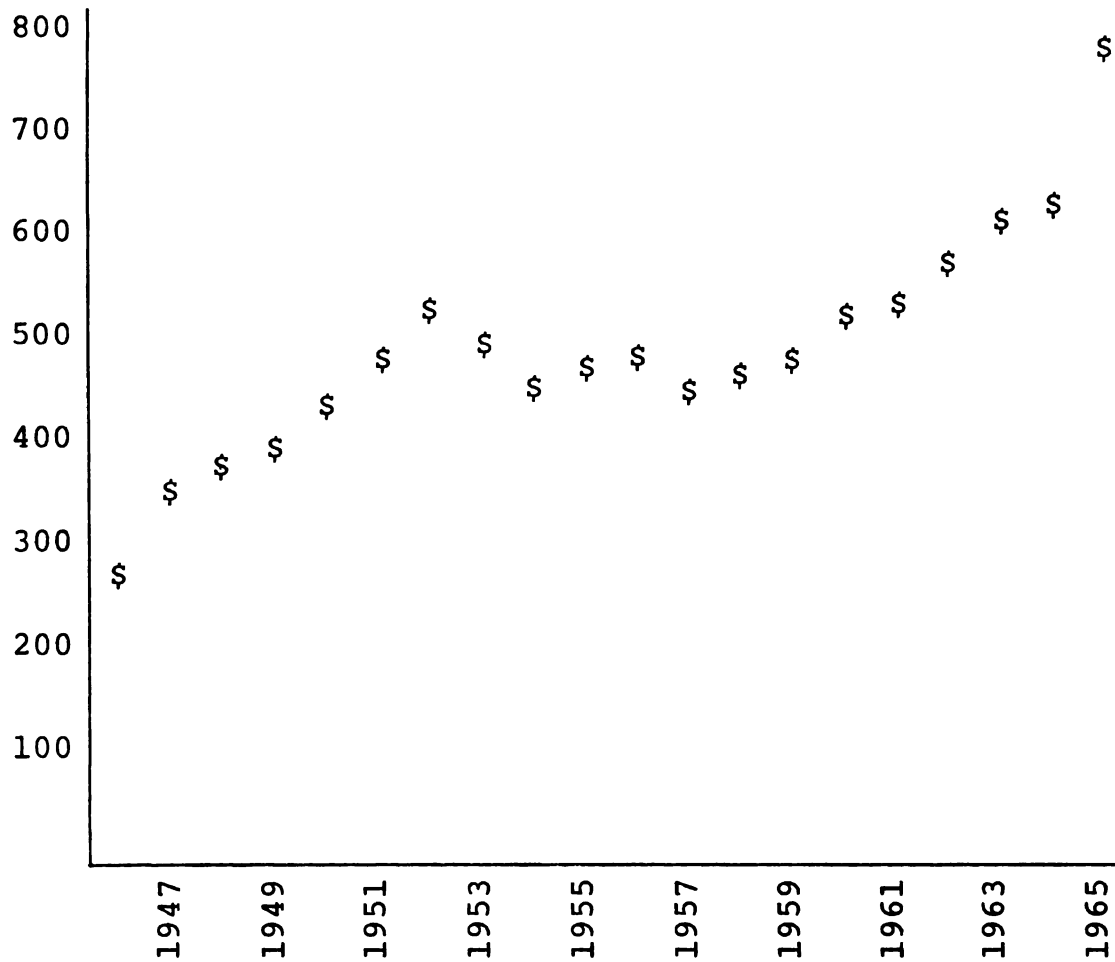


Fig. 12.--Radio Revenue, Waco, Texas,  
1946-1965<sup>2</sup>  
(In Thousands of Dollars)



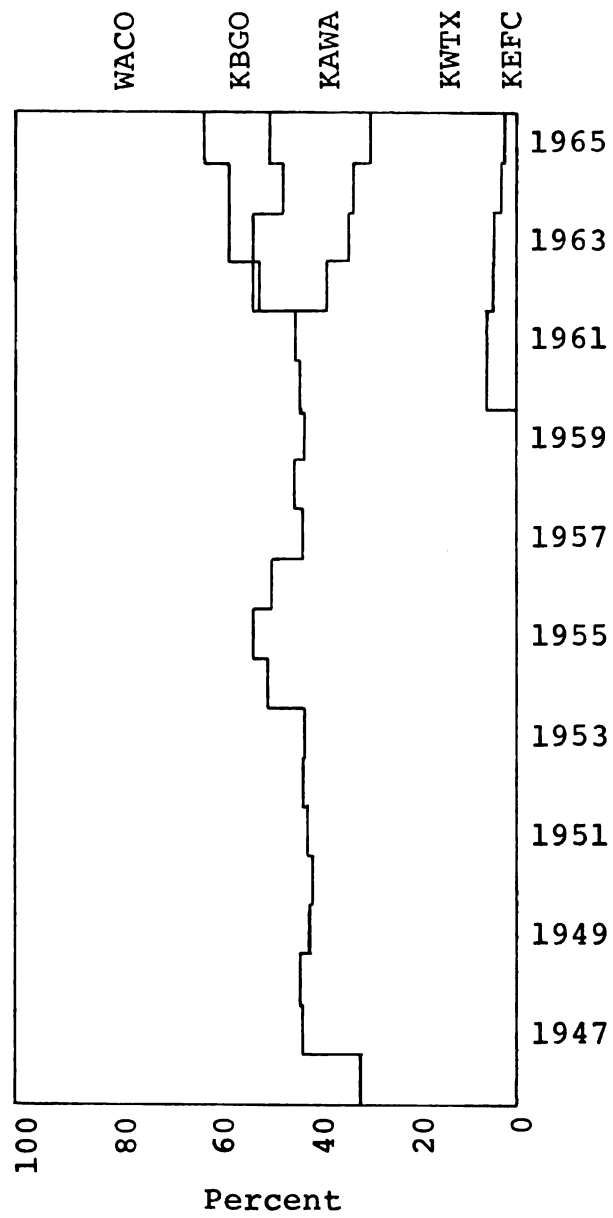


Fig. 13.--Distribution of Radio Revenue,  
Waco, Texas, 1946-1965<sup>3</sup>

financial problem.

The second reason was unbalanced management. This is not to suggest that John Borders mismanaged KBGO into financial disaster; it appears that he did a good job putting top-quality programming on the air, and as previously noted he kept the station very close to its operating budget.<sup>4</sup>

But the station's management was over-loaded with programming talent, and had no one able to put together an effective sales organization. Even Joyce Monroe, the only stockholder with a broadcast background, had no sales experience. John Borders had no sales experience; he was strictly a programmer. Sales manager Lloyd George's background was selling in major markets; and according to Borders, George did not fit into the smaller Waco market well. Two KBGO staff members described him as lazy, one saying:

. . . I remember the sales manager used to sit around all the time. He was always in the station; he was never out of the station. And of course I knew enough about radio to know that your sales staff had to be on the street. And the sales manager, he was always in the station, always goofing off.<sup>5</sup>

KBGO's mistake was thinking, in effect, that if they put on outstanding programming, advertisers would rush to buy time. But it did not happen that way. Since KBGO did not have an aggressive, experienced sales force led by a knowledgeable sales manager, the other stations were

successful in casting KBGO as a fly-by-night station, a description a better sales force would have been able to rebut.

As previously noted, Audiocasting's failure to understand that it would take time to develop sufficient advertising revenue to pay operating expenses caused a major underestimate of the operating capital required initially. The problem was compounded by the heavy expenses involved in getting a construction permit and building the station.<sup>6</sup>

KBGO was originally capitalized at \$40,000, the same as KJOE.<sup>7</sup> KBGO received its construction permit after a 43-month proceeding that cost Audiocasting about \$20,000, while the KJOE permit cost about \$3,000.<sup>8</sup> Construction costs at KBGO totaled at least \$45,000, while KJOE was built for about \$10,000.<sup>9</sup> Once on the air, KBGO operated 24 hours daily, while KJOE was on the air daytime hours only.<sup>10</sup> KBGO had an initial staff of about 17, while KJOE had only a third that many.<sup>11</sup> KBGO had a monthly budget of \$12,400, while KJOE spent about half that much.<sup>12</sup> KJOE succeeded initially, while KBGO did not.

The undercapitalization and overspending that prevented KBGO from successfully surviving until the station established itself financially must be attributed to gross corporate mismanagement. Even if the operating management had been more keenly attuned to effective sales, it is not realistic to expect that KBGO could have

succeeded with the financial limitations and high budget imposed by the corporate management.

Not only did the stockholders, officers, and directors provide bad financial guidance to the operating management, they began squabbling among themselves because of the station's troubles. The Shreveport people soon became disillusioned at KBGO's failure to be the instant success KJOE had been; the Texas people had no broadcast experience and simply did not like the rock and roll music played; and Joyce Monroe was not able to apply her knowledge and experience from Miami.

The Shreveport faction became more concerned with minimizing their losses than with supporting the station until it could succeed; the Texas faction openly expressed their displeasure to the operating staff, destroying staff morale and lending credence to the rumors circulated by the other Waco stations that KBGO was about to go dark. Everyone criticized the operating staff, but no one analyzed the situation to understand the cause of the problem. Financial aid was provided on a week-by-week basis, with no thought to what was needed for long-term support of the station.

By February 1963--just four months after KBGO went on the air--Audiocasting decided the situation was hopeless and began looking for a buyer. They just gave up.

## Recommendations

KBGO could have succeeded if its owners had given more thought to what they were doing. Instead, they did the same thing they had done with KJOE: once they decided the station could be a money-maker, they turned everything over to others--Joe Monroe at KJOE; lawyers, engineers, and John Borders at KBGO. No one ever asked himself: What is required for this station to be a success? And no one ever gave such a question the comprehensive answer it demands. KBGO was trapped by its owners' blindness, because they did not foresee even the obvious problems.

Problems could have been avoided from the very start. For example, it turned out that adjustment of the KBGO directional antenna was difficult and costly. The day and night patterns had completely different protection problems.<sup>13</sup> The daytime pattern was especially critical because of the proximity of several stations on the same and adjacent channels; yet it was the nighttime pattern that caused the greatest adjustment difficulty.<sup>14</sup>

This suggests that the nighttime pattern might have been a compromise pattern fitted to a physical tower arrangement dictated by the daytime pattern. While sharing of the same towers for both the day and night patterns--a common practice--obviously saves some construction expense (the four-tower array cost \$10,662), it is false economy if the expense of adjusting and maintaining the system exceeds

the cost of more stable separate-tower arrays. Further, optimized day and night patterns might have permitted the use of one kilowatt day and night, or otherwise improved coverage. There is no indication that separate-tower arrays were even considered.

Turning to prosecution of the application for construction permit: Audiocasting's principals apparently thought they had no chance competing against Jackson's application, so they immediately arranged for Jackson to merge with them. Because of the terms of their merger arrangement, grant of the construction permit was delayed for more than a year.

What alternatives did they have? They apparently never even discussed with Jackson a simple drop-out of his application, paying his expenses but not merging--though that possibility was discussed in Shreveport.<sup>15</sup> Such an arrangement would have been clearly permitted, and would have given Audiocasting the opportunity to select local ownership rather than having a local owner forced upon them. Jackson might have been anxious to agree to a simple drop-out since the North Fort Hood expansion had not developed, and there was little prospect that Gatesville would become the boom town Killeen had. But there is no indication that a drop-out was proposed to Jackson.

On the subject of local ownership: The part of this study dealing with unsuccessful applicants for Waco radio

stations clearly shows that there were many people interested in owning a Waco radio station. The applicants included Waco businessmen comparable in occupation and position to those who backed KWTX, and experienced broadcasters. Had Audiocasting brought in some of these people, they could have had the former's banking and business connections (which Jackson and his friends did not provide) and the latter's broadcasting expertise.

There were other possibilities for local ownership. For example, in June 1963 Robert Weathers (then manager of KAWA, later manager of WACO) expressed an interest in buying KBGO.<sup>16</sup> But with all these potential backers, there is no indication that the subject of other local stockholders was ever considered.

Once the merger was decided upon, there was little reason to suspect that the combination of drop-out and merger might not be acceptable to the Commission; and it was an unfortunate coincidence that the Communications Act was amended while the Commission was considering the first initial decision. (Had the initial decision come perhaps six months earlier, the construction permit probably would have been issued before the amendment.) Yet the hearing examiner hinted as early as November 20, 1959, that the combination was unique.<sup>17</sup> Had Audiocasting and Jackson dropped the payoff and employment agreement then, again the application would have been granted much sooner.

It should be noted that although the payoff and employment agreement were later dropped, there must have been some undisclosed understanding that Jackson's expenses would be taken care of. Jackson was provided a yearly salary of \$6,000 for serving as chairman of the board of directors (even after ill health forced his resignation as a director); the original agreement had provided for reimbursement of \$2,500 in application expenses, and a two-year employment contract at \$3,750 yearly.<sup>18</sup>

When the merger problem was resolved, Audiocasting made the mistake of failing to anticipate grant of the construction permit. The supplemental initial decision granting the permit was issued July 6, 1961, but the first formal stockholders' meeting was not held until October 21. At that time rough equipment proposals were on hand, but they had not been analyzed to provide item-by-item price comparisons, and equipment delivery dates had not been provided. Also, it was not until that meeting that there was any discussion of a building for the station.

Had Audiocasting been serious about getting KBGO on the air as soon as possible (and giving the relocated KAWA less of a head start), such groundwork would have been done well before the construction permit was issued: building plans would have been completed, and equipment orders would have been placed as soon as it was apparent that the permit was to be issued. Instead, the planning began after the



permit was issued.

Several decisions made during the construction stage reflect the mistaken notion that KBGO would soon become financially self-sustaining. The most significant trade-off of less expensive construction for higher operating expense was the decision to house only the transmitter at the tower site, with separate studios and offices downtown. The reason given is plausible enough: the downtown site was more prestigious than operating from the transmitter site (KWTX and WACO, and later KAWA, all operated with separate studio and transmitter sites), and the studio/office lease agreement was less expensive than erecting a large building at the transmitter location.

Unfortunately, Audiocasting apparently did not consider that operation of the directional antenna required (at least until the stability of the antenna was established) stationing a licensed operator at the transmitter in addition to the announcer on duty at the studio. With a consolidated studio/transmitter, the extra operator could have been eliminated. For 24-hour operation the extra salary expense was up to about \$850 per month. In addition, maintaining separate studios and transmitter required rental of a program line from the telephone company to connect the two locations: another \$50 per month. But there is no indication that these expenses were considered.

Audiocasting's planning for routine operation of KBGO should have been tied to a substantially reduced budget. (The initial monthly budget of \$12,400 required capture of one-fourth of the 1963 Waco radio revenue to break even, a grossly unrealistic expectation for a new station.) KBGO could have been put on a much sounder financial basis by spending more money for construction (as suggested above), and reducing operating expenses by about a third. A budget incorporating such a reduction (in the same form as the actual initial budget listed on page 166, above) is listed below:

|                                     |          |
|-------------------------------------|----------|
| Sales Expenses                      |          |
| Salaries                            | \$ 800   |
| Outside Commissions                 | 300      |
| Program Expenses                    |          |
| Salaries                            | 2,175    |
| Promotion                           | 200      |
| News Service                        | 215      |
| Royalties                           | 200      |
| Other                               | 50       |
| Technical Expenses                  |          |
| Salaries                            | 450      |
| Utilities                           | 50       |
| Other                               | 50       |
| General and Administrative Expenses |          |
| Salaries                            | 1,520    |
| Depreciation                        | 1,050    |
| Amortization                        | 550      |
| Taxes                               | 525      |
| Other                               | 750      |
| Total Expenses                      | \$ 8,885 |

This proposed budget differs from the actual budget in the following key areas:

- (a) Elimination of a separate sales manager; the general manager's principal duties at such a new

station should have been developing sales, and there is no need for a separate sales manager in an economical operation.

- (b) Reduction of commissions and sales salaries to reflect a more realistic revenue estimate: \$8,000 rather than \$12,000 monthly.
- (c) Elimination of one announcer by reducing the operating schedule to 18 hours daily.
- (d) Elimination of a separate news director.
- (e) Elimination of a technical staff (except for the chief engineer) by consolidating the transmitter/studio operation.
- (f) Reduction of the office staff from three to two.
- (g) Increase in depreciation due to construction of a station building.

Cash expenses of this budget require revenue of only about \$8,000 to break even, since the amortization expense is not a cash drain, and the depreciation expense is slightly greater than actual payments for the associated assets due to accelerated depreciation. This compares with an actual budgeted cash flow of about \$11,500.

Assuming that KBGO could have begun operations with \$2,000 advertising per month, and could have increased sales steadily to the break-even point of \$8,000 after 18 months, total capitalization should have been about \$140,000 to \$150,000 (pre-operation expenses were about

\$80,000). Since the actual sales for December 1962 (the second full month of operation) were over \$6,000, it is believed that such a view is conservative.

It is interesting to note that by June 30, 1963, Audiocasting had \$112,000 in stockholder capital (\$71,000 in stock, and \$41,000 in notes) and bank loans of over \$11,500. Had the budget suggested above been adopted, capital requirements by mid-1963 would have been about \$125,000, almost exactly what was raised by then. It is concluded, therefore, that if only the expenses had been reduced, KBGO should have succeeded.

Finally, there was no excuse for Audiocasting's failure to report ownership changes promptly. Even before KBGO went on the air, Washington counsel Pepper wrote the station:

Perhaps this would be the best place to state for future purposes that any changes in officers, directors, stockholders, stockholdings, stock authorizations, articles of incorporation or bylaws of Audiocasting of Texas, Inc., require the filing of an ownership report within thirty days after such change. This, of course, is on the presumption that the change does not involve a transfer of control which, of course, would require prior Commission approval before it could be effectuated. I would appreciate it if you would advise the secretary of the corporation of this fact which, of course, will alert him to notify us if any of these matters occur.<sup>19</sup>

Had that advice been followed, the \$1,500 forfeiture might have been avoided or substantially reduced.

## Summary

KBGO failed because its owners did not know what they were doing, and because they believed all they had to do was build the station and it would start producing money. This study has described the principal problems they faced--problems that could occur at any station--and the consequences of their meeting the problems with blind ignorance. (As noted on page 200, above, they still seem not to recognize that the failure was their own fault, and go on blaming the Commission, other stations, and their own employees.)

It is believed that the Waco market provided a good chance of success, and that KBGO's failure was not the result of some outside element, but was due solely to its own corporate incompetence.

Broadcasting is an expensive business. Like any other business, success is unlikely unless it is carefully planned for. That is the critically important lesson of this thesis.

Notes

<sup>1</sup>Broadcasting, October 24, 1966, p. 76. FCC Annual Financial Report for KBGO (1965).

<sup>2</sup>FCC Annual Financial Reports for WACO (1946-1965), KWTX (1946-1965), KEFC (1959-1965), KAWA (1962-1965), and KBGO (1962-1965).

<sup>3</sup>Ibid.

<sup>4</sup>See page 166, above.

<sup>5</sup>The source making this statement requested that his name be withheld.

<sup>6</sup>See pages 150-151, above.

<sup>7</sup>See pages 75-76, above. KJOE's original capitalization was in fact \$24,000 (see page 61, above), but it was increased to \$40,000 as Joe Monroe acquired negative control.

<sup>8</sup>See pages 60 and 150, above.

<sup>9</sup>See pages 62 and 150-151, above. KJOE construction expenses given on page 62 include total equipment prices. Since the equipment was bought on credit and deferred payments apparently amounted to over \$10,000, the cash expense of building KJOE was apparently about \$20,000. Application of Audiocasting, Inc., for renewal of the license of KJOE, file BR-2984 (filed April 6, 1955), Exhibit I, "Audiocasting, Inc., Shreveport, Louisiana, Balance Sheet, December 31, 1954."

<sup>10</sup>See pages 59 and 164, above.

<sup>11</sup>See pages 62 and 167, above.

<sup>12</sup>See pages 166 and 168, above.

<sup>13</sup>See pages 69 and 74, above.

<sup>14</sup>See pages 69 and 148-149, above.

<sup>15</sup>See pages 100 and 102, above.

<sup>16</sup>Letter from Charles M. McDonald to Joyce Monroe dated June 26, 1963.

<sup>17</sup>On November 20, 1959, the hearing examiner asked

Audiocasting's attorney, "Why didn't you just make this agreement to say--for Audiocasting to say, 'We will give Jackson 25 per cent interest in our company if he will dismiss his application.' Why isn't it made on that basis?" Record, at 19.

<sup>18</sup>See pages 102-104 and 153-154, above.

<sup>19</sup>Letter from Vincent A. Pepper to John M. Borders dated August 22, 1962.

## **SOURCES CONSULTED**



## SOURCES CONSULTED

### Published Materials

"Bar Association Files Comments on Proposed Change in Rules on Consolidations and Dismissals." 16 Fed. Com. B.J. 124-128 (1958).

"Actions of the Federal Communications Commission." Broadcasting, March 15, 1937, pp. 80-81.

"FCC Approves Two More Hearst Sales." Broadcasting, May 15, 1939, p. 22.

"FCC Issues Freeze Order, With Leeway." Broadcasting, May 4, 1942, pp. 9 and 51.

"Our Respects to Jack Oscar Gross." Broadcasting, October 25, 1943, pp. 36 and 38.

"Transfer of KOMA and WACO to Hearst Radio Is Approved." Broadcasting, August 15, 1936, p. 14.

"UHF KETX(TV) Tyler Quits." Broadcasting, October 25, 1954, p. 70.

Broadcasting: November 13, 1961, pp. 90-93; November 25, 1963, p. 49; October 12, 1964, p. 40; October 25, 1965, p. 40; October 24, 1966, pp. 74-76; December 25, 1967, p. 32; February 10, 1969, p. 48; October 20, 1969, p. 28; December 14, 1970, p. 30; January 10, 1972, p. 78; January 1, 1973, p. 62; December 31, 1973, p. 62.

Broadcasting Yearbook: 1947 through 1961-1962. Washington: Broadcasting Publications Inc.

City of Waco. City Plan Commission. A Report Upon Comprehensive City Plan, Waco, Texas. St. Louis: Harland Bartholomew and Associates, 1958.

City of Waco. Planning Department. Comprehensive City Plan, Waco, Texas. St. Louis: Harland Bartholomew and Associates, 1967.

Economic Report of the President, February 1971. Washington: Government Printing Office, 1971.

- Fulmore, Zachary T. The History and Geography of Texas. Austin, Texas: S.R. Fulmore, 1926.
- General Directory of the City of Waco 1888-9. Galveston, Texas: Morrison and Fourmy, 1889.
- Nordyke, Lewis. The Truth About Texas. New York: Thomas Y. Crowell Company, 1957.
- Richardson, Rupert N. Texas: The Lone Star State. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1958.
- "Shreveport." Encyclopedia Americana. 1973. Vol. XXIV.
- "Survey of Buying Power." Sales Management, 1947 through 1971.
- U.S. Congress. House. Committee on Interstate and Foreign Commerce. Conditional Grants, Pregrant Procedure, Local Notice, Local Hearings, Payoffs, Suspension of Licenses, and Deceptive Practices in Broadcasting. Hearings before a subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., 2d Sess., 1960.
- U.S. Department of Commerce. Bureau of Navigation (later Radio Division). Radio Service Bulletin, Nos. 1 through 145.
- U.S. Department of Commerce. Bureau of the Census. Census reports, 1850-1970.
- U.S. Department of Commerce. Radio Division. Commercial and Government Radio Stations of the United States. Washington: Government Printing Office, 1923 through 1931.
- U.S. Federal Radio Commission. Second Annual Report. Washington: Government Printing Office, 1928.
- "Waco." Encyclopedia Americana. 1969. Vol. XXVIII.
- "Only Radio Unit With Identical Call--City Name." Waco Sunday Tribune-Herald. January 3, 1937, p. 8.
- "Pate Proves Ability as Head of Radio Station." Waco Sunday Tribune-Herald. January 3, 1937, p. 9.
- "Radio Phone Broadcasts Waco Music." Waco Times-Herald. July 22, 1922, p. 3.

Waco News-Tribune. Advertisement, December 13, 1929, p. 7.

Who's Who in America, Vol. 23, 1944-1945. Chicago: The A.N. Marquis Company, 1944.

Who's Who in America, Vol. 25, 1948-1949. Chicago: The A.N. Marquis Company, 1948.

Who's Who in America, Vol. 35, 1968-1969. Chicago: Marquis--Who's Who, Incorporated, 1968.

#### Federal Communications Commission Documents

Memorandum Opinion of April 27, 1942. "Policy and Procedure for the Handling of Broadcast Applications Exclusive of International, ST, Developmental, High Frequency Experimental and Non-Commercial Educational." 9 F.C.C. 356.

Order. "Amendment of Sections 1.365; 1.373(g); 1.378(e) and the Adoption of a New Section 1.367." 22 Fed. Reg. 3113 (1957).

Order. "Daytime Skywave Transmissions of Standard Broadcast Stations and Acceptance of Applications." 15 Fed. Reg. 9065 (1950).

Order No. 84-A. "Multiple Ownership of Standard and High Frequency Broadcast Stations." 8 Fed. Reg. 18985 (1943).

Public Notice. "Standard Broadcast Applications Ready and Available for Processing Pursuant to Section 1.354(c) of the Commission's Rules." 24 Fed. Reg. 2842 (1959).

Report and Order. "Amendment of Part 3 of the Commission's Rules and Regulations and Technical Standards Concerning the Power Limitation of Class IV AM Broadcast Stations." FCC 58-513, 17 P&F Radio Reg. 1541 (1958).

Report and Order. "Clear Channel Broadcasting in the Standard Broadcast Band." 31 F.C.C. 565 (1961).

Report and Order. Docket 10509. 19 Fed. Reg. 5141 (1954).

U.S. Federal Communications Commission. Annual Report. Washington: Government Printing Office, 1935 through 1972.

Federal Communications Commission Applications

Application of Roy Branham Albaugh for construction permit,  
file B3-P-3268, docket 6219.

Application of Audiocasting of Texas, Inc., for construction permit, file BP-11851, docket 12856.

Application of Floyd Bell for construction permit, file BP-11870, docket 13157.

Application of Belton Broadcasters, Inc., for construction permit, file BP-12934, docket 13159.

Application of Robert W. Cahill for construction permit, file BP-11812.

Application of Robert W. Cahill for construction permit, file BP-12006.

Application of John F. Egan and Robert Sherman d/b as Bay Area Electronic Associates for construction permit, file BP-11319, docket 12544.

Application of Falls County Public Service for construction permit, file B3-P-5631, docket 9086.

Application of R.E. Lee Glasgow for construction permit, file BP-10119.

Application of Horace K. Jackson, Sr., for construction permit, file BP-12550, docket 12877.

Application of Beauford H. Jester for construction permit, file B3-P-3176, docket 6218.

Application of T.E. Kirksey for construction permit, file BP-1385.

Application of KWTX Broadcasting Company for construction permit, file BP-13806, docket 14404.

Application of Hugh M. McBeath for construction permit, file BP-10001, docket 13156.

Application of McLennan Broadcasting Company for construction permit, file BP-8031.

Application of Jacob A. Newborn, Jr., trustee for Nancy and Nena Newborn, tr/as Austin Radio Company, for construction permit, file BP-9763, docket 13155.

Application of Radio Broadcasters, Inc., for construction permit, file BP-12465, docket 13158.

Application of James G. Ulmer tr/as Heart of Texas Broadcasters for construction permit, file BP-12985, docket 13160.

Application of Universal Broadcasting Corporation for assignment of license, file BAL-4711.

Application of Winston O. Ward for construction permit, file BP-7602.

### Interviews and Correspondence

Bitzer, Ralph J. Private interview held at his office, St. Louis, Missouri, March 1972.

Borders, John M. Private interview held at his office at KFJZ, Fort Worth, Texas, June 6, 1972.

Brandon, Lawrence. Telephone interview from New York, New York, October 11, 1974.

Burke, Milton P. Private interview held at his office, Shreveport, Louisiana, August 1970.

Cady, William M. III. Private interview held at his office, Shreveport, Louisiana, August 1970.

Cahill, Robert W. Telephone interview in San Francisco, California, April 1971.

Carter, Dr. James D. Letter to this writer from Washington, D.C., May 22, 1969.

Causey, Bid (Dean Grossman). Private interview held at his office at WEEP, Pittsburgh, Pennsylvania, March 15, 1971.

Chodorow, Nate. Telephone interview from Waco, Texas, January 4, 1973.

Clark, Harold. Letter to this writer from Waco, Texas, June 2, 1970.

Clarke, William Penn. Letter to this writer from Waco, Texas, September 26, 1971.

- Dickson, Donnell D., Jr. Telephone interview from San Antonio, Texas, October 19, 1974.
- Franks, R.D. Private interview held in Shreveport, Louisiana, August 1970.
- George, Lloyd. Telephone interview from Baytown, Texas, October 18, 1974.
- Jackson, Elfrieda Wolfertz. Private interview held at her home, Waco, Texas, December 24, 1970.
- Jackson, Hub. Letter to this writer from Schoolcraft, Michigan, May 17, 1969.
- Lockwood, Lee. Letter to this writer from Waco, Texas, June 9, 1969.
- McDonald, Charles M. Private interview held at KBGO, Waco, Texas, February 4, 1969.
- McKee, Goodson. Private interview held at his office at KAWA, Waco, Texas, June 7, 1972.
- Monroe, Joe Cudd. Private interview held at his home, Corpus Christi, Texas, December 1970.
- Monroe, Joyce Lane. Private interview held at her office at WBJW, Orlando, Florida, May 30, 1972.
- Small, David W. Private interview held at KLIF, Dallas, Texas, June 6, 1972.
- Stierman, Vern. Private interview held in Shreveport, Louisiana, August 1970.
- Thomas, Roger D. Private interview held at his home, Grand Prairie, Texas, June 6, 1972.
- Tinus, William C. Letter to this writer from Maplewood, New Jersey, August 8, 1971.

#### Miscellaneous Sources

Application record files for: Denver, Colorado; Gatesville, Texas; Marlin, Texas; Shreveport, Louisiana; and Waco, Texas. License Division. Broadcast Bureau. FCC.

Corporate record book of Audiocasting of Texas, Inc.

FCC Annual Financial Reports for: KAWA, 1962-1973; KBGO, 1962-1972; KEFC, 1959-1973; KJOE, 1954-1959; KRZI, 1973; KWTX, 1946-1973; KWTX-FM, 1973; and WACO, 1946-1973. Research and Education Division. Broadcast Bureau. FCC.

History cards for: KANG-TV, KAWA, KCEN, KEEL, KHOO, KJOE, KRMD, KRZI, KWEA, KWKH, KWTX, KWTX-FM, KWTX-TV, and WACO. License Division. Broadcast Bureau. FCC.

License files for: KAWA, KBGO, KEEL, KIXS, KLEN, KMLW, KRMD, KTBS, KWKH, KWTX, and WACO. License Division. Broadcast Bureau. FCC.

Ownership reports for: KAWA, KBGO, KEEL, KMLW, KTBS, KWKH, KWTX, and WACO. Renewal and Transfer Division. Broadcast Bureau. FCC.

Personal files of John M. Borders, Horace K. Jackson, Sr., and Charles M. McDonald.

Radio Station WRR. Undated information sheet about WRR.

Communications Act of 1934, as amended. 47 U.S.C. §§ 307, 309, 310, and 311.

H.R. 11341, 86th Cong., 2d Sess. (1960).

S. 1898, 86th Cong., 1st Sess. (1959).

















MICHIGAN STATE UNIV. LIBRARIES



31293103432625