

Construction Permit Extension Of
Reimbursement For Extensions

Commission reviews a Review Board decision which denied petitioner an extension of CP to construct a new FM facility (ref. FCC 78R-25 elsewhere in this volume). Petitioner alleges inability to pursue construction until Commission determines petitioner's reimbursement liability to other licensees who had changed channels for interference reasons; reimbursement set, legal fee reimbursement discussed. 21420

FCC 79-712

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of

HAROLD A. JAHNKE Radio Station KQHJ-
FM Hampton, Iowa

Docket No. 21420
File No. BMPH-
15051

For Extension of Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted: October 25, 1979. Released: November 5, 1979)

BY THE COMMISSION:

1. Harold A. Jahnke (Jahnke) is seeking review of a Decision, FCC 78R-25, released as corrected by the Review Board on April 5, 1978, 42 RR 2d 1113.¹ The Review Board's decision denied Jahnke an extension on his construction permit to build an FM station in Hampton, Iowa. The Board held that Jahnke did not qualify for an extension because his failure to build the proposed authorized station was due to causes within his control and because there were "no matters" within the meaning of Rule 1.534(a) which would otherwise justify an extension.

2. In his application for review, Jahnke justifies his failure to build by arguing that it would be imprudent to proceed with further capital investment until the Commission has determined the amount of

¹ Jahnke, who is appearing *pro se*, actually filed two separate pleadings, a Petition for Review, filed on May 8, 1978, and a Notice of Intent to Appeal, filed on April 13, 1978. We are treating these pleadings as a single application for review pursuant to Section 1.115 of the Commission's Rules. Also on June 5, 1978, the Broadcast Bureau filed an opposition to Jahnke's pleadings. Jahnke filed a reply on June 27, 1978.

reimbursement owed by Jahnke to Radio, Incorporated (Radio) the licensee of KCHA-FM, Charles City, Iowa. When new channels were allocated to Hampton and Pella, Iowa, we required Radio to change its assigned channel to avoid interference. *Second Report and Order* in Docket No. 19401, 39 FCC 2d 452, 26 RR 2d 977 (1973). At the same time, we indicated that Radio could look to the eventual permittees for the Hampton and Pella channels for reimbursement of the reasonable expenses incurred in complying with the required channel change.² We further stated that the interested parties should determine the appropriate reimbursement amount, subject to Commission approval in case of dispute. Radio and Tulip City Broadcasting Co. (Tulip City), the permittee for the new channel assigned to Pella, have reached a settlement in which Tulip City agreed to pay Radio \$6,300 as the *pro rata* share of the reimbursement obligation Tulip City shares with Jahnke. However, negotiations between Jahnke and Radio have not been successful.

3. Before deciding the merits of Jahnke's application for review, we issued a letter, dated September 29, 1978, soliciting an accounting by Radio of its reimbursable expenses, and granting Jahnke and the Broadcast Bureau the opportunity to respond.³ In addition, the Chief, Office of Opinions and Review has issued orders, pursuant to delegated authority, soliciting comments from Radio and the Bureau with specific reference to Radio's reimbursement claim for legal fees.⁴ Radio, Jahnke, and the Bureau have filed numerous pleadings in response to our letter and the orders by Chief, Office of Opinions and Review.⁵ In light of the information contained in these pleadings, we believe that it is appropriate to resolve the question of Jahnke's reimbursement liability.

² Consistent with this requirement, we noted in our order granting Jahnke his construction permit to build the Hampton station that program test authority would be withheld until an agreement is reached on the reimbursement question. *Obed S. Borgen*, 58 FCC 2d 560, 564 (1976).

³ Letter dated September 29, 1978 by direction of the Commission, Commissioner Washburn absent, to Harold A. Jahnke, Radio, Incorporated, and Wallace E. Johnson, Chief, Broadcast Bureau.

⁴ FCC 79M-20, released January 5, 1979; and FCC 79M-418, released March 29, 1979.

⁵ Comments, filed October 16, 1978 by Radio; Comments, filed October 30, 1978 by Jahnke; Comments filed November 14, 1978 by the Bureau; Motion for Leave to Supplement Comments and attached affidavit by David G. Rozzelle, filed November 30, 1978 by Radio; Motion to Strike, filed December 19, 1978 by Jahnke; Opposition to Motion to Strike, filed December 18, 1978 by Radio; Further Comments, filed January 19, 1979 by the Bureau; Motion for Leave to File Further Supplemental Comments and attached affidavits by David G. Rozzelle, Ralph F. McCartney, J.R. Herbrechtsmeyer, and LuVerne J. Bromberg, filed February 14, 1979 by Radio; Further Comments and attached affidavit of David G. Rozzelle, filed April 23, 1979 by Radio; Further Comments, filed May 8, 1979 by Jahnke; and Further Comments, filed June 4, 1979 by the Bureau. Because Radio's motions of November 30, 1978 and February 14, 1979 aid our public interest determinations by providing a complete record concerning these questions, they will be granted. For the same reason Jahnke's Motion to Strike, filed December 19, 1978, will be denied.

4. In our *Second Report and Order (Circleville, Ohio)*, 8 FCC 2d 159 (1967), we announced general guidelines for determining the reimbursement owed by the benefiting party to a licensee ordered to change its assigned channel to accommodate a new channel assignment. We said that reimbursement is proper for: (a) engineering, legal and equipment charges, (b) printing (logs and stationery), (c) out of pocket nonreducible expenses while the station is off the air, (d) advertising promotion for the new frequency, and (e) miscellaneous expenses. 8 FCC 2d at 163-64. We also pointed out that the licensee is not entitled to reimbursement for loss of revenue during the time the station is off the air or arising from the failure of advertisers to renew contracts with the licensee after the frequency change. We considered loss of revenue to be beyond the licensee's right of reimbursement because a broadcast license does not entitle its holder to a guaranteed profit, and because any calculation of lost revenue in this context would be too speculative to be helpful. See *Report and Order (Jackson, Lima, Kenton, and Bellefontaine, Ohio)*, 3 FCC 2d 598, 605 (1966). With this precedent in mind, we will now consider the specific request for reimbursement presented by Radio.

5. Aside from Radio's claim for reimbursement for legal expenses, discussed *infra*, Radio claims that it incurred the following reimbursable expenses.

1. 240A antenna	\$3,725.00
2. antenna shipping costs	117.87
3. second harmonic filter	395.00
4. retuning exciter and shipping costs	163.76
5. recalibrate frequency and modulation monitor	180.00
6. shipping for monitors	50.59
7. tuning bar	16.20
8. 285A antenna shipping	109.38
9. installation of 240A antenna and removal of 285A antenna	368.90
10. assembly of antenna and related ground work	334.75
11. frequency checks	24.00
12. FM stereo proof-AM antenna measurement	210.84
13. newspaper advertising	875.52
14. miscellaneous	<u>334.20</u>
Total	\$6,906.01 ⁶

⁶ Comments, filed October 16, 1978 by Radio.

Jahnke has protested the factual accuracy of Radio's accounting and Radio's right to specific reimbursement claims. However, as the Bureau points out, Jahnke's claims of factual error are not accompanied by affidavits or any other offer of proof contradicting Radio's showing. Nor does Jahnke cite relevant authority in support of his legal arguments. Thus, we see no need for further discussion of these matters and will rely instead on the analysis given by the Bureau in its Comments, filed November 14, 1978.

6. The Bureau recommends that we approve all of Radio's claims, listed above, except the \$334.20 claim for miscellaneous expenses. The Bureau's objection to this claim is that none of the expenses listed by Radio in this category is substantiated by documentary proof. Subsequently, Radio offered proof, in the form of two affidavits⁷ that it incurred a \$150.20 interest charge on money borrowed to effect the channel change. We will accept these affidavits as sufficient documentation and approve reimbursement for this portion of Radio's claimed miscellaneous expenses.⁸ In other aspects, our analysis is consistent with the Bureau's recommendation. Therefore, we find that Radio is due reimbursement in the amount of \$6,722.01 for expenses, exclusive of legal representation, incurred in effecting the required channel change.

7. The pleadings now before us are devoted in large measure to the question of Radio's reimbursable legal expenses. In its October 16, 1978 Comments, Radio claims it incurred a cost of \$6,661.99 for legal representation by its Washington counsel and local counsel in Charles City. Responding to an assertion by the Bureau that this claim was undocumented, Radio produced an affidavit by David G. Rozzelle, a partner in Radio's Washington law firm stating that the firm billed Radio \$9,159.94 for "legal services relating to the frequency change." In the pleading accompanying Rozzelle's affidavit,⁹ Radio stated, it was not increasing its claim for reimbursable legal expenses even though Rozzelle's affidavit places the cost of services by his firm alone at approximately \$2,500 over Radio's original claim for all legal services. Also, Radio argued that there was no need to produce a similar affidavit by local counsel because Rozzelle's affidavit documents more than enough legal expense to support the \$6,661.99 claim.

8. The Broadcast Bureau subsequently commented that more precise documentation of legal fees was still needed. The Bureau said,

⁷ The affidavits are by J.R. Herbrechtsmeyer, Vice-President of First Security Bank and Trust Company, Charles City, Iowa, and by LuVerne J. Bromberg, President of Radio, Incorporated. The affidavits were attached to the Motion for Leave to Further Supplement Comments, filed February 14, 1979 by Radio.

⁸ Since no documentation has been provided for the \$194.00 portion of the miscellaneous item, we agree with the Bureau that no reimbursement is warranted in that respect.

⁹ Motion for Leave to Supplement Comments, filed November 30, 1978.

"Radio's counsel should be prepared to provide Jahnke with the same sort of documentation of those fees as it would provide any other client."¹⁰ Responding to this criticism, Radio filed on February 14, 1979 a Motion for Leave to Further Supplement Comments and appended to it a second affidavit by Rozzelle and an affidavit by Charles City attorney, Ralph F. McCartney. Rozzelle's affidavit lists the pleadings prepared and other work performed by his firm and the hours spent by partners, associates, and other employees of the firm. McCartney's affidavit simply makes the conclusory statement that his law firm performed service "pertaining to the assignment and change of frequencies" for which it billed Radio \$363.49 in 1973 and \$77.01 in 1974. By an Order, FCC 79M-418 released March 29, 1979, Radio was afforded a further opportunity to supply more information. Radio responded with further comments and another affidavit by Rozzelle. No further documentation of the legal fees charged by Charles City counsel was included. Rozzelle's latest affidavit notes that the accounting it contains is at variance on some minor points with the accounting in his earlier affidavit. The difference, Radio asserts, is *de minimis*, and solely "attributable to the fact that each itemization was conducted independently and necessary decisions as to the appropriate category of some items were not the same in all cases."¹¹ Rozzelle's affidavit contains no subtotals for the various legal services rendered by his firm nor a grand total for all legal expenses. Instead, the affidavit states the number of hours billed and the charge for these hours. We have made the necessary computations and have arrived at the following amounts:

1. Legal representation in the Hampton, Iowa, proceeding that awarded a construction permit to Harold A. Jahnke.
 - a. Obed S. Borgen's application: "Legal services including petition to deny or condition grant and related pleadings, correspondence, conferences, memoranda related thereto."¹²

\$940.00
 - b. Harold A. Jahnke's application: "Legal services including research and legal writing for petitioner to deny or condition grant and related pleadings; letter opposing Jahnke's petition to condition grant (BPH-7383); supplement to petition to deny and related pleadings; conferences, telephone, memoranda, etc. related thereto."

\$1,226.52
 - c. Further services related to Jahnke's application: "Legal services including research and legal drafting of opposi-

¹⁰ Further Comments, filed January 19, 1979 by the Bureau.

¹¹ Further Comments, filed April 23, 1979 by Radio.

¹² The quoted description of each category is taken from Rozzelle's affidavit attached to Radio's Further Comments, footnote 11, *supra*.

- tion to petition to amend condition on construction permit (BPH-8963) and related pleadings, correspondence, telephone, conference and memoranda related thereto."
\$1,963.42
2. Legal representation in the Pella, Iowa, proceeding that awarded a construction permit to Tulip City Broadcasting Company.
- a. Pella Communications, Inc.'s application: "Legal services including research and drafting of petition to condition grant and related pleadings, conferences with FCC staff on above matters, telephone calls, etc."
\$804.10
- b. Tulip City Broadcasting Company's application: "Legal Services including settlement correspondence, research and drafting of petition to deny (not filed); review of Tulip application, review merger documents; correspondence, telephone, conferences and memorandum related thereto."
\$670.76
3. Legal representation in the Wabasha, Minnesota, proceeding involving Obed S. Borgen's application: "Legal services including petition to deny Wabasha, Minnesota application, related pleadings, conferences, telephone calls, memoranda, etc."
\$492.21
4. Negotiations between Radio and Jahnke: "Legal services including drafting of settlement agreement; settlement negotiations; telephone correspondence, conferences and memoranda related thereto."
\$777.01
5. Negotiations between Radio and Tulip City Broadcasting Co.: "Legal services including drafting of settlement agreement; settlement negotiations; letter to FCC on program test authority; conferences, correspondence, telephone and memoranda related thereto."
\$1,003.99
6. The frequency change: "Legal services including review and filing of FCC Form 301; conferences with FCC; correspondence and telephone related thereto."
\$225.00
7. Miscellaneous: "Legal services including general correspondence on status of proceedings; second harmonic interference, etc.; memoranda on status of proceedings; conferences with FCC staff on status; correspondence on general settlement matters such as equipment

costs, etc.; telephone calls on FM construction, equipment deliveries, etc.; memoranda and conferences related thereto."

\$728.55

8. Petition for Stay:

"Legal services including petition for stay of date of frequency change, supplement to petition for stay, research and related work."

\$388.75

Total cost of Legal Services supplied by Washington firm:

\$9,220.31

9. Radio claims that its participation in the Hampton and Pella proceedings, categories 1 and 2, was aimed at assuring that the eventual grantees of the construction permits for the newly-assigned channels in these locations would be willing and able to reimburse Radio according to the terms of our 1973 order, 39 FCC 2d 452. Radio's second purpose for entering these proceedings was to assert that the reimbursement obligation of the "benefiting parties" included reimbursing Radio for equipment and engineering service designed to obviate possible second harmonic interference. Our 1973 order clearly shows that the Commission recognized that second harmonic interference to television reception was a possible consequence of changing the channel assignment for Charles City; however, Radio claims that we did not determine at that time, which party would bear the expense of alleviating it. After Radio raised this issue in the Hampton proceeding, we squarely placed the obligation on the Hampton and Pella permittees, when we granted the Hampton construction permit to Jahnke. 58 FCC 2d at 563.

10. Radio participated in the Wabasha, Minnesota, proceeding, category 3, in response to a construction permit application to build a new AM station filed by Obed S. Borgen, who was also an applicant in the Hampton proceeding. Radio filed a pleading arguing that the Commission should not allow Borgen to extend his financial resources further as long as he remained an applicant in the Hampton proceeding, where, if successful, he would become liable to Radio for reimbursement. Categories 4 and 5, negotiations with Jahnke and Tulip, appear self-explanatory as does category 6, the frequency change. Rozzelle explains that the miscellaneous expenses, category 7, represent charges sufficiently documented by time slips so that "its general relevancy was assured" but not specific enough to determine "the exact nature of the task" performed.

11. Finally the petition to stay, category 8, represents the legal expenses Radio incurred when it sought to stay the date for the frequency change. The original date chosen by the Commission was February 1, 1974. 39 FCC 2d at 457. Radio sought the stay in order to reduce the time between the date on which it would incur the expense of the frequency change and the date on which it could reasonably expect to receive reimbursement. On August 16, 1973, the day Radio

filed the petition for stay, no permittee had been chosen in either the Hampton or the Pella proceeding and therefore no specific party, at that time, actually bore the burden of making the reimbursement. Reducing the delay between incurring the expenses and receiving reimbursement was critical, according to Radio, because it planned to borrow money to pay for the frequency change and would incur interest charges until the loan was repaid.

12. In response to Radio's accounting, Jahnke filed Further Comments on May 8, 1979. In it, he questions the firm's charge of \$85.00 an hour for two and a half hours of negotiations between Radio and Tulip City.¹³ Jahnke notes that in an earlier affidavit Rozzelle reported that his firm began charging \$85.00 an hour on August 1, 1977. Jahnke asserts that negotiations between Radio and Tulip City were completed on or about July 30, 1976, and therefore that Radio was not charged \$85.00 an hour for this work. Jahnke also claims that, because Radio has not provided further substantiation of the legal services provided by its Charles City counsel, we should not allow reimbursement for his claim. Next Jahnke relies on *Alyeska Pipeline Service v. Wilderness Society*, 421 U.S. 240 (1975), as authority that Radio has no legal right to reimbursement of legal fees incurred due to the channel change. In other respects, Jahnke's Further Comments merely reiterate earlier arguments which we considered and rejected in paragraph 5, *supra*.

13. The Bureau's pleading, also entitled Further Comments, filed June 4, 1979, does not discuss Jahnke's objection that Radio is mistaken about the \$85.00 an hour charge for the negotiations between Radio and Tulip City. The Bureau agrees with Jahnke that Radio has failed to substantiate local counsel fees, and finally the Bureau rejects as irrelevant Jahnke's reliance on *Alyeska Pipeline*. Concerning Rozzelle's affidavit, the Bureau does not object to the expenses contained in categories 1, 2, 4, 5, 6, and 7. Specifically, the Bureau says that the claims in categories 4 and 5 should be allowed even though Commission policy on reimbursement pursuant to Section 1.525 of the Commission Rules does not allow reimbursement for legal expenses incurred as a result of settlement negotiations. The Bureau argues that this policy is inappropriate to the reimbursement obligation involved here because the settlement negotiations were not entered into voluntarily, but as the direct result of Commission action. However, the Bureau objects to the claims in categories 3 and 8 because they are unrelated to the channel change and in fact resulted from a private business decision.

14. We agree with the Bureau that Jahnke's reliance on *Alyeska Pipeline* is misplaced.¹⁴ We also reject Jahnke's contention about the \$85.00 an hour charge for negotiations between Radio and Tulip City.

¹³ Our summary, appearing in para. 8, *supra*., of Rozzelle's affidavit omits this detail.

¹⁴ *Alyeska Pipeline* concerns a claim for payment of attorneys' fees in civil litigation initiated by a public interest group bringing suit as a "private attorney general." The

Jahnke presents us with only his unsupported assertion that the negotiations between Radio and Tulip City ended prior to July 30, 1976. We have searched the record and have found no indication of when the negotiations ended. Therefore, with no evidence to the contrary, we will accept Rozzelle's sworn affidavit as dispositive of the question. We agree, however, with Jahnke and the Bureau that Radio has not shown its local counsel fees to be related to the channel change and therefore these fees may not be included in the items to be reimbursed. With these questions resolved, we begin a step by step analysis of Rozzelle's most recent affidavit concerning the services rendered by Washington counsel.

15. The Bureau does not offer any guidance for the expenses claimed in categories 1 and 2, participation in the Hampton and Pella proceedings. These two claims total \$5,604.80. Radio's justification is that it had an interest in making sure that the eventual grantee in these proceedings would be willing and able to comply with the reimbursement obligation. While we understand the reason for Radio's interest in these proceedings, we do not think that it is entitled to reimbursement for its participation. Our 1973 order, 39 FCC 2d at 454, awarded Radio the right to seek reimbursement "for the reasonable costs of the channel change." We do not believe that the reasonable costs include the expense Radio incurred while endeavoring to aid the Commission in making a choice of the permittees which would eventually bear the reimbursement obligation. This was clearly a collateral matter, albeit one which Radio had standing to address. Standing, however, is a much broader right than Radio's right to reimbursement in the context of this case. The financial qualification of an applicant for a construction permit to build a new station is always given consideration. Much of the information and legal analysis provided by Radio in the Hampton and Pella proceedings duplicated the routine efforts of the Broadcast Bureau. Radio's right to receive reimbursement encompasses only those expenses which it unavoidably incurred because of our order to change channels. See generally *Second Report and Order (Circleville, Ohio)*, 8 FCC 2d 159, 163-64 (1967). There is no basis to require reimbursement of a claimed expense of \$5,604.80 which was incurred solely to assure that the Commission would choose permittees with the aggregate financial resources to meet the expense of a channel change that Radio claims cost \$6,906.01 plus certain expenses for legal representation. See para. 5, *supra*. Radio's claim that our 1973 order left in doubt who bore the burden of paying for the equipment and necessary engineering to avoid second harmonic interference is unpersuasive. This matter, if indeed it was ever in doubt, should have been left to later negotiations with the actual permittees. By prematurely raising the point, Radio found itself

instant case concerns an order by the Commission with a specific provision indicating which parties, within the Commission's jurisdiction, will bear the expense of implementing the order.

negotiating with all four applicants, whereas, if it had waited, Radio would only have needed to negotiate with the two actual permittees. For these same reasons, and consistent with the Bureau's recommendation, we also reject Radio's claim for reimbursement of its expense of \$492.21 incurred while participating in the Wabasha, Minnesota, proceeding, category 3.

16. Next, we agree with the Bureau that legal expenses incurred in the negotiation process, categories 4 and 5, are properly reimbursable. The reasons for our policy concerning Section 1.525 negotiations have no application here. Radio's claim for these two categories totals \$1,881.00. While this amount is substantial, Jahnke presents no evidence suggesting that these negotiations required less time and effort than claimed and the Bureau has no objection. Therefore, we will approve all of the reimbursement claims in categories 4 and 5.

17. Radio's claim in category 6 is unassailable, and we approve it in full. We do not, however, approve the claim in category 7 for miscellaneous expenses. While Rozzelle asserts that the "general relevancy" of these expenses is "assured," it is clear that such a general contention is not sufficient to warrant reimbursement. Although it is possible that some of the expenses reflected in this category would have qualified for reimbursement if more specific information had been supplied, this was not the case and therefore we must reject this claim in its entirety.

18. Concerning category 8, the petition for stay, we think that Radio was acting prudently in incurring this expense. When Radio filed the petition for stay it had no idea how much time the Commission would need before awarding permits in the Hampton and Pella proceedings. Until these permits were awarded, Radio could not assert its right of reimbursement. Since it planned to borrow money to pay for the channel change, Radio understandably wanted the loan to be paid off as quickly as possible. We believe that Radio's petition was aimed at reducing the number of days its loan would remain outstanding, thereby decreasing the reimbursement amount the Hampton and Pella permittees would be required to pay, and that it thus was reasonably related to the necessary change of channel.

19. To summarize, we are allowing Radio reimbursement for the claims of legal expenses contained in categories 4, 5, 6, and 8. These claims total \$2,394.75. Added to \$6,722.01, which is the amount allowed for nonlegal expenses, para. 6, *supra.*, the total reimbursement due Radio is \$9,116.76.

20. By its own admission, Radio has "settled" with Tulip City which agreed to pay Radio \$6,300.00 as its *pro rata* share of the reimbursement obligation. Radio may therefore claim no more than \$2,816.76 due it from Jahnke. This raises the issue of Jahnke's obligation of contribution toward Tulip City.¹⁵ We think it clear that

¹⁵ See 18 Am. Jur. 2d Contribution §9 (1965).

the public interest is best served by encouraging settlements in this sort of situation. Therefore it would be inappropriate to penalize Tulip for attempting to bring about a speedy resolution of this matter. By entering into a separate settlement with Radio, Tulip City should not be precluded from a right of contribution against Jahnke even though he was not a party to the settlement agreement. Assuming that Tulip City has indeed carried out its settlement agreement with Radio, we believe that Jahnke should make a sufficient contribution to Tulip City so that Jahnke's total payments will equal one-half of Radio's reimbursable expenses. In this regard, by making a payment of \$1,741.62 to Tulip City, in addition to his payment of \$2,816.76 to Radio, Jahnke will have paid for \$4,558.38 of Radio's reimbursable expenses, and Tulip City, which has paid Radio \$6,300.00, will, after receiving Jahnke's \$1,741.62 contribution, have also paid for \$4,558.38 of Radio's reimbursement expenses.

21. Now that we have ruled on the reimbursement obligation, Jahnke can no longer make any claim that any extrinsic circumstance is impeding his effort to construct the Hampton station. We will therefore afford Jahnke thirty (30) days following release of this order to present to the Commission a firm commitment to proceed expeditiously with construction. If such a commitment is presented, we shall extend Jahnke's construction permit for an additional six months. Cf. *Onondaga UHF-TV, Inc. (WONH)*, 21 FCC 2d 525 (1970); *Onondaga UHF-TV, Inc. (WONH)*, 65 FCC 2d 582 (Rev. Bd. 1977).

22. ACCORDINGLY, IT IS ORDERED, That Radio, Incorporated is due \$2,816.76 from Harold A. Jahnke as his *pro rata* share of the reimbursement owed Radio, Incorporated for expenses incurred in complying with the Commission order assigning it FM channel 240.

23. IT IS FURTHER ORDERED, That Tulip City Broadcasting Co. is due a contribution of \$1,741.62 from Harold A. Jahnke for payments by Tulip City Broadcasting Co. in excess of its *pro rata* share of the reimbursement due Radio, Incorporated.

24. IT IS FURTHER ORDERED, That Harold A. Jahnke WILL BE AFFORDED thirty (30) days following release of this order to present to the Commission a firm commitment: (a) to proceed expeditiously with construction of a new FM broadcast station in Hampton, Iowa, and (b) to reimburse Radio, Inc. and to make a contribution to Tulip City Broadcasting Co. in the amounts specified in this order.

25. IT IS FURTHER ORDERED, That the Motion for Leave to Supplement Comments, filed November 30, 1978 by Radio, Incorporated, and the Motion for Leave to File Further Supplemental Comments, filed February 14, 1979 by Radio, Incorporated ARE GRANTED, and the Motion to Strike, filed December 19, 1978 by Harold A. Jahnke IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary*.