

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

REIMBURSEMENT FOR LEGITIMATE AND
PRUDENT EXPENSES OF A PUBLIC INTEREST
GROUP FOR A CONSULTANCY TO A
BROADCASTER IN CERTAIN INSTANCES.

Docket No. 19518

REPORT AND ORDER

(Proceeding Terminated)

(Adopted: January 6, 1976; Released: January 9, 1976)

BY THE COMMISSION: COMMISSIONER QUELLO DISSENTING.

1. The Commission has before it the *Notice of Inquiry and Notice of Proposed Rulemaking* in this proceeding, 37 Fed. Reg. 11592 (1972), and the comments and reply comments filed in response to this *Notice*.¹ At issue are agreements between licensees and citizens groups to the extent that they contemplate in their terms withdrawal of a petition to deny and reimbursement by the station for future expenses of the group and/or the payment of fees to a group or its members in connection with their providing consulting services to the station in question.²

2. In the *Notice* we described this proceeding as an outgrowth of two cases in which agreements (between a transferee and a citizens group) submitted to the Commission³ in connection with changes in station ownership called for reimbursement of future expenses by the station to the protesting citizens group. The groups agreed⁴ to withdraw their objections in exchange for various actions, including the payments in question. In these two cases, the Commission was presented with agreements to pay future expenses up to \$2,000 yearly (Atlanta) or \$5,000 yearly (Denver) in carrying out the advisory activities to be rendered. These amounts were not part of sums intended to cover the past expenses of litigation which would be governed by Section 311(c) of the Communications Act and the policy which underlies it.⁵ That subject is not at issue here.

¹ The parties which filed comments and/or replies are listed in the appendix. We grant the request of Black Efforts for Soul in Television to accept its reply comments filed one day late.

² In *Boston Community Media Committee, Minority Caucus v. F.C.C.*, — U.S. App. D.C. —, — F. 2d — (1975), the Court of Appeals had been presented with a case dealing with the agreement to make future payment of fees to a citizens group, but the case became moot with the buyer's decision not to consummate the sale of the station. See *Hefstel Broadcasting-Boston, Inc.*, 42 F.C.C. 2d 1076 (1973) and *RKO General, Inc.*, 44 F.C.C. 2d 1004 (1974).

³ *Combined Communications Corp. (KBTU), Denver, Colorado*, 33 F.C.C. 2d 525 (1972), and *Strauss Broadcasting Company of Atlanta*, 31 F.C.C. 2d 550 (1971).

⁴ The question of these payments only arises in connection with an agreement. Absent such a voluntary agreement, the Commission does not have the authority to order payment of expenses of litigation, past or future. See *Alyeska Pipeline Service Co. v. Wilderness Society*, — U.S. —, 44 L. Ed. 2d 141 (1975) and *Turner v. F.C.C.*, — U.S. App. D.C. —, 514 F. 2d 1354 (1975).

⁵ See *J.T. Parker, Jr., et al.*, 8 F.C.C. 2d 202 (1967); *National Broadcasting Company, Inc.*, 25 R.R. 67 (1963); *National Broadcasting Company, Inc. (KNBC)*, 24 F.C.C. 2d 218 (1970); and *Office of Communication, United Church of Christ v. F.C.C.*, 465 F. 2d 579 (1972).

3. The issue here is whether the public interest would be served by payment of *future* expenses and/or fees to a group which filed and later dismissed a petition to deny an application as part of an agreement which specified that the group would serve as a consultant to the station.⁶ Aside from the basic issue of the acceptability of these agreements, the Commission indicated in the *Notice* that it wished to explore the need to apply any special requirements as a condition for their approval. Several possibilities were mentioned.

4. Based on a thorough examination of the record of this proceeding as well as Docket No. 20495, it became clear that both proceedings involved essentially the same issues and the same concepts. These issues, discussed at length in the *Report and Order* (FCC 75-1359) in Docket 20495, need no reiteration here except to observe that new rule provisions were adopted calling for the placing of copies of certain licensee/public agreements in the station's public file. The provisions are designed with specific recognition of the kinds of agreements involved here. We do not believe that reimbursement for future expenses and consultancy arrangements require the adoption of separate rules. The general principles set forth in our *Report and Order* in Docket No. 20495 apply with equal force to the agreements under consideration here.

5. Accordingly, IT IS ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

PARTIES FILING COMMENTS AND REPLY COMMENTS IN DOCKET
19518

Comments

American Broadcasting Companies, Inc.
Black Efforts for Soul in Television
Carter Publications, Inc.
Charles County Broadcasting Co., Inc.
Citizens Committee to Preserve the Present Programming of the
"Voice of the Arts in Atlanta" on WGKA-AM and FM
Columbia Broadcasting System, Inc.
Combined Communications Corporation
Evening News Association, et al.
Metromedia, Inc.
Multimedia, Inc., et al.
National Association of Broadcasters
National Organization for Women
Office of Communication of the United Church of Christ
Regional Broadcasters Group
Springfield Television Broadcasting Corporation
Station Licensees
Storer Broadcasting Company
Welch & Morgan

⁶ The *Notice* did not contemplate a total ban on all forms of reimbursement. ABC's proposal for such a ban is beyond the present inquiry. Also, there was a filing from the law firm of Welch and Morgan in support of reimbursement in connection with withdrawal of an application in conflict with a renewal application. This, too, is not at issue here, and we shall not discuss the matter further.

Reply Comments

American Broadcasting Companies, Inc.
Black Efforts for Soul in Television
Evening News Association, et al.
Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
National Association of Broadcasters
National Association of Educational Broadcasters
Station Licensees