

Antenna, Change
Costs, Allocation Of
Cross-modulation
Interference, Corrective Measures

Petition for reconsideration of staff grant of CP, to relocate antenna-transmitter, granted in part; permittee responsible for corrective measures to alleviate interference to existing broadcast operations caused by cross-modulation. Parties expected to cooperate to resolve interference problem at minimum cost to licensee.

F.C.C. 77-419

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

In Re Application of

SUDBRINK BROADCASTING OF GEORGIA,
INC., RADIO STATION WIIN, ATLANTA,
GEORGIA

File No. BP-20698

For Construction Permit to Relocate
Antenna-Transmitter Site

MEMORANDUM OPINION AND ORDER

(Adopted: June 14, 1977; Released: July 29, 1977)

BY THE COMMISSION:

1. The Commission has for consideration: (a) a "Petition for Reconsideration and Alternative Relief" filed March 24, 1977, by Meredith Corporation, licensee of AM Station WGST, Atlanta, Georgia (Meredith), directed against the action of the Chief, Broadcast Bureau, of February 9, 1977, which granted a construction permit to relocate the WIIN (AM) antenna-transmitter site; (b) an "Opposition to Petition for Reconsideration and Alternative Relief" filed April 7, 1977, on behalf of Sudbrink Broadcasting of Florida, Inc., licensee of Station WIIN, Atlanta, Georgia (Sudbrink); and (c) related pleadings and correspondence.

2. The subject application authorized the relocation of the WIIN antenna-transmitter to a site approximately 0.17 miles from the licensed WGST antenna-transmitter site. In view of this proximity and the relatively small frequency separation between the stations (920 versus 970 kHz), Station WGST experienced objectionable interference due to cross-modulation upon commencement of the WIIN operation at the newly authorized site on March 4, 1977. Shortly thereafter, on March 11, 1977, the WIIN special temporary authority was modified to reduce power pending resolution of the interference problem and the filing of a covering license application.

3. Prior to the filing of the petition for reconsideration on March 24, 1977, Meredith states that it has incurred engineering costs of approxi-

mately \$6,000 which were necessary to alleviate this interference problem. Essentially, these costs consist of the design of a satisfactory filter by Meredith's own consulting engineer as well as related construction and installation costs. Therefore, Meredith requests that either the grant of the construction permit be "reconsidered and conditioned" or, in the alternative, that resolution of this matter be a condition to the grant of a covering license or the issuance of program test authority.

4. Sudbrink does not contest its responsibility to correct any resulting interference problems experienced by Station WGST. However, Sudbrink objects to the "dictation" of the particular form the effort to eliminate the interference should take. In addition, Sudbrink contends that an expectation of full reimbursement is "unreasonable" and "inequitable" and specifically contests any responsibility for the allegedly "excessive" costs over the "high cost" of the filter and related hardware. Furthermore, Sudbrink alleges that it had not been consulted by Meredith concerning the work performed for Meredith and that Meredith has refused to engage in good faith negotiations. Finally, Sudbrink states that it was "willing and able" to have its engineers install the necessary filter and "guarantee satisfaction."

5. After careful examination of all pleadings and related correspondence, we are unable to discern the precise extent of the financial liability incurred by Meredith for which Sudbrink is responsible. For this reason, we will withhold action on the pending WIIN license application pending resolution of this matter. This does not relieve Sudbrink of its responsibility in this matter or preclude our future consideration and appropriate action, if necessary, in connection with the WIIN license application. In any event, we are of the opinion that the preferable solution is for the stations to equitably resolve this matter. In the present situation, it is apparent that the failure of the parties to reach such a solution is due, in part, to a misunderstanding concerning the nature and extent of Sudbrink's responsibility. It is clear that the "newcomer" is responsible, financially and otherwise, for taking whatever steps may be necessary to eliminate objectionable interference. *Midnight Sun Broadcasting Company*, 3 RR 1751 (1947); *B & W Truck Service*, 15 FCC 2d 769 (1968). A preliminary examination of this matter indicates that the total cost necessary to rectify the WGST interference problem would consist of the filter design cost, the cost of a review of the filter design by the Meredith engineering consultant or director of engineering, filter construction cost, filter transportation cost to the antenna-transmitter site, filter installation and adjustment cost and a review of the installation and adjustment by the Meredith engineering consultant or director of engineering. Clearly, Sudbrink is responsible for the cost incurred by Meredith with respect to review of the filter design and the review of the final installation and adjustment by Meredith's own consulting engineer or director of engineering. Likewise, the construction and transportation costs of the filter are readily definable costs. The interfering station would be responsible for these expenses even if its own engineering personnel installed the necessary filter and "guaranteed satisfaction." In using its own qualified engineering consultant and engineering staff to alleviate the interference problem, it is possible that Sudbrink would hold its financial

responsibility to a minimum. Nevertheless, we do not proscribe Meredith from using its own engineering consultant and staff for the design, installation and adjustment of the appropriate filter. In such situations, we would expect that the engineering consultant and engineering staff of the reimbursing station be allowed to participate to the extent necessary to assure that excessive and needless costs are not being incurred and make other appropriate suggestions consistent with good engineering practice.

6. Between the commencement of the WIIN operation on March 4, 1977, and the filing of the petition by Meredith on March 24, 1977, Meredith states that it had incurred approximately \$6,000 in engineering costs. Although we do not condone the apparent absence of representatives from Sudbrink, we recognize that the urgency of an existing interference problem does not lend itself to the delay inherent in good faith negotiation. It was not unreasonable for Meredith to take immediate steps to alleviate the interference problem. However, this action by Meredith should be subject to review by Sudbrink in order to show any cost or expense in excess of that which would have been incurred by Sudbrink to alleviate the interference problem. Sudbrink should be allowed to examine, in detail, the costs incurred in each of the areas of responsibility outlined herein in order to demonstrate any cost saving which could have been effectuated consistent with good engineering practice. Moreover, Sudbrink should be allowed to compare the cost incurred by the Meredith engineering consultant in relation to the cost of its own consulting engineer as well as any cost attributable to the utilization of Sudbrink employees.

7. As indicated earlier, we are unable, at this juncture, to define the extent of the financial responsibility of Sudbrink on the basis of the petition for reconsideration filed by Meredith. Furthermore, in view of the above and our established policy in this area with respect to the responsibility of the interfering station, it is unnecessary to set aside the grant of the WIIN construction permit. In this regard, we are withholding final action on the WIIN license application pending ultimate resolution of this matter. In taking this action, we would like to reiterate our belief that good faith negotiation, in accordance with the guidelines set forth above, offers the most efficient and effective means of resolving this matter. Finally, our dismissal of the Meredith petition ~~does not, in any way, preclude a final Commission solution, if necessary, in connection with the WIIN license application.~~

Accordingly, IT IS ORDERED, That the aforementioned "Petition for Reconsideration and Alternative Relief" IS GRANTED to the extent indicated above and IS DENIED in all other respects.

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