

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-532

In re Applications of

RENEE MARIE KRAMER File No. BPCT-870731KV

Carlos B. McDaniel and File No. BPCT-870731KY
Mary S. McDaniel d/b/a
McDANIEL
BROADCASTING
PARTNERS

MANATEE File No. BPCT-870731LA
TELEVISION, INC.

BRADENTON File No. BPCT-870731LB
BROADCAST
TELEVISION
COMPANY, LTD.

JOYNER FILE NO. BPCT-870731LC
COMMUNICATIONS
LIMITED
PARTNERSHIP

For a Construction Permit for a
New Television Station on Channel 66 at
Bradenton, Florida

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 1990; Released: October 4, 1990

By the Commission:

1. Before the Commission for consideration are a Review Board Decision, *Renee Marie Kramer*, 5 FCC Rcd 563 (Rev. Bd. 1990), granting the application filed by Bradenton Broadcast Television Company Ltd. (BBTC) for a construction permit for a new UHF Television Station on Channel 66 at Bradenton, Florida; Applications for Review filed February 27, 1989 by Renee Marie Kramer and March 1, 1990 by McDaniel Broadcasting Partners, Manatee Television, Inc., and Joyner Communications Limited Partnership; and a Contingent Application for Review, filed March 1, 1990 by BBTC.¹ We agree with the Board's decision and it is affirmed. However, two matters raised in the Applications for review merit additional comment.

2. First, several competing applicants argue that the gender and minority enhancements are unconstitutional. They therefore challenge the finding of the Review Board, in granting BBTC's application, that its integration proposal is enhanced by its principal's gender and minority

status. The arguments concerning minority enhancement were rejected by the Supreme Court in *Metro Broadcasting, Inc. v. FCC*, 110 S.Ct. 2997 (1990). Furthermore, in view of BBTC's other comparative advantages over the competing applicants, the arguments concerning gender enhancement credit are not decisionally significant in this case. See 4 FCC Rcd at 2863.

3. Second, Joyner challenges the dispositive weight given to BBTC's local residence. Joyner notes that Ms. Joyner has longer (38 years) service area residence than BBTC's principal, Rogers (10 years in Bradenton), and more civic activities than Rogers;² that BBTC's transmitter will be closer to Tampa than to Bradenton; that Bradenton constitutes only 1.3% of the service area; and that television is considered an area wide service. It argues that in the 1965 *Policy Statement on Comparative Broadcast Hearings*, the Commission said that "generally speaking" residence in the principal community would be of primary importance "closely followed" by residence in the service area. 1 FCC Rcd 393, 396 (1965). It concludes that it should be preferred because of Ms. Joyner's longer residence and more numerous civic activities, and because the location of BBTC's proposed antenna and relatively small size of Bradenton reduce the significance of Rogers' residence in the proposed community of license.

4. Residence in the community of license is entitled to greater credit than residence in the service area. *West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601, 607-08 (D.C. Cir. 1984). Joyner correctly observes that television is an area-wide service and that the Commission has declined to provide decisive Section 307(b) preferences based solely on which community a television applicant proposes to designate as its community of license. *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *review denied*, FCC 82-235 (1882). Television stations, nevertheless, are expected to serve the needs and interests of their community of license and to treat that community as their primary service responsibility. *WHYY, Inc.*, 93 FCC 2d 1086, 1094-96 (1983) (ruling on a complaint alleging that a Wilmington, Delaware television station was serving Philadelphia, Pennsylvania).³ Thus, when a channel is allocated to a community, pursuant to the Commission's Section 307(b) obligation to provide a fair and equitable distribution of television service, our rules require applicants to adhere to heightened standards for the community of license and to serve primarily that community. See *WSTE - TV*, 75 FCC 2d 52, 56 (1979).

5. In the 1965 *Policy Statement*, 1 FCC 2d 393, 396 (1965), we determined that residence in the principal city to be served is of primary importance and "indicates a likelihood of continuing knowledge of changing local interests and needs." In this proceeding, all of the applicants propose Bradenton as the community of license. Ms. Joyner is a resident of Tampa, which is about 40 miles from Bradenton, and her civic activities are centered in Tampa and Hillsborough County. In contrast, Ms. Rogers is a resident of Bradenton, and her civic activities are centered in Bradenton and the surrounding Manatee County (Bradenton is the Manatee County Seat). Joyner has not cited any precedent that would support the dilution of the credit to be given for local community residence in this proceeding. Nor has Joyner demonstrated how Ms. Joyner's longer residence and greater number of civic activities enhance her familiarity with Bradenton, as opposed to the service area generally. Thus, the Board

properly found that BBTC is entitled to greater enhancement credit for Rogers' residence in the community of license.

6. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed February 27, 1990 by Renee Marie Kramer and the Applications for Review filed March 1, 1990 by Manatee Television, Inc., by McDaniel Broadcasting Partners and by Jordan Communications Limited Partnership ARE DENIED; and that the Contingent Application for Review filed March 1, 1990 by Bradenton Broadcast Television Company, Ltd., IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ On March 14, 1990 BBTC filed a Consolidated Opposition to Applications for Review. On March 16, 1990, Joyner filed Oppositions to Kramer's Application for Review, and BBTC's Contingent Application for Review.

² Joyner claims that the ALJ and the Board erred in not fully crediting its principal's civic activities. The ALJ credited Joyner with 17 civic activities, as opposed to 6 for BBTC. 4 FCC Rcd 2848, 2863 ¶ 119. These activities establish that Arthenia Joyner has a knowledge of and interest in the welfare of the service area. However, even if we were to credit Joyner with the activities not considered by the ALJ (*see* Joyner Exh. 3), those activities are cumulative and do not establish a greater knowledge and interest in the welfare of the service area. *See 1965 Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965). Thus, any additional enhancement would not be sufficient to outweigh BBTC's overall qualitative advantage.

³ *See also*, 47 C.F.R. § 73.1120 (providing that every broadcast station "will be licensed to the principal community or other political subdivision which it primarily serves"); and 47 C.F.R. § 73.685(a) (requiring that applicants provide grade A coverage over the entire community of license). Even in relaxing the studio location requirements (47 C.F.R. § 73.1120), we stressed that the underlying goals of providing service to the principal community would not be changed by the modification of the rules. *Amendment of Sections 73.1125 and 73.1130*, 2 FCC RCD 3215, 3219 ¶ 46 (1987).