

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

MM Docket No. 87-426

In re Applications of

SHAWN PHALEN File No. BPH-851231MO

ELLWOOD BEACH File No. BPH-851231MS  
BROADCASTING, LTD.

SPIRIT File No. BPH-851231MZ  
BROADCASTING

JAMES EVANS File No. BPH-851231MR

For Construction Permit for  
New FM Broadcast Station at  
Montecito, California

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1992; Released: January 30, 1992

By the Review Board: MARINO (Chairman), and  
BLUMENTHAL.

1. In our *Memorandum Opinion and Order*, FCC 92R-1, released January 23, 1992, we indicated that the initial decision in *Salinas Broadcasting Limited Partnership*, 4 FCC Rcd 2762 (1989) had not been appealed. *See MO&O* at paras. 23-24 & n.28. This was incorrect. *see* 5 FCC Rcd 1613 (Rev. Bd. 1990)(remanding on site issue(s) against 5 applicants).

2. As the Commission has done, we will leave to the sound discretion of the ALJ the question of whether to examine Stanfield's conduct in the *Salinas* proceeding under Issue (1), even though *Salinas* remains subject to further review. *See Carmel Broadcasting Limited Partnership*, 6 FCC Rcd 3287 (1991)(Comm'n declines to delete issue based upon principal's conduct in another proceeding yet under administrative appeal).<sup>1</sup>

3. ACCORDINGLY, IT IS ORDERED. That the *Memorandum Opinion and Order*, FCC 92R-1, released January 23, 1992, IS MODIFIED as indicated above.<sup>2</sup>

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal  
Member, Review Board

FOOTNOTES

<sup>1</sup> As the Commission has explained:

An initial decision is not a mere report to be arbitrarily disregarded. In the absence of review, the initial decision is the decision of the agency. Section 557(b) of the Administrative Procedure Act. Even when review is granted, the initial decision must be taken into account by the agency and when necessary by a reviewing court.

*Stero Broadcasting, Inc.*, 74 FCC 2d 543, 546 (1979).

<sup>2</sup> In order to avoid delay, pre-publication copies of this order have been made available to the ALJ and the parties.