

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

MM Docket No. 90-10

In re Applications of

Wayne G. Mulligan, File No. BPH-870331MZ
Richard D. Buckley, Jr.,
and Richard S. Korsen
d/b/a RANCHO MIRAGE
RADIO, A General Partnership

HUGH R. PAUL File No. BPH-870331PN

SUNDIAL RADIO File No. BPH-870421MC
BROADCASTERS, A
CALIFORNIA
LIMITED
PARTNERSHIP

DANIEL P. MITCHELL File No. BPH-870422MB

Isabell Drake File No. BPH-870422ME
d/b/a DRAKE BROADCASTING

ANNE K. WALLACE and File No. BPH-870422MJ
WILLIAM F. WALLACE

For Construction Permit for
New FM Station, Channel 258A,
Rancho Mirage, California

Appearances

Lawrence Bernstein and F. Joseph Brinig, on behalf of
Hugh R. Paul; Morton L. Berfield and John J. Schauble,
on behalf of Sundial Radio Broadcasters, A California
Limited Partnership; Lewis J. Paper, on behalf of Daniel
P. Mitchell, III; Jerome S. Silber, on behalf of Drake
Broadcasting; and James A. Gammon and A. Wray Fitch
III, on behalf of Anne K. Wallace and William F. Wal-
lace.

DECISION

Adopted: January 2, 1992; Released: January 17, 1992

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

Board Member BLUMENTHAL:

1. Before the Review Board are exceptions and related
pleadings filed by the above-captioned applicants¹ to an
Initial Decision, 6 FCC Rcd 2523 (ALJ 1991) (*I. D.*), by
Administrative Law Judge Joseph Chachkin (ALJ), which

granted the application of Anne K. Wallace and William
F. Wallace (Wallaces) for a new FM station at Rancho
Mirage, California. Oral argument was held before a pan-
el of the Board on September 20, 1991.

2. The *I. D.* turned on the standard comparative issue.
Pursuant to criteria employed thereunder, *see Policy State-
ment on Comparative Broadcast Hearings*, 1 FCC 2d 393
(1965) (*Policy Statement*), the Wallaces received a
decisional preference for their ownership/management
"integration" proposal: 100% quantitative credit, en-
hanced by local residence/civic activities on a half-time
basis since 1981; female ownership credit for Ms. Wallace
(60%); and extensive past broadcast experience.² Hugh R.
Paul (Paul) and Daniel P. Mitchell, III (Mitchell) simi-
larly received 100% quantitative credit, but lacked the
enhancements possessed by the Wallaces. Paul also re-
ceived a very slight preference for proposing greater over-
all coverage, but that advantage was deemed minor
because the proposed service areas were well served: five
or more primary aural services. Drake Broadcasting
(Drake) was awarded 66.6% quantitative integration cred-
it, because one of its principals -- a 33.4% owner --
withdrew from the applicant after the date integration
proposals were fixed for comparative purposes.³ The final
applicant, Sun Radio Broadcasters, A California Limited
Partnership (Sundial), received no quantitative credit, al-
though it claimed 100%, and, arguably, proffered the
highest enhancements. The ALJ, however, labeled the
application a sham, controlled by one of its purported
"passive" limited partners, who -- the ALJ found -- would
continue to control if Sundial's application were granted.
Sundial also was assessed a very slight diversification
demerit for the media interests of its impermissibly "ac-
tive" limited partner.

3. In the exceptions, each of the applicants asserts its
superiority, raising various arguments; however, because
we agree with the ALJ's resolution of the case, we have
confined our discussion to the decisionally significant ex-
ceptions: (1) Sundial's request for restoration of its
claimed quantitative integration; and (2) the unsuccessful
applicants' attack on the award of full integration credit
to the Wallaces.⁴ Based on our review of the *I. D.*, the
underlying record, and the oral argument, we adopt the
ALJ's findings of fact, except as modified herein, and
affirm his grant of the Wallaces' application. We turn first
to Sundial's application.

SUNDIAL RADIO BROADCASTERS,
A CALIFORNIA LIMITED PARTNERSHIP

4. Sundial is a limited partnership, comprised of a
general partner, Joyce Wade-Maltais, and two limited
partners, Leonard E. Walk, and Philip K. Smith, Jr. *I. D.*,
para. 23. Both Wade-Maltais and Smith have a 20% own-
ership interest in the applicant, and 60% is held by Walk
and his wife as joint tenants. Wade-Maltais proposes to
work full time as the station's general manager. *Id.*, para.
45. She is a black female with long-time residence in the
service area. Wade-Maltais has participated in service area
civic activities and possesses past broadcast experience. *Id.*,
paras. 46-48 & n.7.

5. Although Wade-Maltais is nominally the active prin-
cipal of the applicant, the ALJ concluded that the totality
of the record evidence, detailed below, demonstrated that
the partnership was, in reality, under Walk's control, and
that the applicant, therefore, was not entitled to integra-

tion credit. *Id.*, paras. 90, 95. He found that Walk, an experienced broadcaster, initially conceived the venture, and obtained Smith's name from a friend in Los Angeles after inquiring about finding a person from the Rancho Mirage area, with whom he could file an application. *I. D.*, paras. 24, 26. After calling Smith, a land developer, and discussing his desire for a local person --preferably a minority -- who could head up the group, Smith contacted Wade-Maltais. *Id.*, paras. 27-30. Walk then met with Wade-Maltais, reaching an agreement whereby she would participate in a limited partnership. *Id.*, paras. 30-31. The ALJ noted that Walk gave Wade-Maltais exclusive control over the applicant even though she had no prior experience in managing any business and Walk had not talked to anyone other than Smith, a stranger, about Wade-Maltais' competence or character. *Id.*, para. 91. Walk recommended that she use his law firm. *Id.*, para. 31. The firm, which had assisted Walk in filing similar applications since 1976, drafted the limited partnership agreement, prepared the financial estimates, obtained the station's consulting engineers, and contacted the equipment leasing company. *Id.*, paras. 38, 92.

6. The limited partners will supply all of the funds for the prosecution of the application and for the construction and operation of the station. *Id.*, paras. 39, 94. Wade-Maltais is not obligated to pay any money for her 20% ownership interest, nor is she liable to the limited partners for any loss that she determines does not constitute gross negligence or gross misconduct. *Id.*, paras. 35-37, 40. She also understood that she would be indemnified for any action taken on behalf of the partnership in good faith. *Id.*, 40. Sundial's exceptions mainly disagree with the adverse conclusions derived from the facts.

7. *Discussion.* As a general proposition, an applicant is entitled to the percentage of quantitative credit that is commensurate with its voting ownership proposing to work full time in station management. *see generally, WHW Enterprises, Inc.*, 89 FCC 2d 799, 816 (Rev. Bd. 1982)(subsequent history omitted) -- the interests of limited partners (or non-voting shareholders) disregarded as having no authority to control the licensee. *see Anax Broadcasting Inc.*, 87 FCC 2d 483, 488 (1981). Where, however, the applicant's conduct is demonstrably at odds with its described ownership structure, the Commission does not accept "at face value the applicant's claim . . . while ignoring the nonintegration of its passive owners in calculating the applicant's integration credit." *Royce International Broadcasting*, 5 FCC Rcd 7063, 7064 (1990); *see also Coast TV*, 4 FCC Rcd 1786, 1787 (1989). The equity interests of nominally "passive" owners who have actively participated in prosecuting the application after the applicant has formally organized itself into either a limited partnership or two-tier corporation are attributed to the applicant, resulting in an overall diminution of the percentage of the specific proposal for which integration is claimed. *Royce*, 5 FCC Rcd at 7064. Additionally, where the applicant has "left fundamental uncertainty" as to the nature of its organizational structure so that "control of the applicant as between integrated and non-integrated principals cannot be reliably ascertained," the integration proposal will be completely discounted. *Id.*

8. Here, the instant Sundial application is virtually identical to a number of applications recently discredited as shams. *See, e. g., Pleasant Hope Broadcasting Co., L. P.*, 6 FCC Rcd 6553, 6556-6558 (Rev. Bd. 1991); *Evansville*

Skywave, Inc., 6 FCC Rcd 5373, 5374-75 (Rev. Bd. 1991).
⁵ In *Evansville*, we depicted the *modus operandi* of the archetype sham (6 FCC Rcd at 5375): "

[An application filed] by a coterie of . . . entrepreneurs claiming to be merely "passive" investors, and who . . . purportedly place *exclusive* control of their applicant entity in the hands of a virtual stranger, one with little or no palpable stake in that application, economic or otherwise. [T]ypical of the breed, the allegedly "passive" investors suppl[y] all of the capital, utilize[] its regular engineers and lawyers, pre-prepare[] the corporate documents (with a pre-arranged equity split), whereas the supposedly "active" principal [is] left with little or no operational function other than those purely *post hoc* ministerial acts associated with certifying the application on behalf of the "passive" entrepreneurs.

And, in *Metroplex Communications, Inc.*, 5 FCC Rcd 5610 (1990), *aff'd by judgment sub nom. Southeast Florida Limited Partnership v. FCC*, No. 90-1482 (D.C. Cir. October 28, 1991), where nominally passive investors purportedly ceded exclusive control over the applicant to a virtual stranger, the Commission expressed a similar view (5 FCC Rcd at 5612):

It is not credible that a group of experienced investors (including those with past broadcast ownership) would grant exclusive control of their station to a virtual stranger with no broadcast experience, who would make no investment in the station. On the facts before us, we fail to see any legitimate *quid pro quo* by [the stranger] for becoming general partner. We have in the past rejected such instances of "giving away the store" as unworthy of credence. *See KIST Corp.*, 102 FCC 2d 288, 292 (1985)."

Evansville and *Pleasant Hope* were deemed by the Board as stronger examples of shams than *Metroplex*, where 4% equity interest and exclusive control constituted "giving away the store," because the former cases involved 25% and 20% equity interests, respectively, along with the exclusive control. A disparate result is not justified on the facts here. *See also Fresno FM Limited Partnership*, 6 FCC Rcd 6998 (1991) (proposal unreliable in light of the "relatively casual" manner in which the general partner was recruited and his lack of financial stake); *Evergreen Broadcasting Co.*, 6 FCC Rcd 5599, 5602, at para. 22 (1991); *Poughkeepsie Broadcasting Limited*, 6 FCC Rcd 2497, 2498, para. 6 (1991).

9. Moreover, even if we were not to find the applicant a sham, the post-formation record reflects an impermissible level of activity on the part of the limited partners that requires their inclusion into the overall calculus of the applicant's integration proposal. Walk stated at deposition that he was contacted by Wade-Maltais subsequent to the signing of the limited partnership agreement to locate an appropriate transmitter site. *I. D.*, paras. 41-43. Smith also was drawn into the search when Walk's efforts proved futile. *Id.*, para. 42. Although Wade subsequently disavowed his damaging admission, his recantation was not predicated on documentation that refreshed his recollection. Tr. 410. It is significant that Smith also expressed a belief that the search occurred after the limited partner-

ship agreement was signed. *See Mitchell Exh. 5*, at 27. Also compare Wade-Maltais' testimony that the agreement was signed on or about April 3, 1987 (Tr. 370) with Wade Maltais' declaration that Sundial received written permission on April 6, 1987 to use the land for a transmitter site (Sundial Opposition to Petition to Enlarge Issues, filed May 1, 1990, at Exh. 4).⁶ Thus, in light of the post-formation activity, Sundial would be entitled, at most, to 20% quantitative integration credit, even if its proposal were *bona fide*. *See Evergreen*, 6 FCC Rcd at 5601-5602, paras. 18, 23.⁷ Because Walk has not been a passive principal, nor is likely to be one in the future, the ALJ correctly attributed his media interests to Sundial for comparative diversification purposes. *See Dayona Broadcasting Co., Inc.*, 103 FCC 2d 931, 934-935 (1986).⁸

ANNE K. WALLACE AND WILLIAM F. WALLACE

10. The applicant is a general partnership, consisting of Anne and William Wallace; the Wallaces are married to one another. *I. D.*, para. 66. Anne Wallace owns 60 percent of the partnership, while her husband owns 40 percent. *Id.* She proposes to work as the station's full-time general manager, and Mr. Wallace will be its full-time sales manager and chief engineer. *Id.*, paras. 71, 79, 81. The Wallaces purchased a condominium at Rancho Mirage in 1981, intending to move there full time following the sale of stations KAAP-AM/FM, Santa Paula, California. *Id.*, para. 68. William Wallace had owned the AM facility since 1965, and the Wallaces jointly had owned the FM station since 1976. *Id.*, para. 67. The stations used the same studio and were jointly managed by the Wallaces until the sale. *Id.* Because of a series of problems concerning the sale, however, they were unable to relocate to Rancho Mirage on a full-time basis. They have resided there at least half time since 1981. *Id.*, paras. 67-68, 72. Ms. Wallace has participated in local civic activities, serving as the Rancho Mirage Chairman of the United Way of the Desert Campaign during 1985-1986. *Id.*, para. 74. The Wallaces have extensive past broadcast experience. *Id.*, paras. 75-78, 82.

11. The exceptions reiterate arguments made to the ALJ that full credit should not be awarded to the Wallaces because of two alleged deficiencies in their proposal: (1) William Wallace's role at the station will not be managerial; and (2) that Wallace will not adhere to his proposal on a permanent basis. Specifically, Wallaces' opponents argue that under paragraph 7 of the Wallace Partnership Agreement, William Wallace is not afforded any role in management or policy. That provision reads as follows:

Management, duties, and restrictions: The following provisions shall apply with regard to the management of the business and affairs of the partnership.

(a) Managing partner. The right to manage and conduct the partnership business shall be vested exclusively in Anne K. Wallace and all decisions affecting the partnership, its policy and management, including its employees, their employment and discharge, and their compensation and bonuses, if any, shall be made by Anne K. Wallace. Anne K. Wallace shall devote her attention and time to the conduct and supervision of the partnership business.

(b) Other partner. William F. Wallace shall devote his entire time to the furtherance of the interests of the partnership business.

Mitchell Exh. 8, p.1. The exceptors further advert to Wallace's testimony (at Tr. 616) that he will devote 95 percent of his time at the station "selling and "presenting the station" to advertisers, as evidence that his duties will not be managerial. With respect to their contention that the application lacks the requisite permanence, the exceptors refer to paragraph 10(a) of the Partnership Agreement, which provision, it is claimed, was apparently inserted into the Agreement because of William Wallace's current "retirement" status. Drake Exceptions at 4. That provision reads as follows:

Retirement and dissolution: The following provisions shall apply in the event of the retirement of a partner or termination of the partnership prior to any mutual termination.

(a) Retirement. Any partner shall have the right to retire from the partnership at the end of any month. Written notice of his intention to retire shall be served upon the other partner at the office of the partnership at least 30 days before the end of the month.

Mitchell Exh. 8, p.2. The parties note that Wallace is 66 years old, has not been gainfully employed since 1981, and joined the application only because of his wife's wishes for him to do so. In light of the foregoing, the parties question his "present intention" to work at the station. In rejecting these arguments, the ALJ found that William Wallace's role would be managerial, construing paragraph 7 of the Partnership Agreement as simply conferring "ultimate" decision-making authority to Ms. Wallace, and noting that Wallace's position as sales manager is a position explicitly recognized as managerial by the *Policy Statement* (1 FCC Rcd at 395). *I. D.*, para. 89. Moreover, he found that the 30-day notice provision concerning retirement merely provided an orderly vehicle for terminating the partnership, adding that it was not indicative of either partners' "present intention." He also referred to William Wallace's testimony denying any intention to retire in the event of a grant of the application. *Id.*

12. *Discussion*. The Commission credits integration proposals only where the applicant has demonstrated that the specific principal's role involves policy-making and important management functions stressed in the *Policy Statement*, 1 FCC 2d at 395, as opposed to typical broadcast employee functions. *See Coastal Broadcasting Partners*, 6 FCC Rcd 4242, 4248 (Rev. Bd. 1991), at para. 29, and cases cited therein; *see also Makai Broadcasting, Inc.*, 102 FCC 2d 322, 324 (Rev. Bd. 1985). Additionally, integration proposals are to be adhered to on a permanent basis. *See Policy Statement*, 1 FCC 2d at 395 n.6; *see also Victorson Group, Inc.*, 6 FCC Rcd 1697, 1699 (Rev. Bd. 1991). Here, although superficially appealing, the arguments provide no convincing basis for overturning the ALJ's conclusions. It is clear from the evidence adduced at hearing that William Wallace proposes to function as the station's sales manager, formulating sales procedures and supervising sales personnel. Tr. 608-610, 612-613,

651-652. As properly reported by the *I. D.*, the position of sales manager is an explicitly recognized managerial position, see *Policy Statement*, 1 FCC Rcd at 395, and applicants with principals occupying that position have consistently been accorded credit predicated upon that participation, notwithstanding that significant sales activities have accompanied the sales supervision. See *Voce Intersectario Verdad America, Inc.*, 100 FCC 2d 1607, 1617 (Rev. Bd. 1985), *recon. denied*, 102 FCC 2d 465; see also *Debra D. Carrigan*, 100 FCC 2d 721, 738 (Rev. Bd. 1985)(subsequent history omitted). As long as the applicant sets forth a specific integration proposal, adheres to that proposal, and there is reasonable assurance that the plan will be carried out, integration credit is awarded. See *Royce*, 5 FCC Rcd at 7063. These criteria are met here.

13. Paragraph 7 of the Partnership Agreement concerning Ms. Wallace's position as the managing partner does not mandate a different result. Although the provision is plainly inartfully drafted, it is clear from the testimony that the Wallaces intended that Ms. Wallace have final decision-making authority on all station matters, including sales when there was a disagreement between the principals. Tr. 610, 648-649. The parties' reliance on *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3952-3953 (Rev. Bd. 1988) (subsequent history omitted), for the proposition that parol evidence cannot overcome written documents is misplaced, because there the oral testimony was insufficient to prevail over the written contract [*i.e.*, several McDonalds' franchise agreements purportedly requiring full-time efforts to the restaurants] only because the applicant neglected to produce a witness or other evidence that would corroborate his assertion that no conflict existed by also working full time at the proposed station. Although the term "exclusive" as used in the Agreement could be construed as argued by Wallaces' opponents, we cannot say that the provision in the instant case is susceptible to only one interpretation. It has been explained by the parties to mean that Ms. Wallace has the "ultimate" decision-making authority should "push com[e] to shove," Tr. 649, and the "parties' mutual interpretation of an agreement is customarily favored." *Barry Skidelsky*, FCC 91R-115, released January 2, 1992, at para. 18, relying on WILLISTON ON CONTRACTS, THIRD EDITION, 623. Finally, we concur with the ALJ that the inclusion of the retirement provision in the Partnership Agreement does not dictate a finding that William Wallace will not adhere to his integration proposal. He testified that he is "looking forward" to working at the station (Tr. 607) and has no "present intention" to retire if they are awarded the construction permit for the station (Tr. 645). He stated that the provision was initially included in a "boilerplate type of document" and that he saw no reason why it should be eliminated. Tr. 645-646. The Wallaces are entitled to 100% qualitative integration credit.⁹

14. Paul would also diminish the weight of the enhancement credits awarded the Wallaces. He argues that the half-time figure for local residence at Rancho Mirage since 1981 is only an estimate; that his civic activities, detailed in paras. 17-18 of the *I. D.*, are superior to the Wallaces; and that his past broadcast experience equals or surpasses that of the Wallaces. We will not disturb the ALJ's findings. The Wallaces testified that they have spent at least half of their time since 1981 residing at Rancho Mirage, Tr. 542-543, 635-637, see also Wallace Exh. 1, and

no contrary evidence was adduced. Additionally, Ms. Wallace pre-filing Rancho Mirage community involvement includes a position of leadership, which is entitled to greater weight than mere organizational membership. See *Rebecca L. Boedker*, 6 FCC Rcd 2557, 2558 (1991). The Wallaces' past broadcast experience is extensive, with William Wallace's managerial experience reaching back to the late 1940s, and his wife's role as assistant general manager commencing as early as 1965. That the Wallaces have not been directly involved in broadcasting since the 1981 sale of their stations is not significant since broadcast experience is not discounted merely because it is non-current. See *New Continental Broadcasting Co.*, 88 FCC 2d 830, 847 (Rev. Bd. 1981)(subsequent history omitted). In contrast, Paul's past residence and civic activities at Rancho Mirage commenced only after he filed his application, and, thus, are, entitled to minimal weight. See *Colonial Communications, Inc.*, 6 FCC Rcd 2296, 2297 (1991); see also *Anchor Broadcasting Limited Partnership*, 6 FCC Rcd 721, 724 n.8 (1991). Moreover, his past broadcast experience, although of longer duration than Ms. Wallace since the Wallaces terminated their supervision of their broadcast stations in 1981, has not been managerial, and is entitled to a lesser weight. Cf. *Barton Broadcasting Co.*, 104 FCC 2d 785, 790 (Rev. Bd. 1986); *Armendo Garcia*, 3 FCC Rcd 1065, 1068 (Rev. Bd. 1988).

15. *Comparative Summation*. The Wallaces have been awarded 100% quantitative integration credit, enhanced by local residence/civic activities, female ownership, and extensive past broadcast experience. Paul is the only other applicant entitled to the local residence/civic activities enhancement, but his credit is minimal since it occurred after the filing of the application. His broadcast experience is also of lesser weight. Thus, he lags behind the Wallaces even when Wallaces' credit for female ownership is factored in. Paul's preference for slightly better overall coverage is not sufficient to outweigh Wallaces' integration proposal. See n.4, *supra*. Mitchell's sole enhancements are for broadcast experience and his proposal to move to Rancho Mirage. Drake only received 66.6% integration credit, but even if awarded 100%, only has enhancement credits for female ownership (66.6%) and past broadcast experience, and would follow behind the Wallaces' local residence/civic credits. Sundial received 0%. We therefore affirm the ALJ's award to the Wallaces.

16. ACCORDINGLY, IT IS ORDERED, That the Petition For Nunc Pro Tunc Acceptance Of Late-filed Consolidated Briefs And Exceptions To Initial Decision, filed June 13, 1991 by Drake Broadcasting IS GRANTED, and the exceptions ARE ACCEPTED; that the Motion For Correction to Transcript of Oral Argument, filed October 11, 1991 by Anne K. and William F. Wallace IS GRANTED; and that the Motion For Leave To Supplement Exceptions And Reopen The Record filed October 11, 1991, and supplemented October 15, 1991, by Daniel P. Mitchell, III IS DISMISSED as moot; and

17. IT IS FURTHER ORDERED, That the application of Anne K. and William F. Wallace (File No. BPH-870422MJ) for a new FM station at Rancho Mirage, California IS GRANTED; that the applications of Hugh R. Paul (File No. BPH-870331PN), Sundial Radio Broadcasters, A California Limited Partnership (File No. BPH-870421MC), Daniel P. Mitchell, III (File No. BPH-870422MB), and Drake Broadcasting (File No. BPH-

870422ME) ARE DENIED; and that the application of Rancho Mirage Radio, A General Partnership (BPH-870331MZ) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

¹ Rancho Mirage Radio, A General Partnership, failed to file exceptions to the *I. D.*'s denial of its application. Accordingly, its application is hereby dismissed for failure to prosecute, pursuant to 47 CFR § 1.276(f). See *Breaux Bridge Broadcasters, Limited Partnership*, 4 FCC Rcd 4995 (Rev. Bd. 1989).

² Full-time participation in station operation by owners is considered to be of substantial importance because it provides a desirable nexus between legal responsibility and day-to-day performance, as well as augmenting the likelihood of greater sensitivity to an area's changing needs and programming designed to serve those needs. *Policy Statement*, 1 FCC Rcd at 395.

³ In a *Memorandum Opinion and Order*, FCC 90M-2473, released August 10, 1990, the ALJ accepted, for reporting purposes only, an amendment reporting the withdrawal. He rejected an argument that the applicant was entitled to 100% after the withdrawal, citing as support *Angeles Broadcasting Network*, 59 RR 2d 752, 756 (1985), *recon. denied*, 61 RR 2d 480 (1986); *High Sierra Broadcasting Inc.*, 96 FCC 2d 423, 430 (Rev. Bd. 1983), *review denied*, 56 RR 2d 1394 (1984); and *Las Misiones De Bejar Television Co.*, 93 FCC 2d 191, 196 (Rev. Bd. 1983), *review denied*, 56 RR 2d 1481 (1984). We agree that the precedent fully supports the ALJ's ruling. See also *V. O. B. Incorp.*, 5 FCC Rcd 5872, 5874 para. 11 (Rev. Bd. 1990).

⁴ Among the other exceptions are claims that the Wallaces should have received a diversification demerit for not submitting an exhibit detailing the extent of their other media ownership; that Paul's coverage preference should have been slight rather than very slight; that Mitchell should have been assessed a diversification demerit for ownership in a monthly travel magazine; that Paul's integration credit should have been reduced to zero because he will not be able to effectuate his commitment; and that misrepresentation, financial, and related issues should have been added against Paul.

Both exceptions having a potential bearing on the Wallace's comparative superiority, *i.e.*, coverage and diversification, are without merit. The Commission has previously held that small preferences, whether labelled slight or very slight, for covering already well served areas and populations are not as important as preferences for the qualitative aspect of integration proposals. See *Naguabo Broadcasting Co.*, 6 FCC Rcd 4879, 4881 n.10 (1991). And as for diversification, the ALJ took official notice of the Wallace's Integration and Diversification Statement that they owned no other media interests; no one alleges here that the Wallaces have any other media interests. Technically, the Wallaces should have replicated in their direct exhibits their lack of other media interest, but we have previously dismissed as "non-serious," claims that diversification demerits should be assessed against applicants which simply omit a statement that they possess no other media interests. See *Santee Cooper Broadcasting Company of Hilton Head, Inc.*, 99 FCC 2d 781, 791 n.41

(Rev. Bd. 1984)(subsequent history omitted); *cf. Mabelton Broadcasting Co., Inc.*, 5 FCC Rcd 6314, 6318, 6319 (Rev. Bd. 1990)(permitting applicant to reform exhibits to conform with Integration Statement). We perceive no reason for departing from previous practice here.

With respect to the remaining exceptions, the Wallaces would prevail comparatively even if the relief requested were granted. Accordingly, we have not reached those exceptions. See *Colonial Communications, Inc.*, 6 FCC Rcd at 2296 para. 3 (1991)("[a]n agency, like a court, need not decide questions which are not relevant to its decision," quoting *Deep South Broadcasting Co. v. FCC*, 278 F. 2d 264, 266 (D.C. Cir. 1960)).

⁵ Sundial, by way of contrast, relies on *Susan S. Mulkey*, 4 FCC Rcd 5520 (1989), as its model, where the Commission awarded full quantitative integration credit. We disagree. The Commission based its holding in *Mulkey* on the fact that the nominally active individual was obligated to repay a 5-year interest bearing promissory note even if the applicant were unsuccessful in securing the license. 4 FCC Rcd at 5521. Wade-Maltais, however, has no similar financial obligation to Sundial.

⁶ See also additional post-formation activity in response to a petition filed by Drake on March 26, 1990, requesting site availability and related misrepresentation/lack of candor issues against Sundial. Pursuant to a request by Wade-Maltais, Smith contacted the property owners of the site, dispelled confusion alleged in the petition concerning the address of the site, and confirmed the continued availability of the site. *I.D.*, para. 44. Although Sundial argues that the response required Smith's declaration because only he had personal knowledge of the facts surrounding the status of the site at the time the application was filed, that argument begs the question, because, as correctly noted by the ALJ, Wade-Maltais was responsible to contact the site owners to clarify the matter. *Id.*, para. 93. She could have easily proffered Smith's declaration, assuming it were necessary to resolve questions bearing on his role in initially obtaining the site.

⁷ The ALJ held also that the integration proposal was flawed because -- he said -- the limited partners can dissolve the partnership at will, without the consent of the general partners, and the limited partners can demand repayment of their loans at any time giving them *de facto* control over the applicant. *I.D.*, paras. 94-95. Sundial correctly notes, however, that the principals' testified that the general partner's consent is necessary to dissolve the partnership and that Section 24(e) of the limited partnership agreement provides that all provisions of the agreement are to be construed so as to fulfill the Commission's requirements for non-attribution of the limited partners for comparative purposes. Sundial's Exceptions at 19-21. As to the repayment of loans by the limited partners, Sundial adverts to Section 10 of the agreement, conferring authority solely on the general partner to determine when profits or income may be distributed. *Id.* at 19.

⁸ But for the fact that our affirmance of the ALJ's denial of integration credit to Sundial effectively denies it this construction permit, we would remand this case to the ALJ on the basic qualifying issues of truthfulness and/or abuse of process. See *Evansville*, 6 FCC Rcd at 5373-5374, 5377 n.12; *Pleasant Hope*, 6 FCC Rcd at 6560 n.13; and *Shawn Phalen*, FCC 92R-1, adopted January 2, 1992.

⁹ That Mr. Wallace is 66 years old and currently not gainfully employed provides no legal basis for disregarding his proposal. See *United Broadcasting Co., Inc.*, 94 FCC 2d 938, 956 para. 34 (Rev. Bd. 1983) (subsequent history omitted) (age irrelevant absent showing that principal's health will not allow him to

meet his commitment); *Swan Broadcasting Limited*, 6 FCC Rcd 17, 19 (Rev. Bd. 1991) (current unemployment is not pertinent to whether principal will effectuate her proposal).