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March 16, 1998

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RECEIVED

MAR 16 1998

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Federal Communications Commission
Office of Secretary

John P. Wong, Chief
Engineering and Technical Services Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Washington, D.C. 20554

Re: GTE Media Ventures Incorporated
CAR Station WLY-476, Honolulu, Hawaii
FCC File No. CAR-47999-02 (as amended)

Dear Mr. Wong:

We represent Time Warner Entertainment Company, L.P., dba Oceanic Cablevision ("TWE"), the operator of cable television systems serving Honolulu, Hawaii and other communities on the Island of Oahu. On behalf of TWE and pursuant to Section 78.22(c) of the Commission's Rules, we hereby object to the grant of the above-referenced application of GTE Media Ventures Incorporated ("GTE") for modification of license of Cable Television Relay Service Station WLY-476 (the "Modification Application").

Station WLY-476 is part of an ITFS and MMDS system providing educational and entertainment programming to the Honolulu, Hawaii area.¹ GTE is requesting authority to relocate the transmit site of Station WLY-416 to a building located at 319 Koa Street in the area of Honolulu known as Wahiawa.² GTE proposes to transmit signals from this site to a receive site located in the community of Palehua.

At this time, the Modification Application is pending before the Cable Services Bureau. To TWE's knowledge, GTE has not been authorized to install or operate a CARS microwave facility at 319 Koa Street in Wahiawa. As TWE shows herein, however, GTE has

¹ See Modification Application at Exhibits A-7; E-2.

² Id. at Schedule D.

installed a parabolic microwave antenna mounted on a pipe attached to the side of the building at 319 Koa Street. This antenna is pointed in the direction of Palehua and is transmitting on the microwave channels proposed in the Modification Application.

Sections 301 and 319 of the Communications Act of 1934, as amended,³ and Commission policy make abundantly clear that (1) it is unlawful for any person to use or operate equipment for the transmission of energy or communications or signals by radio except with a license, and (2) a license will not be granted for the operation of any station unless a permit for its construction has been granted by the Commission. Under applicable Commission case law, GTE's unauthorized and premature installation of a transmitting antenna at 319 Koa Street requires denial of the Modification Application. In addition, GTE's unauthorized operation of the antenna for the transmission of microwave signals may warrant the imposition of a monetary forfeiture.

As discussed above, GTE is proposing to relocate Station WLY-416 to the Wahiawa site for transmission of signals on a path toward Palehua. As set forth in Exhibit C-6 and C-7 of the Modification Application, digitally encoded pay television service signals will be transmitted from the Wahiawa headend to an MDS booster station transmit site at Palehua.⁴ Schedule D includes a vertical profile sketch of the "Transmitting/ Receiving Station Antenna Structure" at Wahiawa and indicates that the height of the antenna will be 55 feet above the ground. Exhibit D-2 notes that the "proposed CARS antenna at this site will be mounted on an existing building." The building address is given as 319 Koa Street, Honolulu, Hawaii in the community of Wahiawa. Exhibit D-2 further references the FAA notification, a copy of which is filed as Exhibit D-3.

Attached hereto is the Affidavit of Manfred L. Gerstl, a Senior Communications Engineer employed by Oceanic Cablevision. Mr. Gerstl avers in his Affidavit, which is supported by photographs, that GTE has installed a parabolic microwave antenna mounted on a pipe attached to the side of the building at Koa Street and extending above the building's roofline. This antenna is pointed in the direction of Palehua. Measurements taken by Mr. Gerstl establish that RF signals are being transmitted by the antenna.

Section 319(a) of the Act provides in relevant part that "[n]o license shall be issued under the authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission." Specifically with respect to facilities in the Cable Television Relay Service, the Commission has expressly stated that the installation of antennas

³ 47 U.S.C. §§ 301, 319(a).

⁴ GTE is requesting authority for the use of Channels C35-C37. It should be noted that this spectrum appears to exceed the bandwidth required for the proposed pay television transmissions to the MDS booster site at Palehua.

prior to issuance of a construction permit is prohibited by Section 319(a) and requires denial of the license for the operation of the CARS station as constructed:

It has come to our attention that applicants for authorizations in the Cable Television Relay Service (CARS), CARS equipment manufacturers, and construction firms, appear to misunderstand the applicability of Section 319(a) of the Communications Act of 1934, as amended, to towers used in conjunction with cable television system headends and used to support microwave equipment for CARS stations. Such parties should be aware that where a tower is used exclusively as a CARS facility, the tower, foundations, and related equipment, cannot be constructed prior to the grant of a construction permit. If construction occurs prior to the grant of the construction permit (i.e. premature construction), Section 319(a) prohibits the Commission from granting a license to operate the CARS station as constructed. In addition, no microwave equipment can be mounted on an existing tower or structure prior to grant of a construction permit. Specifically, such equipment includes microwave antennas, waveguides, and passive reflectors.⁵

The evidence provided by TWE clearly documents that GTE, has inappropriately installed a microwave antenna on the building at 319 Koa Street prior to the grant of the Modification Application.⁶

TWE submits that GTE's conduct warrants particular scrutiny because in addition to GTE's premature installation of the as-yet unauthorized transmitting antenna, the RF signal measurements taken by Mr. Gerstl show that GTE is also engaging in the unauthorized operation of a CARS microwave transmission facility. Section 301 of the Act provides in relevant part that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁷ In certain situations involving the disclosed unauthorized construction and operation of radio facilities, the Commission has imposed a

⁵ Premature Construction in the CAR Service, 39 RR 2d 1515 (1977) (emphasis supplied).

⁶ In Westinghouse Broadcasting Co., Inc., 49 FCC 2d 1171 (1974), the Commission found a violation of Section 319(a) in a situation where prior to issuance of a construction permit, foundations, footings, towers, antennas and waveguides were constructed and installed in connection with two proposed CARS facilities. The Commission ordered the applicant not to utilize this premature construction for the purposes proposed in the pending applications.

⁷ 47 U.S.C. §§ 301.

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monetary forfeiture on the applicant.⁸ In this regard, we note that in determining the amount of forfeiture penalty that could be assessed against GTE for its violations, Section 1.80(b)(4) of the Rules provides a baseline forfeiture amount of \$10,000 for each day of construction and/or operation without an instrument of authorization for the service.⁹

In conclusion, as shown herein, GTE has violated the Act and Commission policy by its unauthorized installation and operation of a CARS microwave transmitting antenna at 319 Koa Street, Wahiawa. The provisions of Section 319(a) preclude the Cable Services Bureau from granting GTE a license to operate the proposed CARS facility. GTE's Modification Application must therefore be denied. In addition, the Commission may impose an appropriate monetary forfeiture in light of GTE's unauthorized installation and operation of the transmitting antenna.

Should there be any question concerning this letter, please communicate with the undersigned.

Very truly yours,



John R. Wilner
Nancy A. Markowitz
Counsel for Time Warner Entertainment
Company, L.P.

Enclosure
JRW/NAM/djn

ccs: A. B. Cruz, III, Esq.
(Counsel for GTE Media Ventures, Inc., via Hand Delivery)
Michael Lance
(FCC, Cable Services Bureau, via Hand Delivery)

⁸ See e.g., American Cable Television, Inc., 88 FCC 2d 593 (1981) (involving the unauthorized operation of CARS facilities); In re Liability for Forfeiture of Data Investments, Inc., 74 RR 2d 781 (1993) (involving the unauthorized construction and operation of facilities for provision of public land mobile services); Virginia RSA 6 Cellular Limited Partnership, 68 RR 2d 1213 (1991) (involving premature construction and operation of antennas and transmission cables at proposed cell sites.)

⁹ 47 C.F.R. § 1.80(b)(4). It is well-settled that "unlicensed operation of a radio transmitter is one of the most serious violations under the Communications Act." Robert J. Hartman, 9 FCC Rcd 2057 (FOB 1994), citing Mebane Home Telephone Company, 51 RR 2d 926 (CCB 1982).

AFFIDAVIT

Manfred L. Gerstl, being first duly sworn, hereby deposes and states as follows:

1. I am a Senior Communications Engineer with the Transmission Systems Department of Oceanic Cablevision, operator of the cable television system serving Honolulu, Hawaii and the administrative center of the Hawaii Division of Time Warner Cable. My responsibilities include fiber optic video transport system design, implementation and maintenance; cable headend system maintenance and proof of performance test and measurement.
2. I am familiar with the application, as amended, filed by GTE Media Ventures Incorporated with the Federal Communications Commission which requests authority to relocate the transmit site of Cable Television Relay Station WLY-416 (FCC File No. CAR-47999-02). According to the application, the new WLY-416 transmit site is a building located at 319 Koa Street in Honolulu.
3. On March 5, 1998 and again on March 10, 1998, I visited the site of the building at 319 Koa Street. On both occasions I observed a parabolic microwave antenna mounted on a pipe attached to the side of the building and extending above the building's roofline. The antenna is pointed in the direction of Palehua. Attached hereto are photographs of the building's roof taken on March 10, 1998 showing the pole-mounted microwave antenna (Attachment #1).
4. Also on March 5, 1998, I measured an RF signal being transmitted from the microwave antenna side-mounted on the building at 319 Koa Street. I took the measurements using a Hewlett-Packard 85721A spectrum analyzer to measure down-converted AML microwave carrier energy at VHF spectrum frequencies. The signal tests were conducted by locating a tripod-mounted, parabolic dish antenna in front of the CARS band antenna shown in Attachment #1. Wave-guide from the antenna flange was connected to an AML monitor receiver which block-converts input 12.7-13.25GHz frequencies to 50-550MHz. The output of the receiver was connected to the HP 85721A spectrum analyzer. Attached hereto are the results of my signal tests showing a number of spectrum displays of carriers being transmitted from the CARS band antenna (Attachment #2).

Figure 1:

Total spectrum emission display using span width of 295.3 MHz.

Figure 2:

Partial spectrum emission display using span width of 50 MHz. Expanded display shows individual digital carriers at lower segment of emitted spectrum. Marker at 60.85 MHz locates lowest 6 MHz digital carrier at AML channel CO3.

Figure 3:

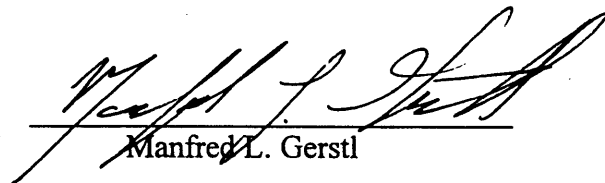
Same partial spectrum emission display. Marker at 73.98 MHz indicates AML pilot frequency carrier used for phase lock control of AML system.

Figure 4:

Partial spectrum emission display using span width of 111 MHz and moving display to middle part of emitted spectrum. Marker shows lower edge of AML channel C22. Channels C19 through C21 are not transmitted. This is consistent with the pending application which does not propose use of C19 through C21.

Figure 5:

Partial spectrum emission display using span width of 50 MHz. Expanded display shows individual digital carriers at upper segment of emitted spectrum. Marker at 251.48 locates highest 5 Mhz digital carrier at AML C34.


Manfred L. Gerstl

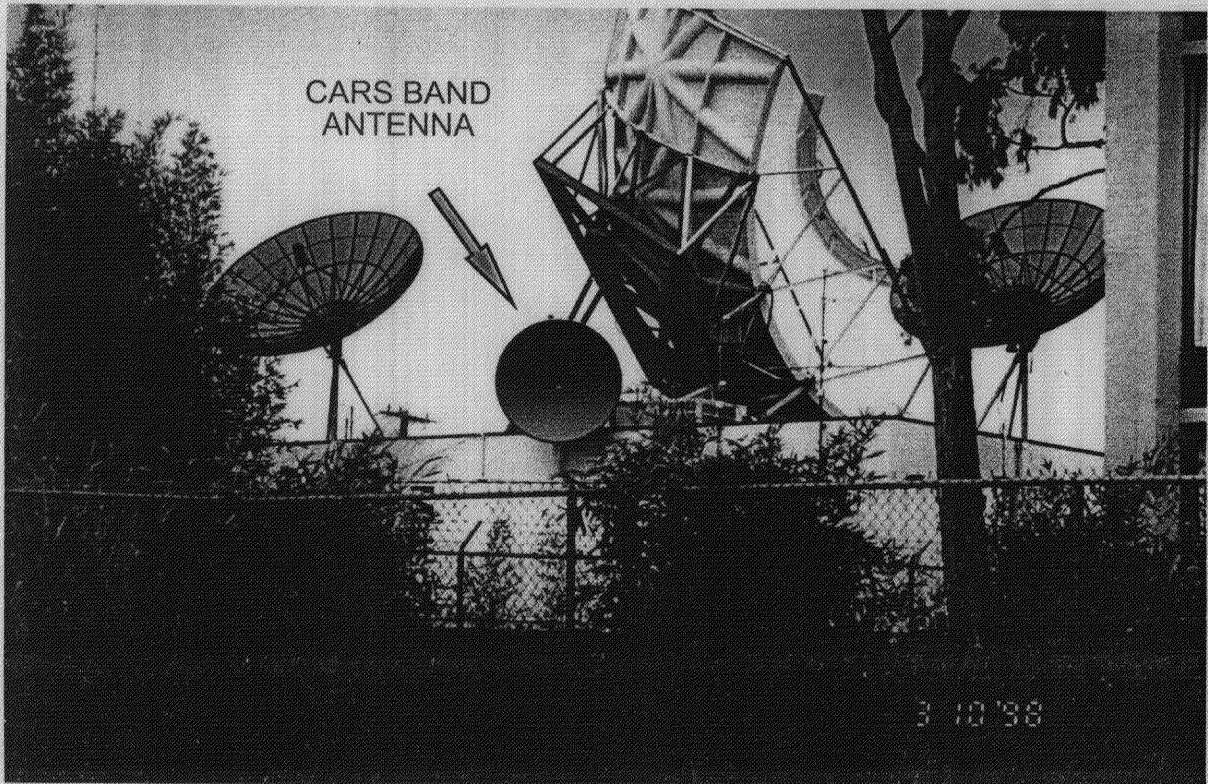
Sworn and subscribed to before me this 12th day of March, 1998.



Notary Public

My Commission Expires: 6/1/98

ATTACHMENT #1



ATTACHMENT #2

Microwave link (path#1) monitored March 5, 1998

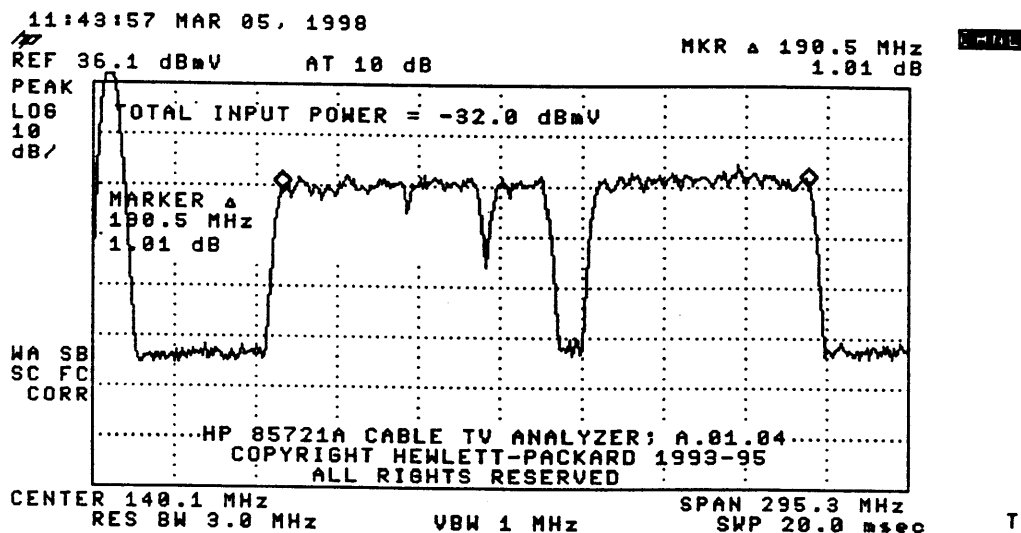


FIGURE 1

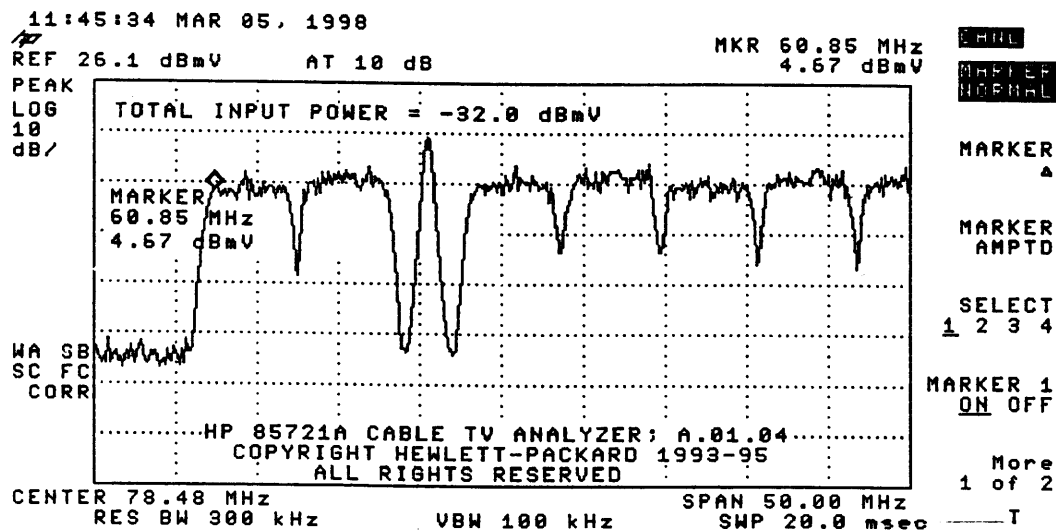


FIGURE 2

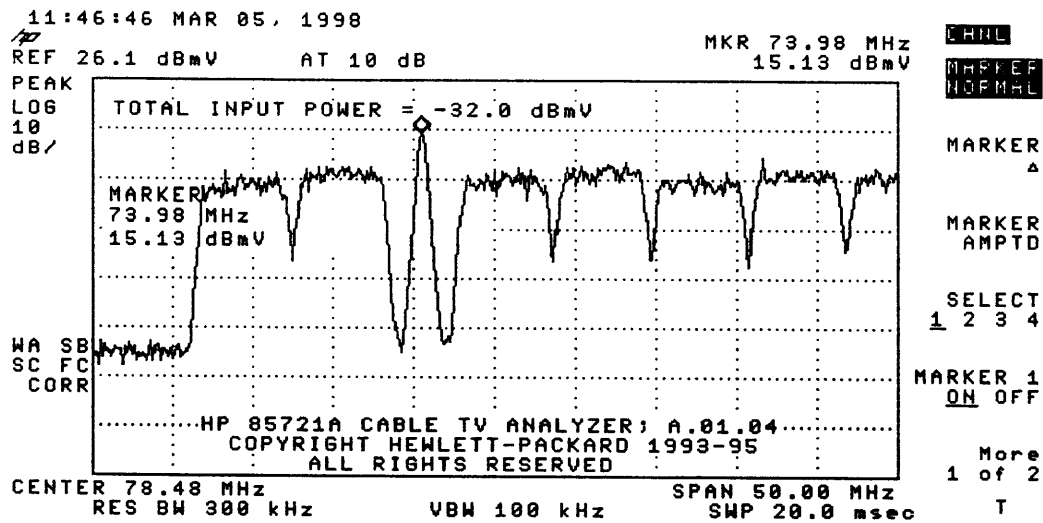


FIGURE 3

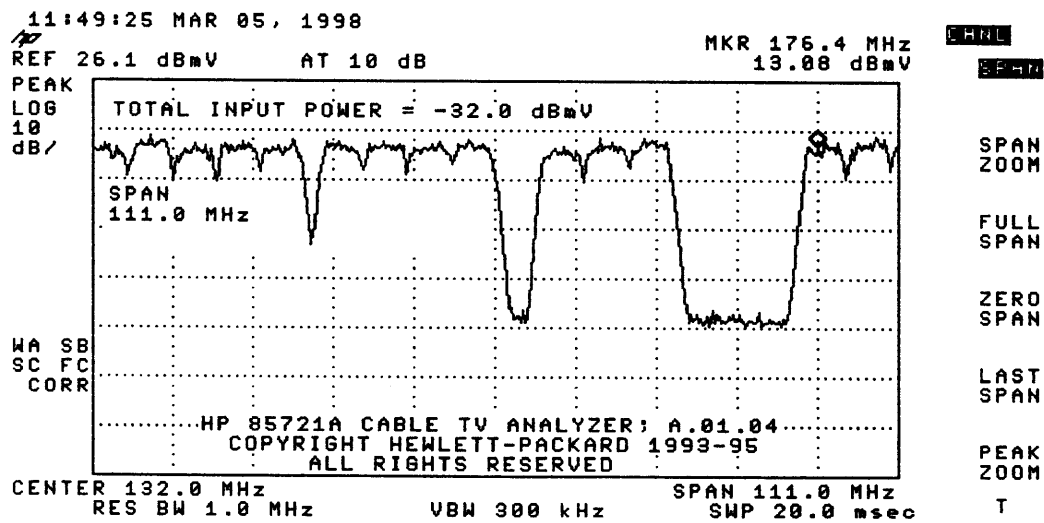


FIGURE 4

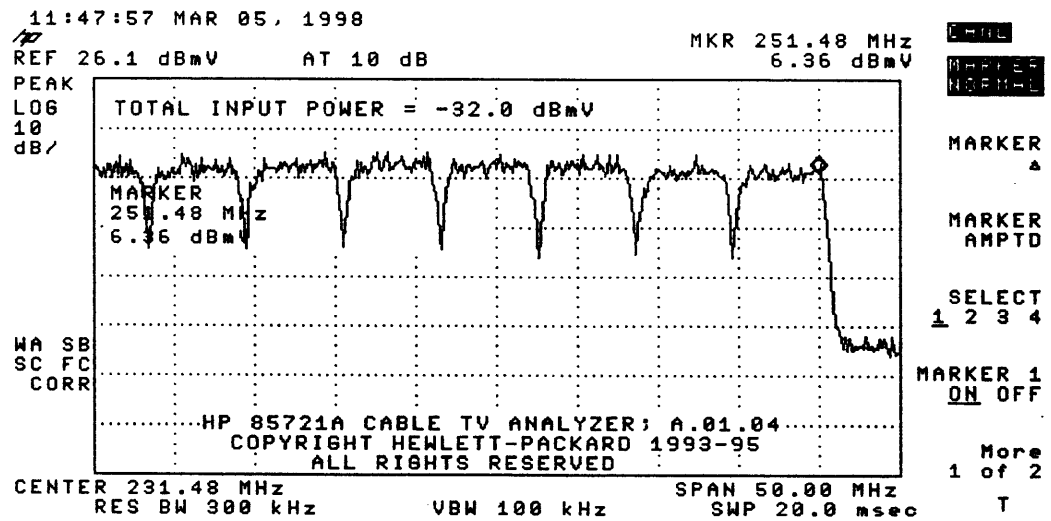


FIGURE 5