

CAPITAL BROADCASTING SYSTEMS, INC.

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RECEIVED

DEC 13 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

December 12, 1995

H. John Morgan, Chief
Experimental Licensing Branch
Mail Stop 1300E1
Federal Communications Commission
Washington, DC 20554

**Re: 1300E1
Call Sign KF2XBF**

Dear Mr. Morgan:

We are in receipt of your letter of November 30, 1995. This letter constitutes the response that you requested.

On May 19, 1993, Playfone Systems, Inc. ("Playfone") tendered an application for a new authorization in the Experimental Radio Service. Attached hereto, as Attachment 1, is a copy of Exhibit 10 to that application, which responded to question 10 on FCC Form 442, requesting a narrative statement describing the program of research and experimentation; the specific objectives; and how this program of experimentation would contribute to the radio art.

While it is true that Playfone stated that it requested an experimental authorization "to explore the technical and economic feasibility of providing live on-site radio broadcasts to attendees at sporting events," Playfone also stated that it intended "to provide spectators and attendees with information concerning the event, traffic, emergency information, and any other information that may be of interest or relevance to the occasion." Playfone added its belief that "there is a need for a temporary broadcast service at events that attract large audiences, delivering a high-quality signal to a discrete and limited reception area", and that "if the experiment proves successful, such a service could be employed at other types of events involving large numbers of people gathered at a single location."

We submit that Playfone's application did not intend to limit itself to experiments at sporting events. If that proved successful, as it has, Playfone had indicated its intention to employ the technology at other types of events and venues that attracted large numbers of people at various locations.

The Commission granted Playfone's application. A copy of that authorization is found at Attachment 2.

As can be seen, that authorization did not limit Playfone's experiments to sporting events. Apart from technical parameters, the license specified that operation had to be "in accordance with Sec. 5.202 (h) of the Commission's Rule."

That section of the rules provides that stations in the Experimental Radio Service will be permitted to conduct operations involving:

Development of radio technique, equipment or engineering data not relating to an existing or proposed service, including field or factory testing or calibration of equipment.

Playfone did not understand the authorization, or the Commission's rules, to limit its experiments to sporting events alone.

Playfone filed required progress reports of experimentation dated April 3, 1994, and October 15, 1994, copies of which are found at Attachments 3 and 4. These reports provided descriptions of the events and program content. For background, the April 3 report described an experiment at the Super Bowl. The October 15, 1994, described an experiment at a hotel, which involved the NFL football players' draft. Playfone received no response to its filings.

Thereafter, Playfone tendered for filing on December 15, 1994, an application requesting authority to assign the authorization from Playfone to Capital Broadcasting Systems, Inc. ("Capital") -- a separate but commonly-controlled corporation. The application form did not request any information about the nature of the experiments being conducted. The application was granted in late January, 1995.

Playfone filed another progress report dated April 10, 1995, a copy of which is found at Attachment 5. The report referenced two experiments, including one "inside a building" in Princeton, New Jersey, which was a medical convention. The other was the Super Bowl. Playfone received no response to this filing.

Playfone then tendered for filing on April 10, 1995, an application (File No. 3735-EX-R-95) for renewal of the authorization. That application form did not request any information about the program content of the experimentation. The Commission granted the renewal application and extended the authorization to July 1, 1997. A copy of the authorization is found at Attachment 6. As can be seen, the only limitation on operation was to operate in accordance with Section 5.202 (h) of the Rules and Regulations.

During 1995 my Communications attorneys, Hal McCombs and Jon Blake, and my associate, Joel Chaseman, and I met on a number of occasions with FCC Commissioners, their staff members, and FCC officials from the Mass Media Bureau and from the Office of Engineering and Technology. Capital described in detail the nature of its experimentation and discussed its ideas for the creation of a new radio service and a licensing system. Capital provided copies of its authorization to all staff members, and at no time did anyone suggest that its experiments were beyond the scope of this authorization.

Our experiment continues to be widely accepted by the Commission. At the recommendation of the FCC Commissioners, their staff members, and FCC officials from the Mass Media Bureau and from the Office of Engineering and Technology we have begun preparing a petition for the creation of a new radio service or new radio services. We also informed the Commission of our filing for an extension of our existing license to continue development and allow sufficient time to file for rulemaking. This extension was granted in June 1995.

The foregoing lengthy background is set forth to establish that Playfone, and its successor Capital, did not understand their authorization to be limited to sporting events. They certainly intended to, and did in fact, operate at sporting events. Nevertheless, their understanding of the experimentation was to make new use of traditional broadcast spectrum, but operating at low power levels, at events, which attracted large groups of people, to provide live on-site information.

During discussions with FCC staff members, two radio service concepts began evolving based on Playfone's and Capital's experimentation -- "event broadcasting" and "site broadcasting". Event broadcasting involves broadcast transmissions at a specific event, such as a sports match or a convention. Site broadcasting involves broadcasts at a specific location, such as an airport or a convention center. In furtherance of the site broadcasting concept developed with the FCC, Capital has been experimenting, in cooperation with the Avis rental car company, to test a low-power radio service at airport car rental locations.

The article that was forwarded to us is a news release on new and innovative travel services and not an accurate representation of our programming. Since we are authorized to use low power settings, our signal range and coverage is governed by not only EPR, but also terrain and antenna placement. We strictly adhere to the power restrictions outlined in our license and range is only a by-product of EPR.

Again, the basic concept of Capital's experimentation and the authorization it requested is the use of conventional broadcast (primarily AM and FM) spectrum, at low power levels, in discrete location, so that members of the public, using conventional radio receivers, can listen to targeted programming. All of this can be accomplished without causing any interference or any other harm of any nature to full service broadcast stations.

Accordingly, Capital submits that it has substantially adhered to the program of experimentation outlined to the Commission, consistent with Section 5.166 of the Rules and Regulations. Moreover, Capital has kept the Commission fully apprised of its experimentation.

If Capital was mistaken in interpreting its authorization and the Commission rules to permit experimentation outside the context of sporting events, then we regret the misunderstanding and request that the authorization be modified accordingly. However, in closing, we submit that the nature of the event -- the program content as it were -- is irrelevant. It is the unique nature of the transmission system that is the key to Capital's experiments and its authorization. This is a very exciting idea and one which can provide a valuable service that is otherwise unavailable. Capital seeks to continue its experimentation, and very soon obtain a permanent authorization.

Respectfully submitted,



Gregory D. Deieso
President

cc: **Harold McCombs; Duncan, Weinberg, Miller & Pembroke, P.C.
Jonathan Blake; Covington & Burling
Joel Chaseman**

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December 13, 1995

† ADMITTED IN WASHINGTON ONLY

H. John Morgan, Chief
Experimental Licensing Branch
Mail Stop 1300E1
Federal Communications Commission
Washington, D.C. 20554

Re: 1300E1
Call Sign KF2XBF

Dear Mr. Morgan:

On behalf of Capital Broadcasting Systems, Inc., we herewith transmit the response to your letter of November 30, 1995, referenced above.

Should there be any questions, please contact the undersigned.

Very truly yours,

Harold K. McCombs
Harold K. McCombs, Jr.

HKM:go

Enclosure

cc: Mr. Robert Greenberg (Room 332)



January 31, 1995

Federal Communications Commission
Experimental Licensing Branch
Room 7326
2020 M Street, NW
Washington DC 20554

Dear Sir or Madam:

I am writing to protest the manner in which a license issued by your division to Capital Broadcasting Systems Inc. for call sign KF2XBF is being used.

It is my understanding that such licenses are issued for the express purpose of experimentation with new technologies and that the above mentioned permit was granted for broadcasts, at 10 watts output level, inside a sports venue.

Over the past few months we have discovered that Avis Rent-A-Car, at Boston's Logan Airport has taken the frequency 88.5 MHz and has been using it for a Traveler's Network. The announcements concern Avis and include commercials or promotional announcements for profit-making organizations.

Our concern, since the day we were alerted to this broadcast is that such blatant commercialism could be heard on the spectrum space reserved for non-commercial radio.

To add insult to injury, preceding the All-Star National Hockey League game from Boston's Fleet center on January 21, we found a commercial-based program being aired promoting the all-star game on 88.5 MHz and also simulcast on 89.3. Included in the broadcast were announcements for commercial radio station WXKS-FM, Coca Cola and other profit making ventures. This information stayed on 89.3 from Thursday January 18 through Sunday January 21 and was audible over a sizable portion of Greater Boston and adjacent suburbs!

Again, we understand the need to use the airwaves to explore new delivery systems and technologies, and it is not there where the problem lies. It is with what appears to be the abuse of the sanctity of the non-commercial band. While stations such as ours are being held to very strict standards concerning the promotion of goods and services, we find it hard to fathom

how such an obviously commercial enterprise is allowed to exist and broadcast on the band reserved for non-commercial educational stations..

This use (misuse) flies in the face of the original license which was granted for operation *ONLY* within a closed environment. Now, broadcasting to cars outdoors, as the Avis Travelers Network, the operation is beyond the scope of the original license application, as spelled out in Exhibit No. 10 of FCC form 442, File Number 3735-Ex-PL-93.

We are asking your office to investigate whether the intent of the license has been violated, and to inform us what we, as non-commercial broadcasters, can do to protect our very valuable frequencies. This includes being sure at all times that what is being done on adjacent channels conforms to the strict regulations placed on the spectrum.

We appreciate your reply.

Sincerely,

A handwritten signature in cursive script, reading "Francine E. Berger", followed by a long horizontal flourish line extending to the right.

Francine E. Berger
General Manager WERS-FM

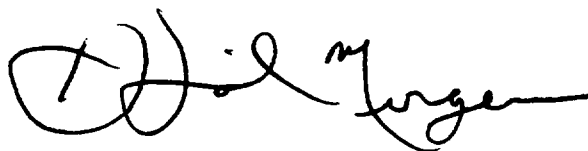
Dear Sir or Madam:

2.

For your information, the kind of low power, local broadcasting envisioned by Capital Broadcasting Systems is appropriately considered under the Commission's rules governing the operation of experimental broadcast stations. You may wish to apply for an experimental broadcast station under Part 74, Subpart A, of the Commission's rules. Finally, be aware that any operation of this type exceeding what would be considered basic experimental test use, can only be facilitated through a permanent change in the Commission's rules to permit such service. Capital Broadcasting Systems, or any interested party, may initiate such a proceeding by filing a Petition for Rule Making with the Commission to request appropriate rule changes.

Please direct any further correspondence to the address on the letterhead, mail stop 1300E1.

Sincerely,

A handwritten signature in black ink, appearing to read "H. John Morgan". The signature is fluid and cursive, with a large initial "H" and a long, sweeping underline.

H. John Morgan
Chief
Experimental Licensing Branch

Attachment

cc: Harold K. McCombs, Jr.

Nancy Key - file

Law Offices

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March 15, 1996

† ADMITTED IN WASHINGTON ONLY

H. John Morgan, Chief
Experimental Licensing Branch
New Technology Development Division
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Suite 230
Washington, D.C. 20554

Re: Experimental Station KF2XBF

Dear Mr. Morgan:

This firm represents Capital Broadcasting Systems, Inc. ("Capital"), which holds Experimental Radio Station License KF2XBF. Capital is in receipt of your letter dated February 28, 1996.

Please be advised that Capital has ceased all operations involving Avis Rental Car Company.

The Avis operations took place at Newark Airport, Newark, New Jersey; Logan Airport, Boston, Massachusetts; O'Hare Airport, Chicago, Illinois; Atlanta Airport, Atlanta, Georgia; and National Airport, Washington, D.C. The first shutdown occurred on Monday, March 11, 1996, at Logan Airport. The last shutdown was completed by Wednesday, March 13, 1996.

All equipment has been disconnected and has either been put into storage or is in the process of being put into storage, pending transport to the manufacturer, Capital headquarters, or some other location that has not yet been determined.

The shutdown was completed by making a telephone call to each of the managers at the five sites, with a request to turn off the system as soon as possible. Confirming written instructions were sent by facsimile to each manager. A receipt confirmation was attached to each FAX, followed up by hard copy

H. John Morgan, Chief
March 15, 1996
Page 2

in the mail, with the instruction that the manager confirm in writing that the system had been shut off. A follow up telephone call was made to each manager to confirm the shut down.

We submit that this response fully responds to and resolves all issues raised in the February 26, 1996, letter of John Wells King to you. Capital intends no further response to Mr. King, unless directed otherwise by the Commission.

Should you have any further questions, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink that reads "Harold K. McCombs, Jr." The signature is written in a cursive, slightly slanted style.

Harold K. McCombs, Jr.

HKM:go

cc: John Wells King, Esquire

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SEP 23 1996

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September 23, 1996

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William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Experimental Radio Broadcast Station KF2XBF

Dear Mr. Caton:

We represent Capital Broadcasting Systems, Inc., licensee of Experimental Radio Broadcast Station KF2XBF. The FCC recently granted an FCC Form 703 application for transfer of control of the licensee. By this application, Gregory D. Deieso proposed to relinquish positive control of the corporation. After consummation, Mr. Deieso and Web SportsNet, Inc. would have, collectively, controlled Capital.

We are advised that the grant of this application was not consummated. Please make any necessary changes in your records to reflect the fact that Mr. Deieso retains positive control of the corporate licensee and that there have been no changes in control.

Should there be any questions, please contact the undersigned.

Very truly yours,

Harold K. McCombs, Jr.

Harold K. McCombs, Jr.

HKM:go

H. John Morgan, Chief

Federal Communications Commission
Office of Secretary

Northeast Regional Office

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