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November 3, 2004

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application No. 17211 of NBC to Continue Use of a Broadcast Tower at 4001 Nebraska Ave., N.W. (Square 1722, Lot 1)

Dear Honorable Members of the Board:

At the Board's Public Hearing on this application on Tuesday, October 26, 2004, the Board requested that the Applicant submit information regarding the interpretation of 11 DCMR §211.5 and a narrative explaining the difficulties associated with potentially requiring the current occupants of the Applicant's 1955 broadcast tower to relocate to another tower.

The leasing of tower space is a key economic consideration in the construction, maintenance and continued use of broadcast towers. Indeed, as the Regional Tower Inventory prepared by the Applicant and attached hereto as Exhibit A indicates, the leasing of broadcast towers in the Washington region is a common practice, marked by a few towers with a number of tenants transmitting and broadcasting from each tower. Thus, in order to understand the true "need" for the proposed height of a tower to render satisfactory service to all parts of the service area, one cannot attempt to parse the terms of section 211.5 in a vacuum, but must rather examine section 211 in its entirety, the Board's previous decisions in BZA Case Nos. 15708-A and 13524, and the District's policy of encouraging co-location of antennas to the greatest extent possible.

A. Interpretation of 11 DCMR §211.5

Section 211 of the Zoning Regulations provides that the Board may permit the use of an antenna for commercial broadcasting subject to a number of conditions. Pursuant to section 211.10, the Applicant has the burden of demonstrating the need for the proposed height of the tower, and

BZA
Case No. 17211
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO. 17211
EXHIBIT NO. 37

that full compliance with the matter-of-right standards would be unduly restrictive, prohibitively costly, or unreasonable. 11 DCMR §211.10. During the course of the public hearing on this application, Councilmember Phil Mendelson and Nancy J. MacWood, Chair of ANC 3C, testified that the Applicant did not met its burden with respect to section 211.5 because the term "its" in section 211.5 should be read to mean "the Applicant's." However, a plain reading of the applicable regulations demonstrates that the Applicant is required to show that the height of the tower is reasonable with regard to satisfactory communication "to all parts of its service area" and the practical and broadcasting needs of the Applicant and other antennas located on the 1955 tower.

A primary rule of statutory interpretation is that the intent of the legislature is to be found in language which is used in the statute. See District of Columbia v. 313 M Street, 633 A.2d 820, 821-23 (D.C. 1993). Moreover, provisions of a regulation must be viewed in context of the larger statutory structure and a key to understanding a provision is to look at sections surrounding such provision. See Id. Section 211.1 clearly provides that the purpose of §211 is to regulate the erection and alteration of antennas and towers for commercial broadcasting. Nothing in the regulation ties the erection or alteration of the antennas or towers to the needs of any particular user. Indeed, this Board recently found that Applicant met its burden of proof in establishing that the height of this particular tower is necessary to render satisfactory service. See BZA Order No. 15708-A, dated January 21,2004, attached hereto as Exhibit B. Specifically, the Board recently found that:

> The combined volume or bulk of the two towers is well within the approved envelope of the master plan. The purpose of the 1981 master plan was to plan for the future needs and probable physical development for the NBC facility. The master plan set forth the basic design and scope of three phases of contiguous physical expansion. The 1955 tower covered an area of 390 square feet and had a volume of 59,670 cubic feet. The 1988 tower covered an area of 1,560 square feet with a volume of 342,680 cubic feet. The master plan, on the other hand, provided for a tower that would be 3,510 square feet in coverage and would have a volume of 771,030 cubic feet. Thus, the master plan envelope for the tower was almost twice as large as the combined area and volume of the two existing antenna towers.
>
> The Board is persuaded that continuance of the 1955 tower would actually result in less impact on the surrounding neighborhood than if the master plan tower were constructed. The master plan tower would have larger structural members, 18 inches to 24 inches in width, and would be closer to Glover-Archbold Park than the other two towers. In addition, the master plan tower would have greater load bearing capacity, most likely resulting in larger and more antennas than the 1955 tower.

BZA Order No. 15708-A at ¶¶ 20-21.

None of the facts underlying the Board's finding that the Applicant met it's burden of proof have changed since the issuance of Order No. 15708-A less than 10 months ago. Before this Board can decline to reissue the requested special exception, evidence must be introduced showing a change of conditions and other considerations materially affecting the merits of the application. See First Baptist Church of Washington v. D.C. Board of Zoning Adjustment, 432 A.2d 695 (D.C. 1981). The opposition has not met this burden, and thus this Board should rely on its previous findings of fact and the legal conclusions previously approved and issued.

The Board's decision on Application Number 13524, a copy of which is attached hereto as Exhibit C, also demonstrates that an application for special exception approval to continue usage of a broadcast tower is not limited to the unique broadcast needs of the Applicant. In this case, the District of Columbia filed an application for a special exception[1] for use of the District's radio tower by commercial businesses. The subject site, which is located at 6001 Georgia Avenue, N.W., is owned by the Metropolitan Police Department and is improved with the Police Department's 4th District Headquarters. The site contained an existing 455 foot radio tower that has been on the property since 1977. Although the Police Department used a portion of their tower for its two-way communications, the Metropolitan Police Department filed the application to allow a commercial broadcaster to increase the height of the tower so Channel 50 could broadcast from the tower. In granting the application, the Board did not rely on the specific needs of the Applicant, in fact, Channel 50 was not a party to the case. Rather the Board specifically relied on the needs of the broadcaster and found the following:

- "It is neither [sic] technically nor economically feasible to locate the ***Channel 50*** television transmitter off-site;"

- "**The proposed height is reasonably necessary to render satisfactory service to the area of *Channel 50***;" and

- "The tower has not adversely affected the use of neighborhood property since its installation in 1977, and the additional ***Channel 50*** antennas proposed will not significantly change the impact of the tower."

BZA Order No. 13524, ¶¶ 12, 14 and 16 (emphasis added).

It is noteworthy that in order to meet the coverage needs of the broadcaster, the height of the tower was increased, and currently has an overall height of 761 feet. Thus, the overall height of the tower is tied to the needs of the occupant (Channel 50) and not the applicant. It is clear that the Board is not required to rely on the unique needs of the property owner, as opposed to the needs of the tower tenants, in determining whether an applicant has met its burden under section 211.5.

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[1] Section 3101.47 of the Zoning Regulations included the same language used in Section 211.5 of the current Zoning Regulations. See 11 DCMR §3101.47 (1981), attached hereto as Exhibit D.

In addition to being contrary to the Board's previous findings on this issue, the opposition's position that the term "its" in section 211.5 should be read to mean "the Applicant's" is also contrary to the District's policy of encouraging co-location of antennas, as embodied in section 201.6 of the Zoning Regulations, which provides that an addition of an antenna to an existing broadcast tower shall be permitted as a matter of right in an R-1 District, provided the size of the tower is not increased and the appearance of the tower is not changed in a manner that causes an adverse impact on the surrounding area. 11 DCMR §201.6. Ignoring this language and requiring each broadcaster to apply for a separate tower for it's antennas would result in more towers being constructed in the District since each broadcaster would theoretically be required to construct its own tower to meet its particular broadcasting needs.

It is also important to recognize that the Applicant has been operating pursuant to previous approvals from this Board, including the approval of the Applicant's master plan in BZA Case No. 13554, which is still in effect until November 25, 2006 and permits the construction of a much larger tower. As the Board found, "that master plan tower would have a greater load bearing capacity, most likely resulting in larger and more antennas than the 1955 tower." See BZA Order No. 15708-A at ¶21. The larger tower was not built because a more economical solution was found which consisted of (1) not constructing the garage or parking deck upon which the master plan tower was to have been constructed since the Applicant obtained additional parking at the nearby National Presbyterian Church, and (2) constructing a new tower that is much smaller than the tower approved by the master plan.

B. Need of the 1955 Tower

Leasing of space on broadcast towers in the Washington region is a common practice, marked by a few towers with a number of tenants transmitting and broadcasting from each tower. See Regional Tower Inventory, attached hereto as Exhibit A. As discussed at length in the Applicant's prehearing submission, continued use of the 1955 broadcast tower is necessary for technically satisfactory and economic transmission and is critically needed by the Applicant and the tower's tenants for operation and economic viability. Operation of the 1955 tower enables the Applicant to provide live news coverage of events in places in central Washington. Moreover, as discussed in the letter attached hereto as Exhibit E from UniVision, UniVision considered a number of sites prior to entering a lease agreement with NBC, and has invested a substantial amount of money in order to broadcast from NBC's tower.[2] Moreover, as Mr. Chuck Lindner testified during the public hearing, it would cost over $1 million for UniVision to relocate to another tower, assuming space, structural capacity and that a lease could be obtained. This testimony was not contradicted or refuted.

Further, as indicated in the letter of support from the D.C. Friendship Fire Association included as Exhibit 20 of the Applicant's prehearing submission, and attached hereto as Exhibit F, the 1955 tower is instrumental to enable the association to report emergency incidents throughout

[2] Under the terms of its FCC's authorization, Channel 14 provides a "Grade B" level of service to its coverage area, which is illustrated on the attached printout from the FCC's database. See Exhibit H.

the Washington area, and to enable their staff volunteers to assist at the scenes of major emergency incidents. The Federal Government, operating as the Federal Radio Service Corp, also has an antenna on the 1955 tower. As their letter of support included in the Applicant's prehearing submission at Exhibit 20 and attached hereto as Exhibit G states, their antenna on the 1955 tower provides critical communication support to the federal government and provides a significant contribution to the security of federal government communications.

Finally, section 211.6 provides that "reasonably economical transmission" is also an important consideration. 11 DCMR §211.6. This language recognizes that economic considerations are part of the criteria for constructing and maintaining a broadcast tower. Although it is true that revenues are derived from tower leasing activities on the part of station owners such as the Applicant, such revenues are returned to the community through job creation and maintenance, and public service activities such as community interest programming and events. Absent the revenues from the tower leasing activities, the Applicant would likely be forced to curtail some of its operations, which would increase the possibility of layoffs, and a reduction in public service programming.

With the submission of this information, the Applicant respectfully requests that the Board grant the application and issue a summary order approving the application.

Sincerely,

Edward L. Donohue

Enclosure

cc: Advisory Neighborhood Commission 3E (via Hand Delivery; w/enclosure)
Advisory Neighborhood Commission 3C (via Hand Delivery; w/enclosure)
Jennifer Steingasser, Office of Planning (via Hand Delivery; w/enclosure)
Karen Thomas, Office of Planning (via Hand Delivery; w/enclosure)
Michael Jack, NBC (Via UPS; w/enclosure)
Andrew Fossett, NBC (Via UPS; w/enclosure)
Rachael Manning-Hymel, NBC (Via UPS; w/enclosure)
Chuck Lindner, NBC (Via UPS, w/enclosures)
Whayne S. Quin and Kyrus L. Freeman, Holland & Knight LLP (w/enclosures)

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Regional Tower Inventory

(abstracted from FCC license database)

Jurisdiction	Tower	Station	Channel	Status	Tower Height (overall)	Antenna Height (center)
DC	American University	WAMU-FM & auxiliary	88.5FM	owner of tower	428	364
DC	American University	WGMS-FM	103.5FM	tower tenant	428	384
DC	American University	WMDO-LowPowerTV	channel 47	tower tenant	428	308
DC	American University	WMMJ-FM	102.3FM	tower tenant	428	338
DC	American University	WPFW-FM	89.3FM	tower tenant	428	299
DC	American University	WPGC-FM auxiliary	95.5FM	tower tenant	428	413
DC	FortTotten	WBIG-FM auxiliary	100.3FM	tower tenant	322	308
DC	FortTotten	WGMS-FM auxiliary	103.5FM	tower tenant	322	253
DC	Fox-WisconsinAve	WDCA-DT (proposed)	channel 20's digital	owner of tower	705	364
DC	Fox-WisconsinAve	WTTG-TV & DTV	channel 5	owner of tower	705	659
DC	Georgia Ave NW	WBDC-TV & DTV	channel 50	tower tenant	761	735
DC	Georgia Ave NW	WCSP-FM	90.1FM	tower tenant	761	479
DC	Georgia Ave NW	WZDC-LowPowerTV	channel 64	tower tenant	761	374
DC	NBC-Nebraska Ave	WRC-TV & DTV	channel 4	owner of tower	662	636
DC	NBC-Nebraska Ave	WFDC-TV & DTV	channel 14	tower tenant	662	410
DC	NBC-Nebraska Ave	WKYS-FM & auxiliary	93.9FM	tower tenant	662	551
DC	Tenleytown	WJLA-TV & DTV	channel 7	joint owner	692	663
DC	Tenleytown	WUSA-TV & DTV	channel 9	joint owner	692	663
DC	Tenleytown	WASH-FM	97.1FM	tower tenant	692	623
DC	Tenleytown	WDCA-DT	channel 20's digital	tower tenant	692	663
DC	Tenleytown	WETA-DT (proposed)	channel 26's digital	tower tenant	692	663
DC	Tenleytown	WHUR-FM	96.3FM	tower tenant	692	633
DC	Tenleytown	WHUT-DT	channel 32's digital	tower tenant	692	663
DC	Tenleytown	WRQX-FM	107.3FM	tower tenant	692	407
MD	River Rd Bethesda	WARW-FM	94.7FM	tower tenant	809	784
MD	River Rd Bethesda	WDCA-TV	channel 20	tower tenant	809	778
MD	River Rd Bethesda	WETA-TV	channel 26	tower tenant	809	778
MD	River Rd Bethesda	WHUT-TV	channel 32	tower tenant	809	712
MD	River Rd Bethesda	WIHT-FM	99.5FM	tower tenant	809	764
VA	Arlington (GMDrive)	WETA-DT	channel 26's digital	owner of tower	495	413
VA	Arlington (GMDrive)	WETA-FM & auxiliary	90.9FM	owner of tower	495	456
VA	Arlington (GMDrive)	WCSP-FM auxiliary	90.1FM	tower tenant	495	384
VA	Arlington (GMDrive)	WGTS-FM (proposed)	91.9FM	tower tenant	495	456
VA	Arlington (GMDrive)	WJZW-FM auxiliary	105.9FM	tower tenant	495	299
VA	Arlington (Lee Hwy)	WAVA-FM & auxiliary	105.1FM	tower tenant	457	374
VA	Arlington (Lee Hwy)	WBIG-FM	100.3FM	tower tenant	457	407
VA	Arlington (Lee Hwy)	WMZQ-FM auxiliary	98.7FM	tower tenant	457	315
VA	BurkeVA	WJFK-FM auxiliary	106.7FM	tower tenant	495	344
VA	BurkeVA	WPXW-TV & DTV	channel 66	tower tenant	495	461
VA	MerrifieldVA	WNVC-TV & DTV	channel 56	owner of tower	689	659
VA	MerrifieldVA	WJFK-FM	106.7FM	tower tenant	689	663
VA	MerrifieldVA	WJZW-FM	105.9FM	tower tenant	689	581

B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 15708-A of the National Broadcasting Corporation, pursuant to 11 DCMR 3108.1, for a special exception under Section 211 to modify a condition of the Board's previous Order No. 13554 to continue to operate a commercial broadcasting tower in an R-1-B District at premises 4001 Nebraska Avenue, N.W. (Square 1722, Lot 1).

HEARING DATES: September 23, 1992 and December 16, 1992
DECISION DATES: January 6, 1993, February 3, 1993, October 7, 2003

PROPOSED DECISION AND ORDER ON REMAND

Beginning in 1955, the Board of Zoning Adjustment (the Board) granted permission to the National Broadcasting Corporation (NBC) to operate a broadcast studio office building with an antenna tower and parking. After the initial 1955 approval, NBC filed a series of applications with the Board and was granted permission to make various changes at the site, including permission to replace the original antenna tower with a new one. NBC constructed a new tower in 1988 but also continued to use the original tower. In 1992, NBC applied to the Board for special exception approval to continue the use of the original 1955 tower.

The Board held public hearings on the application and voted in February 1993 to grant the special exception. However, the Board did not issue its written decision until December 1994, by which time three of the four-member majority had been out of office for over a year because their terms had expired. An appeal was brought to the District of Columbia Court of Appeals based in part on this procedural defect. The Board then requested the Court to remand the case so its current Board members could consider NBC's application on the merits. The Court granted the Board's motion and issued an order remanding the application to the Board for further proceedings. The present members of the Board have reviewed the entire administrative record, including the public hearing transcripts. Based upon its review of the record, the Board adopts the substance of the previous decision and order, as set forth below. This decision and order is based solely upon the record as it existed on December 16, 1992, the date upon which the record was closed.

Government Report Submissions

Office of Planning (OP) Report. OP recommended approval of this application, concluding that the applicant met the requisite burden of proof under Section 211 of the

Zoning Regulations. The report concluded that the tower is necessary to adequately serve the needs of the applicant and the community and that it would not adversely impact the neighborhood. The report analyzed the history of the tower and other approvals by the Board and recognized that a number of technological changes have taken place that make it necessary for the applicant to continue using the smaller tower.[1] These changes include the District of Columbia Police Department usage as well as other future needs such as the high definition television requirement of the Federal Communications Commission. OP pointed out that the site is large and surrounded by institutional uses and noted the deep set backs for the antenna.

National Park Service Report The National Park Service recommended that the application be denied, contending that the 1955 tower, painted orange and white, would adversely impact Glover-Archbold Park and other parks and vistas throughout the District of Columbia. The principal objection of the Park Service was its understanding that a new tower would "replace" the older tower. The Park Service recommended that all of the devices on the tower should be painted black to match the color on the present black tower. In response, the applicant proffered that it would: (a) repaint the lower tower as necessary using a paint that would blend with the skyline and would be subject to FAA and FCC approval, and (b) dedicate a permanent scenic easement to the Park Service for a portion of the site.

ANC Reports

Advisory Neighborhood Commission (ANC) 3E ANC 3E supported the requested special exception, noting the following: The preexisting lower antenna is adjacent to the newer and taller antenna, both of which are substantially set back from all property lot lines. The applicant and its representatives have been good neighbors making positive contributions to the community in many areas. No complaints concerning the operation of the station or the antenna towers have been received. No evidence suggests that the continuation of the tower would intensify in any way the existing operation of the station either as to the number of people or amount of traffic, pedestrian or vehicular. The applicant's representatives represented that they will continue to provide a close liaison with the ANC. The subject grounds are carefully maintained and screened from surrounding property. The subject tower is reasonably necessary for the satisfactory and economic transmission and maintenance of the facility. The preexisting antenna tower serves the District of Columbia police and other important users. It appears that the newer antenna tower could not structurally support the antennas that are used on the lower tower. Interruption of service would have a severe and adverse impact on the facility.

[1] Many of the findings of fact in this decision are based upon the state of technology as it existed in 1992 when the administrative record was closed. Obviously, much has changed since then.

Advisory Neighborhood Commission (ANC) 3C ANC-3C opposed the special exception, noting the following: The case should be considered as a variance rather than as a special exception. The tower is unnecessary for NBC's operations. The tower intensifies the commercialization of NBC's site. The potential health hazards must be weighed against the necessity for the additional antennas. The tower is visually obtrusive. The tower, with its many additional antennas, will increase radio interference problems experienced by neighboring property users. There is nothing about the site that constitutes an exceptional situation, creating a hardship, that warrants relief. The tower is inconsistent with the zoning regulations applicable to the area, and would adversely affect the use of neighboring property.

FINDINGS OF FACT

The Property

1. The property is located on the east side of Nebraska Avenue between Massachusetts Avenue to the south and Upton Street to the north, and is known as premises 4001 Nebraska Avenue, N.W. It is zoned R-1-B.

2. The site consists of 315,810 square feet or 7.25 acres in land area. It has 60 feet of street frontage on Nebraska Avenue. The site is shaped somewhat like a baseball diamond. Vehicular access for the site is from a 310-foot long driveway from Nebraska Avenue. There is a 222-car parking lot on the site. An additional 144 spaces are provided on the adjacent site of the National Presbyterian Church. The site is developed with a two-story brick structure and a radio tower. A ground floor plus two-story addition is currently being constructed on the site. The existing structure totals approximately 124,000 square feet of floor area.

3. To the south of the subject site is the U.S. Naval Security Station with its communication facilities, including a large antenna and other miscellaneous structures close to Glover-Archbold Park. To the north of the site is the National Presbyterian Church headquarters and school facilities. The site is located in an R-1-B District. To the east of the site is Glover-Archbold Park followed by property in the C-3-A District and the McLean Gardens residential development in the R-5-A District fronting on Wisconsin Avenue.

Pertinent Zoning History

4. The Board first granted a use variance to NBC to establish an office building, and special exceptions to establish an office building with parking and a broadcast studio with tower (Appeal No. 4159, public hearing June 1, 1955). Later, following a change in the Zoning Regulations, the Board granted a use variance to

permit continuation and enlargement of accessory parking facilities (Appeal No. 5494).

5. In BZA Appeal No. 8234, dated June 16, 1965, the Board granted a use variance to permit an addition to the office building established under Appeal No. 4159. The existing building then contained 91,370 square feet and the addition provided an additional 16,280 square feet.

6. In Appeal No. 10120, dated November 16, 1979, the Board granted the applicant a use variance to permit a second floor addition to the addition permitted under Appeal No. 8234. That addition would have contained a floor area of approximately 8,140 square feet. However, the second floor addition was not constructed at that time and the Board approval for it expired.

7. In Appeal No. 12011, the Board reinstated Order No. 10120 and also granted permission to locate a temporary office structure at the property during the period of construction of the proposed second floor addition. To alleviate its continuing space concerns, NBC sought and obtained a two year extension of time for the temporary office structure (BZA Order No. 12539, dated March 7, 1978).

8. In Application No. 13222 dated July 28, 1980, the Board granted the applicant a use variance to permit a ground floor plus two-story addition to the existing structure. As a condition of approval and prerequisite to future zoning relief, the applicant was required to submit a proposed "master plan" for future development of the site.

9. NBC presented a proposed master plan to the Board with Application No. 13554 in
which it sought approval for additions to the broadcast studio and office building, including a new antenna tower.

10. On November 25, 1981, the Board approved the additions and master plan, subject to the following conditions:

    a. The additions shall be phased and constructed in accordance with the master plan marked as Exhibit No. 10 of the record.

    b. The applicant shall secure the approval of the Director of the National Capital Region of the National Park Service for the proposed storm water drainage into Glover-Archibold Park.

11. The Board's opinion, reflecting the proposed master plan, noted that, in the future, a new larger tower structure would be installed on top of a parking garage or deck

to improve broadcast range and capacity, and the larger tower would "replace" the existing 1955 tower.

12. The new larger tower was constructed in 1988 in the general location approved by the master plan, but the 1955 tower was never removed. The garage or parking deck upon which the 1988 tower was to have been constructed was never erected because NBC obtained additional parking at the nearby National Presbyterian Church and its adjoining parking lot.

13. The 1988 tower was built, instead, on an equilateral triangular base, having footing separation of 60 feet instead of the approved 90 feet. The 1955 tower and the 1988 tower combined have a bulk of approximately 50 percent of the bulk approved for the larger antenna set forth in the master plan.

14. By letter dated February 25, 1992, the Zoning Administrator notified the applicant that under BZA Order No. 13554, the 1955 tower was to have been replaced by the 1988 tower. The Zoning Administrator advised the applicant to either remove the 1955 tower or seek special exception approval allowing it to remain. The applicant filed this application seeking modification of the previous master plan approval to permit the continued use of the 1955 tower.

The Special Exception Application

15. The two antenna towers are set back from the lot lines to conform to the Zoning Regulations, and are set back a distance of approximately 600 feet from Nebraska Avenue and approximately 200 feet from Glover-Archbold Park. The 1955 tower has an approximate height of 459 feet, a height which is 200 feet lower than the 1988 antenna tower. This height was approved by the District government during the 1955 permit process under the Act to Regulate the Height of Buildings in the District of Columbia (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 through 6-601.09). During prior proceedings the Board found this height to be reasonably necessary to render satisfactory service, and this Board adopts that particular finding based upon testimony by the applicant. The 1955 tower is approximately 30 feet from the 1988 tower at the closest point. Each part of the ground mounted antenna tower is set back a minimum of 10 feet from each lot line or a distance of at least 1/6 of the antenna height. The 1955 tower is not located within close proximity to the neighboring residential properties.

16. The 1955 tower has a minimal impact on the neighborhood from a visual standpoint. The 1955 tower is in a location which minimizes, to the greatest practical degree, its visibility from neighboring properties by virtue of its proximity to the newer tower and its main building. Set backs are provided from all property lines substantially more than is required under the Regulations. The

site has been extensively landscaped and the visibility of the 1955 tower has been minimized. The visual obtrusiveness of the two towers together represents a minor skyline protrusion and the height of both towers is much less than permitted under the Board's previous master plan approval. The 1955 tower is set back from residential areas at substantial distance and is visually shielded by distance, existing vegetation and the existing larger tower.

17. Continuation of the 1955 tower will not result in adverse impacts to the community with respect to increased density or traffic. The commercialization of the site will not be increased by a continuation of the 1955 tower and will not result in an increase in office space, number of employees, vehicular and pedestrian traffic or the establishment of other commercial uses on the site. The Board also finds that the continued use of the antenna tower will not increase existing radio interference problems, if any.

18. Continuation of the 1955 tower will not result in adverse impacts on the neighborhood stemming from the electromagnetic effects of the tower. Antennas located on the tower are licensed by the Federal Communications Commission, and the applicant has complied with all requirements of the Federal Communications Commission regarding safety of radio frequency broadcasts. In addition, the Board adopts the finding proffered by the applicant's expert engineer; i.e.: that the electromagnetic frequency is within recommended industry guidelines. The American National Standard Institutes recommended standard for impact is 1,000 microwaves per square centimeter (UM/CM2). The applicant's engineering consultant, Smith and Powstenko, noted that the maximum ground level power intensity from the main WRC/TV facility is .0014 MW/CM2 which would fall at a location 69 meters from the tower base. This ground level power was likened to something less than would occur with a child's walkie-talkie transmitter.

19. With respect to the alleged health hazards stemming from the electromagnetic frequencies, the Board is not persuaded by the evidence or arguments presented by the opposition. While the record contains articles concerning the purported hazards of electromagnetic frequencies, the claims within these articles were neither persuasive nor applicable to either of the towers in this case. The Board is more persuaded by the applicant's testimony that the power generation on the site is negligible, representing a minute portion of that which is allowed under applicable laws.

20. The Board is persuaded that the continuance of the 1955 tower along with the new tower is consistent with the intent of the original master plan and the approval based upon the master plan should therefore be modified to permit its continuation. The combined volume or bulk of the two towers is well within the

approved envelope of the master plan. The purpose of the 1981 master plan was to plan for the future needs and probable physical development for the NBC facility. The master plan set forth the basic design and scope of three phases of contiguous physical expansion. The 1955 tower covered an area of 390 square feet and had a volume of 59,670 cubic feet. The 1988 tower covered an area of 1,560 square feet with a volume of 342,680 cubic feet. The master plan, on the other hand, provided for a tower that would be 3,510 square feet in coverage and would have a volume of 771,030 cubic feet. Thus, the master plan envelope for the tower was almost twice as large as the combined area and volume of the two existing antenna towers.

21. The Board is persuaded that continuation of the 1955 tower would actually result in less impact on the surrounding neighborhood than if the master plan tower were constructed. The master plan tower would have larger structural members, 18 inches to 24 inches in width, and would be closer to Glover-Archbold Park than the other two towers. In addition, the master plan tower would have greater load bearing capacity, most likely resulting in larger and more antennas than the 1955 tower.

22. The Board credits the applicant's testimony that a continuation the 1955 antenna is critically needed for NBC's operational and economic viability. Space for antennae and antenna towers is in high demand, particularly in this area of the District. The 1955 tower is used by several providers of news programs throughout the area, the nation, and the world. As recognized in the master plan and by the Board in previous orders, NBC needs the flexibility to meet unanticipated changes in technology that require additional antenna space. The space on the 1955 tower is occupied by antennae which are critical to the operation of the TV station. These antenna include receiver microwave links from the Clock Tower at 12th Street and Pennsylvania Avenue that enable NBC-WRC to receive pictures and sound from the Mall area and the District Building. These links also allow the station to receive important news breaks and items from the White House. Additionally, there are two microwave links from the State Department, including the Channon Building and a microwave link from Capitol Hill. Of particular importance are four antennae housed on the small tower serving the District of Columbia police department. There are other antennae used by various service providers, including private two-way uses for security and other endeavors. Interruption of service would adversely affect the NBC/WRC facility.

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR § 3104.1 for a special

exception pursuant to 11 DCMR § 211 to permit the continued use of the 1955 tower at its broadcast studio facility.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1.

The applicant has established that the continuation of the 1955 antenna tower is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The broadcast facility and tower has been operating at the site since 1955 and has been subject to periodic special exception reviews since that time. During this time period the tower has been compatible with the surrounding neighborhood, and there is no evidence to suggest that it would be incompatible with the neighborhood in the future (Findings of Fact 14-21). Likewise, the tower has not adversely affected the use of neighboring properties in the past; and, there is no evidence to suggest that its continued use would adversely effect the neighborhood in the future (Findings of Fact 14-21).

Under Section 211.1 of the Zoning Regulations, the Board may permit the use of commercial broadcast antenna subject to the following provisions:

The proposed location, height, and other characteristics of the antenna shall not adversely affect the use of neighboring property. Because the 1955 tower is set back from lot lines substantially more than required under the Zoning Regulations and is also set back from neighboring residential properties, its location does not adversely affect the use of neighboring properties. The height of the 1955 tower, only 459 feet, is 200 feet less than the approved 1988 tower and less than the master plan tower previously approved by the Board. The comparatively low height of the existing tower will have no impact on the use of neighboring property (See, Findings of Fact 14-15).

The antenna shall be mounted in a location that minimizes to the greatest practical degree its visibility from neighboring property and from adjacent public space, or that is appropriately screened by landscaping or other techniques so as to soften or minimize the visibility of the antenna. Because of the generous setbacks and the landscaping at the site, visibility of the tower is minimized (See, Findings of Fact 14-15). Provided the orange and white tower is repainted to "soften" its visual impact, the Board concludes that this condition will be satisfied.

Each part of a ground-mounted commercial broadcast antenna, including support system and guy wires, shall be removed a minimum of ten feet (10 ft.) from each lot line or at a

distance of at least one-sixth of the mounted height of the antenna, whichever is greater. This condition is met (See, Finding of Fact 14).

The proposed height of the tower shall not exceed that which is reasonably necessary to render satisfactory service to all parts of its service area. This condition is met (See, Findings of Fact 14 and 20).

No transmission equipment shall be located in a Residence District, unless location in the district is necessary for technically satisfactory and reasonably economical transmission. The 1955 tower is not only necessary for technically satisfactory and economic transmission; it is critically needed for NBC's operational and economic viability (See, Finding of Fact 21).

If review by the Historic Preservation Review Board or Commission of Fine Arts is required, concept review and approval shall occur before review by the Board of Zoning Adjustment. This review is not required. Therefore, this condition is inapplicable.

No height of an antenna tower in excess of that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 through 5-409 (1994 Repl. & 1999 Supp.))), shall be permitted, unless the height is approved by the Mayor. The height of the 1955 tower was approved by the District government[2] during the 1955 permit process (See, Finding of Fact 14).

Before taking final action on an application for use as an antenna tower, the Board shall submit the application to the D.C. Office of Planning for review and report. The Office of Planning (OP) reviewed the application and submitted a report recommending approval.

The applicant shall have the burden of demonstrating the need for the proposed height, and that full compliance with matter-of-right standards would be unduly restrictive, prohibitively costly, or unreasonable. Matter of right standards would permit only one ground mounted antenna not to exceed a height of 12 feet at its highest point (See, Sections 201.2—201.5 of the Zoning Regulations). Since 1955, when the subject tower was first approved and built, the Board has recognized that compliance with the matter-of-right standard would be unduly restrictive and unreasonable. The applicant has not only demonstrated the need for the existing 459 feet tower, it has previously demonstrated the need for towers with a greater height, i.e., the 659 feet 1988 tower, and the proposed master plan tower which was approved for 659 feet but would have appeared taller because it was to have been built atop a parking garage (See, Findings of

[2] The District of Columbia did not have a mayor at that time. Height approval was obtained from the Commissioners of the District of Columbia instead.

Fact 4, 10, 14). The Board is persuaded that the applicant has satisfied its burden of demonstrating the continued need for the existing 459 feet tower.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 211 to allow the continued use of the 1955 tower in a residential zone.

ANC Issues and Concerns

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; now codified at D.C. Official Code § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case, there are two affected ANCs, ANC 3E and ANC 3C. The Board has carefully considered the reports made by each ANC. However, it finds only the report made by ANC 3E to be persuasive. As stated in the Findings of Fact, the Board agrees with ANC 3E that the continued use of the 1955 tower will not adversely impact on the neighborhood and is reasonably necessary to the applicant's operations. Accordingly, the Board gives great weight to ANC3E's recommendation to grant the special exception application.

With respect to the report by ANC 3C, the Board finds that it has not offered persuasive advice. ANC 3C maintains that this application must be evaluated under the criteria for variance relief under Section 3103 of the Zoning Regulations. The ANC is incorrect in this respect. The applicant is seeking special exception relief under Sections 3104 and 211 of the Zoning Regulations, not variance relief. Therefore, the applicant does not have to demonstrate under Section 3103.2 that that the property is affected by an exceptional condition creating a practical difficulty or undue hardship upon the owner. With respect to the ANC's other concerns; i.e. commercialization at the site, health hazards, and visual obtrusiveness, the Board is not persuaded that these issues present a significant problem for the neighborhood (See, Findings of Fact 14-18).

The Board further concludes that, as hereinafter conditioned, the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the granting of the requested relief will not tend to adversely affect the use of neighboring property in accordance with the regulations and map. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

Approval shall be until December 1, 2004, as intended by the previous Board at the time it deliberated on this case.

The applicant shall grant the National Park Service a permanent scenic easement of a portion of the site consistent with Exhibit No. 48 of the record.

The applicant shall repaint the 1955 tower a color subject to the approval of the National Park Service.

The applicant shall establish and maintain a Community Liaison/Advisory Council which shall meet with neighborhood representatives upon the request of Advisory Neighborhood Commissions 3E and 3C. The applicant's General Manager or his/her designee(s) shall provide any relevant information about their operations upon request, including but not limited to information regarding use of the broadcast towers, real property improvements, parking and traffic issues, or community outreach efforts. The applicant shall also provide upon request information regarding its intentions to seek any licenses or approvals required by any agencies of the Federal or District or Columbia governments regarding station operations. The applicant's General Manager shall use his/her best efforts to establish an on-going dialogue with the operators of other broadcast facilities within the boundaries of Advisory Neighborhood Commissions 3E and 3C.

Therefore, for the reasons stated above, it is hereby **ORDERED** that: The motion to approve the special exception is **GRANTED**.

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, David A. Zaidain and John G. Parsons, in favor of the motion)

The vote was taken on October 7, 2003 to affirm order and send proposed order out for exceptions. The order was sent to all of the parties for exceptions and arguments on November 4, 2003. No exceptions or arguments were received by the established deadline of November 25, 2003. The Board voted at its decision meeting on January 6, 2004, to **ISSUE** this Order by a **VOTE** of **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David A. Zaidain in favor of the motion, John G. Parsons, not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

DATE OF FINAL ORDER: JAN 21 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPEAL NO. 15708-A

As Director of the Office of Zoning, I hereby certify and attest that on JAN 21 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Whayne S. Quin, Esq,
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

Amy B. McVey, Chairperson
Advisory Neighborhood Commission
3E
St. Mary's Church
P.O. Box 9953
Washington, D.C. 20016

Nancy MacWood, Chairperson
Advisory Neighborhood Commission
3C
2nd Dist. Police Station
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Peter Espenchied
3414 Newark Street, N.W.
Washington, D.C. 20016

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Meredith DeHart
Horace Harper
1528 O Street, N.W.
Washington, D.C. 20005

David Murphy
7910 Woodrow Place
Cabin John, Maryland 20818

Denzil Noble, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Kathleen Patterson
Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, DC 20004

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn

C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13524, of the D.C. Government, pursuant to Subsection 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.47 for the proposed use of a radio tower by commercial businesses in an R-5-A District at the premises rear of 6001 Goergia Avenue, N.W., (Parcel 101/55, Square 2983).

HEARING DATE: July 15, 1981
DECISION DATE: July 15, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the east side of Georgia Avenue, north of Peabody Street, N.W. The site also has frontage on 9th Street. The property is zoned C-2-A to a depth of 150 feet from Georgia Avenue. The remainder of the property is zoned R-5-A.

2. The subject property is owned by the Metropolitan Police Department and is improved with the Police Department's 4th District Headquarters facing on and known as 6001 Georgia Avenue.

3. The subject property also contains an existing 455 foot radio tower, located at the southeast corner of the property adjacent to 9th and Peabody Streets. There is also an existing transmitter building located directly south of the legs of the tower. The tower has been on the subject property since 1977, when it was acquired by a gift from the Sheraton Park Hotel.

4. Location of the tower on the property was approved by the Mayor of the District of Columbia on April 3, 1977. As a facility serving the Government of the District of Columbia, no zoning approval was required.

5. The Metropolitan Police Department is now requesting approval to allow commercial businesses to lease space on the entire north side of the tower. The entire south side is used by the MPD for its two-way communications.

6. Channel 50, Inc., a minority-owned, community-based television station has sought to lease space from the MPD in the tower from which it would broadcast its programming. The University of the District of Columbia, the D.C. Department of Transportation, and the Federal Bureau of Investigation have also expressed an interest in using the tower's surplus space.

7. In order to provide a good omni-directional signal, the proposed antenna must be located on top of the existing 455 foot tower. The antenna itself would be approximately forty-eight feet in height. The existing warning beacon on top of the tower would be relocated to the top of the new antenna. The total height of the tower would not exceed 509 feet.

8. In addition to the existing Police Department transmitter building, an additional transmitter building will be constructed for television broadcasting by Channel 50 within the four legs of the tower. The transmitter must be located on-site to avoid unacceptable "line-loss" in the co-axial pipe transmission line between the transmitter and the antenna.

9. Channel 50 further requires two additional antennas on the tower. One would be a four foot in diameter microwave receiving dish, to receive signals from the studios. This dish would be located at a height of approximately 210 feet. The antenna would be tilted toward the ground, but to the greatest extent feasible will be located within the planes formed by the four legs of the tower. The second antenna would be an eight foot high radio antenna to provide for two-way radio communication between local units.

10. The Police Department further requested approval from the Board to allow the installation of an unspecified number and type of additional antennas to serve other commercial users.

11. The tower is located on the southeast corner of the site. The tower is bounded on three sides by intervening streets and is 158 feet from the adjoining Parcel 101/54, which is more than one-sixth of the height of the tower, plus the proposed antenna.

12. It is neigher technically nor economically feasible to locate the Channel 50 television transmitter off-site.

13. The antenna and tower location have been submitted to and approved by the Federal Communications Commission and the Federal Aviation Administration.

14. The proposed height is reasonably necessary to render satisfactory service to the service area of Channel 50, as determined by A.D. Ring and Associates, consultants in radio engineering.

15. The tower and transmitter area is enclosed with a chain link fence. To the north of the tower is U.S. Park Service property, followed by Quakenbos Street, and semi detached dwellings in the R-2 District. East across 9th Street is U.S. Park Service property used as garden plots. South of the tower across Peabody Street are apartment houses in the R-5-A District. The 4th District Police Station is adjacent to the antenna location to the west in the C-2-A District.

16. The tower has not adversely affected the use of neighborhood property since its installation in 1977, and the additional Channel 50 antennas proposed will not significantly change the impact of the tower.

17. The Office of Planning and Development, by memorandum received on July 10, 1981, recommended approval of the application. The Office of Planning and Development was of the opinion that the applicant's proposal meets the intent and purpose of Paragraph 3101.47 which lists conditions for the protection of neighboring properties. The proposed location and height will not affect adversely the use of neighboring property. The 460 foot tower has existed on the site for two years, without any known detrimental effects on the surrounding community. The tower is set back from the site's lot lines in accordance with the provision that the tower be removed from all lot lines a distance of at least one-sixth of its height or is separated from other property by an intervening street. The Board concurs with the findings and recommendation of the OPD as related to the facilities for Channel 50.

18. The applicant is seeking approval from the Mayor for construction of the additional antenna in excess of the height requirements.

19. There was no report from Advisory Neighborhood Commission-4B.

20. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Paragraph 3101.47 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied as to the proposed use b Channel 50. The tower has not been and will not be objectionable with the limited additional antennas sought by Channel 50.

The proposed height is reasonably necessary and appropriate setbacks have been observed. The transmitter equipment is located under the tower to provide technically satisfactory and reasonably economical transmissions.

As to the proposed use of the tower by other commercial users, the Board concludes that it does not have sufficient information to determine whether there will be an adverse effect on neighboring property. The applicant was unable to cite with sufficient precision how many antennas there might be, of what size and in what locations. The Board therefore determined to hold an additional further public hearing on October 14, 1981, to consider additional commercial antennas on the tower and the impact of such potential antennas on surrounding properties.

The Board concludes that, as to the specific facilities proposed for Channel 50, the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is GRANTED as to the Channel 50 antennas and transmitter building only, SUBJECT to the following CONDITIONS:

1. Approval of additions to the existing tower is limited to those facilities to serve Channel 50.

2. The maximum height of the tower is limited to 509 feet, including the existing tower, the Channel 50 antenna and the warning beacon.

3. Channel 50 may erect one microwave receiving dish antenna, having a maximum diameter of four feet, at a height of approximately 210 feet. That dish antenna shall not extend more than four feet out from the face of the tower.

4. Channel 50 may erect on the existing tower, one radio antenna eight feet in height, no more than four feet out from the face of the tower.

VOTE: 5-0 (Lindsley Williams, Charles R. Norris, Connie Fortune, William F. McIntosh and Douglas J. Patton to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 20 AUG 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS

D

ZONING

DISTRICT OF COLUMBIA ZONING REGULATIONS

WITH ALL AMENDMENTS THROUGH APRIL 1981

D.C. OFFICE OF DOCUMENTS

MARION S. BARRY, JR.
MAYOR

DAVID A. SPLITT
DIRECTOR OF DOCUMENTS

SEP 0 6 1983

3101.463 The applicant shall submit to the Board a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including, but not limited to buildings, parking and loading facilities, screening, signs, streets, and public utility facilities, athletic and other recreational facilities, and a description of all activities conducted or to be conducted therein, and of the capacity of all present and proposed campus development; and,

3101.464 Within a reasonable distance of the college or university campus and subject to compliance with the provisions of sub-paragraph 3101.461 hereof and subsection 8207.2 the Board may also permit the interim use of land or improved property with any use which the Board may determine is a proper college or university function; and,

3101.465 Before taking final action on an application for such use, the Board shall have submitted the application to the District of Columbia Municipal Planning Office and the District of Columbia Department of Transportation for review and report.

3101.47 Antenna tower for television and frequency modulation broadcasting to any height and in conjunction therewith the erection, alteration, or use of buildings for transmission or reception equipment on the same lot or elsewhere, provided that:

3101.471 The proposed location and height will not affect adversely the use of neighboring property in accordance with these regulations;

3101.472 Any part of an atenna tower is removed from all lot lines a distance of at least one-sixth of its height or is separated from other property by an intervening street;

3101.473 The proposed height of the tower is reasonably necessary to render satisfactory service to all parts of its service area;

3101.474 Any transmission equipment located in a Residence District must be located in such district for technically satisfactory and reasonably economical transmission;

(Corrected 5/80)

3101.475 Before taking final action on an application for such use, the Board shall have submitted the application to the District of Columbia Municipal Planning Office for review and report; and,

3101.476 Any height of such tower in excess of that permitted by the Act of June 1, 1910 (36 Stat. 452), as amended, must be approved by the Commissioners of the District of Columbia.

3101.48 Parking lot, provided that:

3101.481 Such use will be located in its entirety within 200 feet of an existing Commercial or Industrial District and such parking lot shall be contiguous to or separated only by an alley from such Commercial or Industrial District;

3101.481 All provisions of Article 74 are complied with;

3101.483 Such use is reasonably necessary or convenient to the neighborhood and is so located and all facilities thereof are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions; and

3101.484 Before taking final action on an application for such use, the Board shall have submitted the application to the District of Columbia Department of Transportation for review and report.

3101.49 Philanthropic or eleemosynary institution, not of a correctional nature, provided that:

3101.491 No goods, chattel, wares or merchandise are commercially created, exchanged or sold therein,

3101.492 Such use will not adversely affect the use of neighboring property; and

3101.493 Before taking final action on an application for such use, the Board shall have submitted the application to the District of Columbia Municipal Planning Office for review and report.

3101.410 Accessory passenger automobile parking spaces elsewhere than on the same lot or part thereof on

E

Washington D.C. • WFDC 14

962 Wayne Avenue, Suite 900
Silver Spring, MD 20910
(301) 589-0030 TEL
(301) 495-9556 FAX

TELEFUTURA

November 1, 2004

Mr. Michael Jack, General Manager
WRC-NBC TV
4001 Nebraska Avenue, N.W.
Washington, DC 20016

Dear Mr. Jack:

On behalf of Univision, broadcasting in the Washington, D.C area as WFDC-TV (Channel 14) and WFDC-DT (Channel 15), I write in support of NBC's application currently pending before the Board of Zoning Adjustment (the "Board").

Univision, which is the only full-power Spanish language television broadcaster in the Washington area, leases space on NBC's smaller broadcast tower located at 4001 Nebraska Avenue, N.W. Univision has been broadcasting from NBC's tower since March 2002. Channel 14 and Channel 15 have a combined viewership of 28,140, and our location on NBC's tower is instrumental in broadcasting to these customers.

Prior to locating on NBC's tower, we conducted a thorough study to determine local sites that met our broadcasting needs. After considering a number of options, including the proposed tower at Tenleytown and a site in Merrifield, Virginia, we determined that NBC's site provided the best location to meet our economic and broadcasting needs.

Univision has invested a substantial amount of money to broadcast in the District. As an initial cost, Univision spent $30 million to purchase the license to air on Channel 14, WFDC-TV. UniVision has also invested over $3 million at NBC's site, including approximately $550,000 in facility upgrade costs and $2,710,000 in antenna and transmitter costs.

In short, our location on NBC's broadcast tower is critical for Univision to provide technically satisfactory and economic transmission in the Washington region.

Rolo Duartes
General Manager
TeleFutura

TOTAL P.02

F

Friendship Fire Association

Engine Company 31, D.C.F.D.
4930 Connecticut Ave., NW
Washington, D.C. 20008

Mr. Michael Jack, General Manager
WRC-NBC TV
4001 Nebraska Avenue NW
Washington, DC 20016

June 28, 2004

Dear Mr. Jack:

On behalf of the volunteers in the D.C. Fire & EMS Department, I want to thank you for allowing our two-way communications base station to continue to use the NBC 4 TV tower, which allows us to rapidly coordinate most of our volunteers.

For at least the past 10 years, thanks to Joel Albert and Charlie Bragale, Citywide Radio, WPOX-401, has efficiently operated from your site. The two-way radio system is used to report emergency incident events throughout the Washington area. It also is used by our volunteers to staff our Canteen Unit, Rehab Bus and Rehab Support Unit, whenever they are needed by the fire department, or other agencies, to assist at the scenes of major emergency incidents.

As a side benefit of the Citywide Radio system, Charlie and his staff has one of our radios in the newsroom and frequently is the recipient of breaking news stories through his ability to communicate with any of our dozen or so volunteers.

Our thanks to you and to Chuck Lindner in Engineering is long overdue but appropriate at this time, since we have just renewed our license and our commitment to serve the Washington area community.

Sincerely,

Walter Gold

Walter Gold, Administrator
FFA, DCFD

cc: Charlie Bragale
Chuck Lindner
Vito Maggiolo, FFA Coordinator of Fireground Operations

G

Federal Radio Service Corp
Government Communication Services

FEDSMR

December 7, 2004

Michael Jack, General Manager
WRC TV
[illegible] Nebraska Avenue, NW
Washington, DC 20016

Dear Mr. Jack,

On behalf of Regency Radio Corporation, I wish to thank you for the communications support WRC has provided. Regency Radio Corporation operates the FEDSMR government radio service, which provides critical communications support to the federal government.

WRC's service has proved to be a significant contribution to the security of WDC federal government communications.

Sincerely,

[illegible]
Director of Operations
Regency Radio Corporation

/mf

1202 Technology Park, Suite C Aberdeen, MD 21001 (410) 273-7611 - Fax (410) 273-7605

H

Virginia — Arlington

WFDC
(formerly WTMW)
Ch. 14

Network Service: TEL.

Licensee: WTMW License Partnership GP, 1999 Avenue of the Stars, Suite 3050, Los Angeles, CA 90067.

Studio: 962 Wayne Ave., Suite 900, Silver Spring, MD 20910.

Mailing Address: 3565 Lee Hwy., Arlington, VA 22207.

Phone: 301-587-0080. **Fax:** 301-495-9550.

Technical Facilities: Channel No. 14 (470-476 MHz). Authorized power: 2880-kw visual. Antenna: 568-ft above av. terrain, 650-ft. above ground, 1010-ft. above sea level.

Latitude	38°	56'	24"
Longitude	77°	04'	54"

Transmitter: 4001 Nebraska Ave. NW, Washington, DC.

Digital Facilities: Channel No. 15 (476-482 MHz). Power: 900-kw visual. Antenna: 568-ft above av. terrain, 410-ft. above ground.

Latitude	38°	56'	24"
Longitude	77°	04'	54"

FCC Digital File Number: BPCDT-19991028ADH. Granted: June 01, 2001.

Note: Latitude and longitude coordinates shown are based on the North American Datum of 1927 (NAD 27) as currently required by the Mass Media Bureau of the FCC.

Ownership: Univision Communications Inc. (Group Owner).

Began Operation: August 3, 1993. Sale to present owner by Urban Broadcasting Corp., Debtor-in-Possession approved by FCC June 1, 2001. Assignment to Urban Broadcasting Corp., Debtor-in-Possession approved by FCC March 28, 2001.

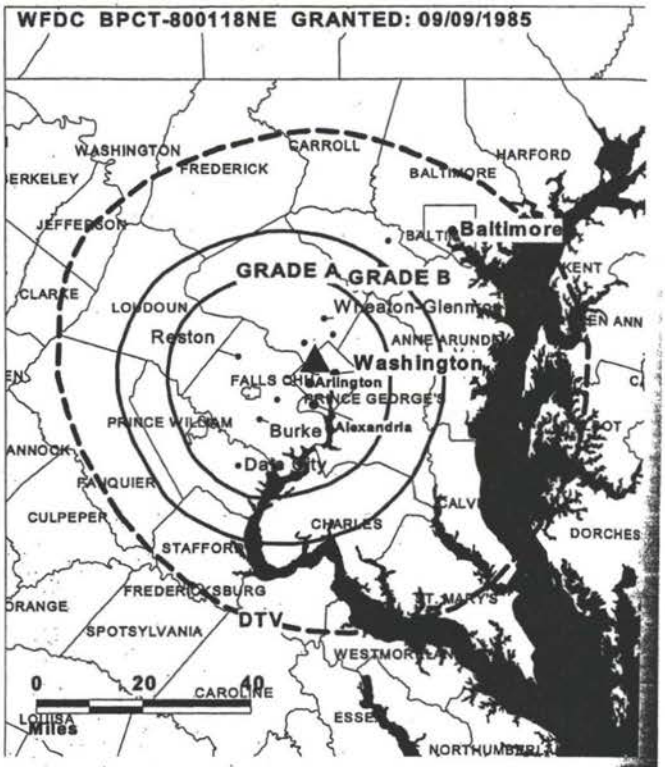
Personnel:

Augie Martinez, General Manager.

Mini Capers, Business Manager.

Fred Wallard, Chief Engineer.

Hermelinva Guezara, Traffic Manager.



© 2003 Warren Communications News

Rudy Guernica, Station Manager.

Oscar Rodriguez, General Sales Manager.

Rates: On request.

City of License: Arlington. **Station DMA:** Washington, DC (Hagerstown, MD).

Rank: 8.

Nielsen Data: Not available.