

Concurring Opinion of Chairman Richard E. Wiley
In which Commissioner Quello joins
In re
Harvit Broadcasting Corporation (Dockets 18456-7)

I fully concur in the result reached in this case to deny the application for review. I think the Board properly disqualified Three States Broadcasting Company, Inc. (States) for failure to comply with the Primer on Ascertainment of Community Problems, 27 FCC 2d 650 (1971) (the Primer) with respect to the required random survey of the public. The Primer, in Q. and A.4 and Q. and A.13(b) and at 666-67, clearly requires such a random survey; and the Commission has strictly interpreted this requirement. Eastern Broadcasting Co., 50 FCC 2d 599 (1975); reconsideration granted on other grounds 55 FCC 2d 270 (1975); see also Bangor Broadcasting Corp., 50 FCC 2d 222 (Rev. Bd. 1974), review denied FCC-1095, released October 8, 1975; A.V. Bamford, 48 FCC 2d 1155 (Rev. Bd. 1974) review denied FCC 75-204 released February 26, 1975; Voice of Dixie, Inc., 45 FCC 2d 1027 (1974) reconsideration denied 47 FCC 2d 527 (1974); and Payne of Virginia, FCC 76-710, released August 6, 1976.

However, I believe that the Board improperly interpreted or misapplied the Primer with respect to the other grounds on which it disqualified States for failure to meet its ascertainment obligation. The Board found that States failed to submit an adequate compositional showing for Matewan, the community of license, or of the service area; failed to give adequate attention to Williamson, West Virginia, the largest city in the service area; and omitted leaders of significant groups from its survey of community leaders in Matewan. The Board thus improperly required

a demographic study of the whole service area although the Primer has no such requirement. The Board also improperly required a survey of community leaders in outlying areas comparable to that for leaders of significant groups in the community of license. And, finally, the Board unreasonably assessed the showing of the composition of the community of license in concluding that the showing was inadequate and, thus, improperly found the community leader survey inadequate.

First of all, it should be noted that the Primer does not require a compositional study of the service area. The Primer requires a compositional study only of the applicant's "city of license" (Q. and A. 9) or its "community" (Q. and A. 10). The purpose of the compositional study is to identify significant groups in the community so that leaders of those groups can be consulted. Accordingly, the Primer does not even by implication require a compositional study of the service area because the Primer does not require that leaders of all significant groups in the service area be consulted.

With respect to the adequacy of the attention given Williamson, the largest city in the service area, the Primer gives the applicant "wide latitude" as to how to ascertain community problems in outlying areas and it is sufficient if he has "consultations with community leaders who can be expected to have a broad overview of community problems" (Q. and A. 7). The applicant must be responsive only to major problems, and ascertainment of major problems need not be as inclusive or exhaustive as that required for the community of license (Q. and A. 7). In view of these imprecise

standards and the grant of "wide latitude" to the applicant, States' interviews with the mayor, a high school principal, and a college director, three community leaders who would by their positions seem to be well qualified to have a broad overview of that community's major problems, does not constitute, in my judgment, a failure to meet Primer requirements.

The compositional study of the community of license was based on detailed U.S. Census data for the four-county area in which the proposed service area lies and was supplemented by additional information prepared by the postmaster in the community of license. The Primer recognizes such census data as an acceptable source for data on communities of less than 25,000 population. Considering the small population of Matewan, only 651 persons, the local postmaster's personal knowledge of the composition of the community acquired in the course of his duties is entitled to some weight. In order to comply with the Primer, a challenge of the adequacy of the compositional study should have been supported by data showing that significant groups had been omitted. There was no evidence that any of the groups referred to by the Board as significant were in fact significant or that members of those groups could even be found in the community of license. If, as the Primer states, the Commission is not interested in minutiae, I am hardpressed to find that the data and information submitted by States about a town of Matewan's size was inadequate or that a further breakdown would have shown any additional significant groups in the community of license. Thus, I believe the Board's conclusion on this record that the compositional study of the community of license was inadequate is an unreasonable application of the Primer.

As to the interviews of leaders of significant groups in the community of license, States did not submit a list of those groups. Instead, it consulted 11 persons (out of a population of 651) who could be identified as connected with organizations that bore some relation on this record to the compositional data. There is no evidence that any significant group in the community was omitted in the survey of leaders, and I believe the community leader survey complied with the Primer.

Ordinarily, I would follow the Commission's policy of refraining from comment on a Review Board decision and merely denying an application for review without stating reasons if, indeed, there is any basis for upholding the Board's ultimate disposition of a case. Denial of an application for review thus does not connote ratification of the Board's opinion in every respect. The question of compliance with the Primer, however, has become a recurring subject on which the Board is required to act and on which review by the Commission repeatedly has been sought. I therefore think it appropriate to express my views on the Board's disposition of the ascertainment issue in this case for its consideration when confronted with ascertainment questions in the future.