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DISTRICT 7-2724

CABLE ADDRESS
HALRADIO

August 7, 1961

800253

Mr. Ben F. Waple
Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Dear Mr. Waple:

On behalf of Gotham Broadcasting Corporation,
applicant for renewal of license for station WINS (File
* No. BR-211), there is enclosed in triplicate, for filing
with the Commission, the licensee's response to the
Commission's letter of July 6, 1961 raising questions
concerning the renewal application.

Extensive exhibits to the enclosed response are
in the hands of the printer and will be filed within the
next day or two.

If there are any questions concerning the above
matter, kindly communicate directly with this office.

Very truly yours,

Andrew G. Haley
Andrew G. Haley

* Enclosures

RECEIVED
AUG 7 1961
OFFICE OF THE SECRETARY
F.C.C.

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AUG 7 1961

Before the

Federal Communications Commission

Washington 25, D. C.

In the Matter of Application of
GOTHAM BROADCASTING CORPORATION
For Renewal of License

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File No. BR 211

RESPONSE OF GOTHAM BROADCASTING CORPORATION
TO LETTER OF JULY 6, 1961 FROM FEDERAL
COMMUNICATIONS COMMISSION

Andrew G. Haley
J. Roger Wollenberg
Stanley Sporkin

Haley, Wollenberg & Bader
1735 DeSales Street, N. W.
Washington 6, D. C.

Attorneys for Applicant

August 4, 1961

Suite 606
1697 Broadway
New York 19, N. Y.

MAURICE JOACHIM
Creative Record Enterprises

May 19, 1959

RECEIVED
AUG 8 1961
F. C. C.
OFFICE OF THE SECRETARY

Mr. J. Elroy McCaw, President
Radio Station WINS
7 Central Park West
New York, N. Y.

Dear Mr. McCaw:

We regret to have to bring to your attention a matter which involves Ronnie Granger, music librarian at your station.

The attached letter to the undersigned from Jim Gribble who contacts radio stations for the airing of our records, speaks for itself.

We believe you can instruct Mr. Granger to return the sum of \$100. which was paid him and for which he failed to carry out certain obligations.

On receipt of this sum we will consider the matter closed and we thank you for your co-operation.

Very truly yours,
CREATIVE RECORD ENTERPRISES, INC.

/s/ Maurice Joachim

MJ/tbm

President

RECEIVED
AUG 7 1961
F. C. C.
OFFICE OF THE SECRETARY

August 4, 1961

Mr. Ben F. Waple
Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Dear Mr. Waple:

Gotham Broadcasting Corporation, licensee of Station WINS, New York, New York, replies herein to the Commission's letter of July 6, 1961 (Reference 8420), which raises questions with respect to the pending renewal application for Station WINS (File No. BR-211).

The Commission's letter contains a series of charges centering around alleged payola activities of certain employees of the licensee. In substance, the letter suggests that the licensee has been negligent in discovering and stamping out payola practices or has actually condoned and participated in such practices. As is discussed in detail in this letter and fully corroborated in the exhibits made part hereof, there is no foundation in fact for these charges. To the contrary, the licensee has never knowingly tolerated payola practices. Long before the possibility that payola practices might lead to violations of the announcements requirements of the Communications Act was generally considered, the owner and president of the licensee opposed such practices as a matter of business policy. The enlightened self-interest of any business organization requires avoidance of conflicts of interest and any financial arrangements which give employees incentives to act other than for the best interests of their employer.

The Commission's letter contains some charges with which the licensee is familiar as a result of the investigation which preceded the pre-hearing letter. In other areas the charges are new and are stated in the most general of terms. In such cases the licensee specifically requests herein that if any questions remain in light of the present response the Commission make available to the licensee the particular facts, if any, upon which such generalized charges are rested, and give the licensee an opportunity to respond to such further information before reaching a decision as to whether a hearing is required.

PRELIMINARY STATEMENT

The present 100% owner and president of the licensee of Station WINS has been an owner of the Station since 1954. During this period its license has been regularly renewed. The present renewal application has been on file since March, 1960, a period of seventeen months. During much of that period the licensee has been subjected to prolonged, intensive and very thorough investigation by the Commission's staff, an investigation centering around alleged payola activities of employees of the licensee. The licensee has been entirely cooperative with the Commission's staff during the course of this investigation.

The Commission's investigation of Station WINS culminated in a series of conferences held at the offices of the Station on Friday, April 27; Saturday, April 28; Monday, May 1; and Tuesday, May 2, 1961. The Commission was represented at the conferences by two staff investigators and, during the meetings on May 1, and May 2, 1961, the Chief of the Complaints and Compliance Division of the Broadcast Bureau was present.

At the licensee's expense, the proceedings during these conferences were transcribed by a public reporting service and copies of the transcript have been furnished to the Commission's staff. During the conferences, particularly the conferences of May 1, and May 2, 1961, a

procedure was followed under which the President of the licensee and other key personnel of the licensee were confronted with certain matters which, in the staff's judgment, might reflect adversely upon the licensee unless satisfactorily explained. The licensee welcomed and encouraged this procedure as affording it an opportunity to respond to all accusations and affording the staff an opportunity to resolve any questions raised during the course of the investigation. As a result of this procedure several matters which initially appeared to raise questions concerning the licensee were satisfactorily and completely resolved.

- The following colloquy between the President of the licensee and the Chief of the Complaints and Compliance Division accurately reflects the nature of the agreed procedure (May 2, 1961 Transcript, pp. 450-454):

"MR. McCaw: * * * Now my point is this: that if the areas in which there are any questions in your mind could be delineated, in other words, here we are, this is just an open conference, this whole investigation must be a fact-finding mission in which it is desired to get any facts relating to a specific subject and if a question should arise in your mind — for example, about anything — that the logical approach, it would seem to me, would be for you to say, 'Now, we are not satisfied on this point,' because when you make a report, obviously you want everything that you could possibly develop on that point, other than just maybe from one source; - develop certain information and then without saying, 'This is - information that has been developed,' 'This is the question that arises in our mind, have you any explanation for this point?'

"Now, there are some things that would obviously be unfamiliar to you or other people that might be involved, or other files, other sources of information that would enable us to explain to you that position, this point, try to get the information which you seek; that if it could be approached on the basis that anything that remains as a question in your - minds at any point, that we would like to discuss that and that. We would like to assume, be able to assume, that you are satisfied on anything which might in your opinion be negative as far as we are concerned before you make any report which might have a logical explanation.

"Do you see my point? Is that clear, Mr. Harrington?

"MR. HARRINGTON: That is what we have been trying to do.

"MR. McCAW: That is where I really think that we can get some place and pinpoint this, because there is no question about it — you are out to do a job, you are out to find out about certain points, you have your instructions, you have your responsibilities. Now, in that your responsibility is to develop a finalized type of a report that, insofar as possible I believe, covers every point, and which, insofar as — well, I won't say insofar as possible, but completely gives us the opportunities to meet that issue and satisfy you on it, we would like you to say that — and this will save a lot of time because otherwise we might — in an effort as we have been going in which we just answer a lot of questions without knowing where they are leading or intended to lead or without even trying to find out — we may in an effort to develop everything on it, we might bring in a lot of additional material, spend a lot of time, on something that you are completely satisfied about.

"So that if we could confine from here on out ourselves entirely to, say, here is a point, this is a thing, this is what we have learned, this is who says it, this is who didn't say it, I mean, who wouldn't, or anything, and say this is the point we were trying to establish by talking to that person: can you shed any light on it, can you suggest any other people that we might talk with, can you refresh your own recollection or anyone else's recollection regarding this point, then we can satisfy ourselves that we have approached it in terms of finding every fact and not have anything appear in a report which would say we find this wrong, we find that wrong, we find the other thing, without letting us have a chance to know anything that you think is that way. Because this is an open investigation, to do a constructive job.

"MR. HUNTER: Mr. McCaw, I think you made your position quite clear to the extent that we can see if we can continue somewhat on the basis as you have described it —

"MR. McCAW: When you say somewhat on that basis, I mean is it a fair basis, Mr. Harrington — I would like to address that question to you — is it a fair premise to say that we should have the right to meet any question as far as our operation or as far as anything relating to us is concerned before any report is made? [Emphasis supplied.]

"MR. HARRINGTON: I think you should, and that is what we are trying to do, Mr. McCaw." [Emphasis supplied.]

Against the background of the above described procedure, the charges contained in the Commission's letter of July 6, 1961, have been carefully analyzed. As to those which relate to matters previously brought to the licensee's attention, the licensee assumes that the charges referred to in the Commission's letter are those with which the licensee was previously confronted. These matters will be answered on that basis.

Certain other matters raised in the Commission's letter have never been raised previously with the licensee during the course of the prolonged investigation and have been stated in the letter in imprecise terms. The licensee answers those charges as best it can herein, but if any questions remain after such response, the licensee believes that both fairness and expedition of the Commission's processes require that the licensee be afforded full information as to the facts in the Commission's possession. Only in this manner may the licensee be given a fair opportunity to demonstrate that a hearing on its renewal application is unnecessary.

In the ensuing discussion of specific issues, it is believed that the following ultimate facts stand out with clarity:

- A. Instances of possible payola involved only three employees of WINS.
- B. The licensee had no knowledge of the alleged incidents when they occurred, and was not negligent.
- C. When alleged payola incidents came to its attention, the licensee moved promptly and decisively to eliminate such practices.
- D. The licensee was wholly candid with the Commission in responding to the payola inquiry.

RESPONSES TO SPECIFIC CHARGES CONTAINED
IN COMMISSION'S LETTER

A. The Commission's letter states that information in its possession indicates that former WINS employees Mel Leeds, Alan Freed and Ronnie Granger "while so employed, received payments or other consideration from record manufacturers and/or distributors for the purpose of having certain recorded material broadcast over the station's facilities, and for other purposes". It further states in this connection "that the required sponsorship identification announcements were not made". These matters will be discussed separately.

WINS is not in a position to deny the charges with respect to Granger, Leeds and Freed. This does not mean, however, that the licensee is able to confirm the Commission's allegations. The named individuals have all been charged with violations of the New York commercial bribery statute and they are now awaiting trial on the charges. The substance of the criminal charges is similar to the charges contained in the Commission's Pre-hearing letter. In view of the fact that these individuals have not had their day in court, the licensee does not believe it appropriate to prejudge these individuals on the charges lodged against them. It is deemed appropriate, however, to set forth the facts within the licensee's knowledge with respect to the conduct of these three individuals and to detail the responses of the licensee in order to make clear that the licensee has diligently carried out its responsibilities.

RONNIE GRANGER. The association of Ronnie Granger with Station WINS was as follows:

Ronnie Granger was hired by Station WINS in August, 1957 as a record librarian.

Prior to May, 1959 the licensee had no knowledge which would indicate that Granger had any financial arrangement with record companies or record distributors. In the latter part of May, 1959, licensee received a letter dated May 19, 1959 from one Maurice Joachim of Creative Record Enterprises, Inc., attached to which was a letter dated May 13, 1959 from one Jim Grubble wherein it was stated that Granger received \$100.00 from Grubble for certain services to be rendered by Granger for Creative Record Enterprises, Inc., and which services Mr. Grubble stated Granger did not perform. (Exhibits 1 and 2)

On May 22, 1959, the president of licensee replied to Joachim advising him that "we are naturally disturbed by the information" contained in the letter of May 19, 1959 and further advising him that the licensee intended to investigate the matter. (Exhibit 3)

The president of licensee immediately referred the Joachim and Grubble letters to the WINS program director, Mel Leeds for action. Leeds reported that he contacted Joachim and that Joachim refused to back up his initial charge. Pending further investigation of the matter, Leeds nevertheless recommended that Granger be moved out of the music department and assigned to another position where it would be absolutely impossible for him to influence the station's music policy.

Granger was married on June 6, 1959, and did not return to the station until two weeks later. Immediately after his return, he was transferred from the music department to the news department; on July 8, 1959 he resigned.

The State of New York in May, 1960 filed a criminal Information charging Granger with violating Section 439 of the New York Penal Law. The statute in question makes criminal the acceptance by an employee of consideration, without knowledge and consent of his employer, under an agreement designed to influence conduct of the employee in connection

with his employment. (Exhibit 4) Mr. Granger has not as yet been tried on the Information.

Upon the information before it, licensee must certainly be deemed to have acted properly in the handling of the Granger matter. A responsible employer does not dismiss summarily an employee who has performed his job adequately on the unsupported statement of a stranger. Especially, is this true where the accuser refuses to substantiate the charge. The licensee cannot be criticized where it acts promptly and effectively to transfer an employee from a sensitive position upon the first report of questionable actions of the employee.

Although Granger had contact with the station's music programming, the licensee has no knowledge that he influenced the preparation or presentation of broadcast matter as a result of having received money or other valuable consideration from sources outside the station. If, as the Commission's letter alleges, it has facts in its possession indicating that Granger did so, those facts have never been made available to the licensee.

The licensee candidly and completely accounted to the Commission with respect to Granger's behavior in the licensee's reply to the Commission's inquiry of December 2, 1959. (Exhibit 5, paragraph 8)

MEL LEEDS. The following are the facts known to licensee concerning Mel Leeds and his association with Station WINS:

Leeds was hired as Program Director of Station WINS in October, 1956. He performed his services competently and contributed towards helping Station WINS attain an important position in New York's radio community. On November 18, 1959 as part of the licensee's efforts to search out any payola practices at Station WINS, the staff was advised that management was determined to obtain all information concerning any wrong doing. It was pointed out to the members of the staff that it would

be in their best interests to disclose to management whether they had taken payola under any circumstance.

Two days later, on November 20, 1959, Mel Leeds came to see the president of the licensee as the latter was preparing to leave for Seattle, Washington. During the discussion of general station matters, Leeds became very emotional and actually broke down in tears. Leeds indicated that he might have done something which, in the light of the various payola investigations, might look very bad and which he regretted. Leeds stated that he had received money as consulting fees for advisory services from four record manufacturers but denied that such fees were paid to influence his decisions as WINS program director.

Leeds at this meeting was upset and depressed. He stated that his life was over and that his whole world had been shattered. Leeds maintained that he had never done anything with any intent to harm the station.

In view of Leeds' excellent employment record at the station and his contention that he had performed services for the outside compensation he received which in no way influenced his decisions as Program Director of Station WINS, Leeds was afforded the opportunity to furnish evidence of the actual performance of such services, of any agreement pursuant to which such services were rendered, and a list of persons to whom he had rendered such services. In the meantime, an inquiry was conducted by WINS executives Harold Anderson and Lee Gorman, during which Leeds was subjected to repeated close questioning; indeed, he complained that he was being subjected to a "Kangaroo Court."

On December 18, 1959 Leeds reported to the police a blackmail attempt by a man named Bosco who claimed that he had evidence that Leeds took payola. Bosco, through the cooperation of Leeds and Station WINS, was apprehended on December 21, 1959, and subsequently pleaded guilty. Mr. Joseph Stone, Assistant District Attorney, made a statement to the president of the licensee to the effect that he was amazed when

Leeds later became involved in an investigation on payola, because Stone was completely convinced that if there was any man in New York who was not involved it would be Leeds.

The Bosco matter was thoroughly explored by the Commission staff during the May 2, 1961 conference at Station WINS. The discussion covers 53 pages in the transcript (pages 461-514). It became evident that the incident reflected unfavorably only upon Bosco. Indeed, in view of the fact that Bosco was successful in exacting tribute from another New York station, the licensee is gratified that it and its employees were of assistance in terminating Bosco's blackmailing career.

Shortly after the Bosco incident, Leeds became seriously ill with a heart condition and was absent from the station. He resigned on January 26, 1960, without ever substantiating the validity of his explanation of the payments he admitted receiving from record companies.

The State of New York in May, 1960 filed an Information charging Mel Leeds with accepting payments from five record distributors in violation of Section 439 of the New York Penal Law (the commercial bribery statute referred to above in connection with the Granger matter). Here, as in the case of all charges under the commercial bribery statute, it was alleged specifically that the payola had been received without the knowledge and consent of the employer.

It is clear on the basis of the above facts that the licensee acted with diligence and dispatch in handling the Leeds matter, as it had the Granger matter. Leeds was well thought of as a program director and had performed his services with competence. Certainly in view of his employment record with Station WINS he was entitled to the opportunity of establishing that the payments he received from record companies were for bona fide consulting services as he represented.

It is true that Leeds never established the propriety of the payments. Instead, he voluntarily resigned within two months after he first disclosed to management that he had received payments from record companies.

Leeds, as program director, naturally was in a position to affect WINS music programming. The licensee never was given any reason to believe, however, that Leeds was influenced in the preparation or presentation of broadcast matter as a result of having received payments from record companies.

As in the case of Ronnie Granger, the licensee in response to the Commission's December 2, 1959 inquiry informed the Commission fully with respect to the knowledge it had concerning Mel Leeds. The statement follows (Exhibit 5, paragraph 9):

"Mel Leeds, former program director of WINS, stated that he had received consulting fees for advisory services from four record manufacturers. The management of WINS asked that he furnish evidence of the actual performance of such services, of the agreement pursuant to which such services were rendered, and a list of persons to whom he rendered such service. Mr. Leeds advised that he would furnish such data, which as yet has not been received. However, he was ill for a considerable period and has subsequently resigned. His attorney assures us that Mr. Leeds can amply substantiate the fact that services were performed for the compensation received which he stated was quite nominal. He further stated that the record companies involved have already testified under oath that substantial and adequate services were performed by Mr. Leeds."

By hindsight, these assurances of Leeds have lost credence as a result of his resignation and failure to furnish the substantiation promised. At the time, however, the licensee reported to the Commission all facts in its possession with candor and completeness.

ALAN FREED. The facts relating to Alan Freed's association with Station WINS are as follows:

Freed was hired by the station on August 10, 1954. His contract was negotiated by Robert Leder who was then WINS station manager and who is currently vice president of WOR and WOR-TV, New York, New York. While employed at Station WINS Freed became a nationally known figure and appeared in motion pictures and staged many personal appearances throughout the country. (Exhibit 6) These activities resulted in Freed's repeated absences from Station WINS during the final years of his-employment. For example, in 1958, he was absent 45 days between January 1, 1958 and May 8, 1958, the date of resignation.

Upon his resignation from Station WINS Freed was employed by Station WABC, New York, New York. Early in 1960, two Informations were filed against Freed charging a total of 26 violations of Section 439 of the New York Penal Law (the commercial bribery statute). Of the 26 charges against Freed, only 2 purport to relate to the period when he was employed at Station WINS and it appears from a study of the Informations that, in fact, only one of the alleged payments by record companies to Freed was made during Freed's tenure at Station WINS. The licensee was entirely unaware, while Freed was employed by it, of the receipt of such payment or any other payola payment to him.

Examination of the Informations reveals that the single incident of a payola payment to Freed which is alleged to have occurred during his WINS employment period was alleged to have been on or about February 28, 1958. (Exhibit 7) Freed, however, spent very little time at Station WINS after that date. He was absent March 1, March 8, March 15, March 22, March 29, and April 5 through May 8, when he resigned. If the alleged payment was made, and if it influenced Freed's activities at Station WINS, station management had little or no opportunity to observe

any pattern of conduct in the brief and interrupted period of Freed's tenure between March 1 and May 8, 1958.

All of the other charges against Freed contained in the New York Informations related to alleged payments during his employment at the American Broadcasting Company's Station WABC. The payments are alleged to have covered a period from June 1958 through October 1959. The dates of these alleged transactions of Freed while at ABC are as follows:

June 30, 1958	July 2, 1959
July 30, 1958	July 14, 1959
August 11, 1958	August 5, 1959
September 29, 1958	August 25, 1959
September 30, 1958	September 1, 1959
November 21, 1958	September 2, 1959
December 18, 1958	October 2, 1959
February 16, 1959	October 5, 1959
March 25, 1959	October 5, 1959
April 28, 1959	October 7, 1959
May 25, 1959	November 4, 1959
June 25, 1959	November 6, 1959

It must be borne in mind that the charges against Freed recited above are charges, not proven transgressions. But if the Commission is to take at face value the charges as presumptive of guilt for present purposes, it must accept the basic premise that in each case the accusation rests upon the assertion that Freed's employers were unaware of his acceptance of the payment involved. (See Exhibits 4 and 7) No crime is stated under the New York commercial bribery statute unless the employer had such a lack of knowledge. Thus, if the charges against Freed are valid it does not mean that WABC should be penalized because 24 of the payments took place while Freed was its employee, or that WINS should be censured because one of these payments occurred during Freed's WINS tenure. The very basis of the charges is that the stations did not know of the payments or consent to them.

WINS had no occasion to notify the Commission of anything concerning Freed since he left the station's employment in May 1958, long before November 1, 1958, which was the commencement of the time period specified in the December 2, 1959 payola inquiry.

In sum, it has been demonstrated above that Station WINS was neither possessed of knowledge of payola activities of Granger, Leeds and Freed, nor was it guilty of negligence or any lack of diligence in dealing with the problems when they came to light.

We turn now to the question whether required sponsorship announcements were omitted in connection with the alleged activities of Granger, Leeds or Freed in accepting payments from record companies. We are at a loss to understand the basis of this charge.

The Commission is, of course, aware that prior to the enactment of the Communications Act Amendments, 1960, Section 317 applied in terms only to payments to a licensee. So if we assume that Granger, Leeds and Freed all accepted payments for the purpose of influencing the matter broadcast on Station WINS, there would still be no sponsorship announcements required.

The Commission's March 16, 1960 Public Notice announced for the first time interpretations of the statute which would read "licensee" as including "employee," but this Notice has not received general acceptance. For example, the House Committee Report accompanying S. 1898 (which became the new anti-payola law) (H. Rep't 1800, 86th Cong. 2d Sess. p. 19) stated flatly that Sect. 317 "as it has existed since the Federal Radio Act appears to go only to payments to licensees as such."

If the March 16, 1960 Notice were the measure of proper conduct prior to its issuance, there is probably not a station in the United States which would not face a renewal hearing for a failure to make announcements which, for the first time, were ruled in that Notice to be required. In the Notice itself the Commission implicitly recognized the prospective

application of the rather novel interpretations promulgated when it warned licensees as to future conduct and stated as to past conduct that:

"Cases now before the Commission involving wilfulness, misrepresentation or serious neglect on the part of the licensee or other circumstances indicating a failure to exercise the proper degree of licensee responsibility will be considered by the Commission on a case-to-case basis and appropriate action will be taken in each case."

It is respectfully submitted that nothing in the Granger, Leeds or Freed incidents remotely suggests "wilfulness, misrepresentation or serious neglect on the part of the licensee," but that its handling of the Granger and Leeds incidents indicated a high degree of licensee responsibility. The Freed "incident" required no handling because the licensee was unaware of the alleged payment to Freed until long after he left the station's employment, and it had no reason to be aware of such a payment.

B. The Commission's letter states that "with respect to certain programs broadcast by Alan Freed, as such employee, at least part of the line charges and engineer's salaries were paid by a record distributor directly to the licensee."

Some time prior to July, 1956 Alan Freed arranged with Station WINS to broadcast from his home in Stamford, Connecticut. The Freed show ran from 7:00 P.M. to 11:00 P.M. six nights a week, Monday through Saturday. Under the arrangement Freed was to be charged and billed for all the expenses that were incurred by the station in setting up the facilities at Freed's residence including the cost of equipment which was to be retained by him. The accounting pursuant to the arrangement was under the direction of Henry G. Kirwan, a certified public accountant who was the treasurer of Station WINS from September, 1950 to September, 1957. This matter is completely covered in the affidavit of Henry G. Kirwan dated May 11, 1961. (Exhibit 8)

During the May 2, 1961 conference, the Commission's staff advised the licensee that two checks had been located which were paid directly by a record distributor to the licensee. The Kirwan affidavit describes the method of payment of the Freed invoices as follows:

"When Mr. Freed would make payments against his account, the payments would either be mailed to us by Mr. Freed or presented to us by Mr. Freed or someone associated with Mr. Freed. This was the general method of payment. I have no recollection who was the payer on any of the checks. But it is my recollection that when the Freed bill was paid, he would accompany his remittance generally with a copy of the station's invoice which was sent to him. Therefore the checks which were attached to the bill and sent back by Freed to the station in payment of his charges were applied against Freed's account."

The Kirwan affidavit further states:

"I never brought the manner of payment to the attention of Mr. McCaw or Mr. Leder or Mr. Fearnhead or Mr. Keating any circumstance whatever surrounding the receipts of monies from Freed or the billing of expenses and other charges to Freed except that on occasion I would mention to Mr. Fearnhead that Freed was a little slow on payment. I was never advised nor did I have personal knowledge that any monies received on payment of Mr. Freed's bills were paid by record distributing companies."

Thus, the answer to this charge is essentially two-fold. To begin with the station's management did not know that a record company or record companies were paying any of the expenses incurred by Alan Freed. In this connection it must be remembered that Freed, in addition to his broadcasting activities, had interests in many non-broadcast business enterprises. It is therefore entirely understandable that when the Freed invoices were returned to station WINS with checks attached, the bookkeeping department assumed that the checks which were signed by persons other than Alan Freed were payments being made by one of the many Freed enterprises. The posting of any payment against an invoice was a routine clerical matter handled mechanically and therefore these payments were not reported to management.

Secondly, in view of the fact that the two payments in question were transmitted to Station WINS, attached to the invoice to Alan Freed, it can not be stated that the payments were made directly to Station WINS. (May 1, 1961, Transcript p. 386.) In any event, the fact that Freed may have paid WINS invoices with checks from others did not occasion inquiry as to the activities of Freed which gave rise to the indebtedness to him. Freed's other activities and interests were sufficiently varied that the appearance of a name of a strange company on a check would not be a cause of comment.

- C. The Commission's letter asserts "that Station WINS billed Alan Freed for the expense of his remote broadcasting, which bills exceeded his salary from the licensee."

It is true that in particular years the charges billed to Freed exceeded his compensation from the station. But it does not follow from this fact that it may be inferred that the disparity should have led the management of Station WINS to conclude that Freed must be taking payola.

In the first place, it is clear that there was no way of knowing in advance whether the compensation would be greater than the line charges and equipment expenses or not. Freed worked on a percentage basis and the revenue generated in his program was to some degree a function of his own efforts. In the second place, some of the charges billed to Freed by the station were for equipment which Freed has kept. The purchase price of equipment can hardly be offset against salary. In the third place, the home broadcasting arrangement at Freed's expense was an accommodation to Freed requested by him and terminable by him at will. It was of no financial benefit to the station. To be able to broadcast from his home saved Freed much time and effort and gave him more time to spend on his outside activities. At the same time, it gave him continuous broadcast exposure, which was extremely important to his career. (Exhibit 9.) His total broadcast salary (without deductions

for line charges) was a relatively small part of his annual income for the period in question. Finally, as the Kirwan affidavit makes clear, there was no occasion for management to compare the Freed charges with the Freed income, which were handled separately in a routine fashion. (Exhibit 7.)

The following colloquy appearing on pages 402-409 of the transcript of May 1, 1961 is pertinent to an understanding of this matter:

"Mr. Hunter: Going back to the multiple interest that you said Mr. Freed had, I think in a previous conversation we had had with you, in which we pointed out Mr. Freed was drawing salary of \$14,000 a year, and yet incurring line charges of \$24,000 a year, that you, at that time, I believe explained that this caused you no problem because of his other multiple interest?

"Mr. McCaw: No, sir. There were two things. First of all I was never aware nor had I at any time monitored the Freed account, ever looked at what he owed the station until the thing was all over. In other words, until Freed had left. I never had occasion, so that I was not aware of that discrepancy at all. However, there were several mitigating factors, whether it would be me or anyone else to whose attention it might have come, although it didn't come to mine in any way, shape or form. The first is that under the arrangement that he had, he concentrated on it, the \$14,000 base was something which could have been built up very significantly in terms of revenue because he had a provision where he would get 25 per cent on the revenues sold specifically for his show and had he not been doing a lot of other things and had he been concentrating on developing the thing where people come in and buy the time on the show as we did such as with 7-Up, which would have involved a contract for \$170,000 a year, that one account would have netted him 25 per cent of that amount because it was bought specifically there, at premium rates, and so on.

"Now, 90 per cent of the traffic load in his show was simply the spots that would be put there basically on a run of schedule. Insofar as selling it to other people, unless you build a specialized merchandising appeal, it was very difficult to sell that show because of the rock-and-roll image, and many people, without regard to rating, they just wouldn't touch it. They would say, 'Don't put me in

there,' and many times we had great difficulty getting people to let us, if they were buying like fifteen spots a week, spread them out and have some in his show. It had that sort of reaction. On the other hand, had we had the type of corporation [cooperation] that this sort of a vehicle could have created, had he concentrated on it and, again, tying it in to merchandising, as 7-Up planned to do and which, incidentally, was something that was just on the verge of signing at the time of the Boston riot, so-called, where it was tried out and merchandise specifically slanted to teenagers, where you had to get somebody to appreciate it and would buy the teenager market, but due to the kind of image that was built around the name 'rock and roll' and his name was synonymous with rock and roll, having started the name 'rock and roll,' even to the point that it was copyrighted, 'Rock 'N Roll,' he was synonymous with it. Furthermore, we found the problem that it tended to create a problem in other areas even though it wasn't on his show. It was such a strong show and so much publicized that WINS, in turn, became synonymous with rock and roll, which was a real problem we had.

"Developing the answer to your question to cover all of the points, that is another facet. Certainly the contract that he had is not one in which he chose to concentrate on it and to help us get that kind of business — believe me there is the help where you need the help of the talent involved — it would have been a highly lucrative thing.

"Take the next point. At the time he signed that and with that provision, that was a really sweet contract, using that word. It was attractive. Hundreds of disc jockeys around the country would like to have that including in the city of New York.

"Now, what happened? Rock and roll, or Freed, somehow caught a certain fancy somewhere — it is impossible to anticipate this sort of thing, you can't anticipate the public — it took off like a sky rocket. When he appeared in public they would have as many as — well, on the front page of the New York Times there was a picture when he appeared in the Paramount; there were four hundred extra policemen and all traffic through Times Square was shut off, just for his appearance.

"In the motion picture field, allegedly, he made as much as \$300,000 in making one motion picture. He was making public appearances around the country, in which he had chartered busses in which he would go around covering the Mid-

west, Chicago and so on, because the publicity that surrounded his name from his broadcasts here and over some of the other stations that were syndicated, he became synonymous with that.

"The Twentieth Century Fox Film Company and another film company bid for his services to appear. Therefore, when a man is really supposed to have struck it rich from perfectly understandable and obvious and explainable sources, and in the field of talent, in which you have the fantastic remuneration that accrues to the fellow that happens to hit the public fancy — the Pat Boones and so on and so forth — it is completely understandable as to why this would be a mere detail to him, and it was equally important despite all of the other things. What made him in the first place?

"Exposure on a major New York station, and the publicity and the constant build-up that followed. We have had many cases, as I explained to you before, where people who for one reason or another are out of the public eye and who depend upon a station in front of the public will do almost anything. Big movie names, and so on, they would like to have a disc jockey show to stay in the public eye — not because of the money they make out of it, they would cheerfully give the money to charity. They have other income, maybe, from residuals of films, or income, but they are fading out of the public eye. Therefore is it unreasonable anything that involved so much money, the fact that he was willing to spend more in order to broadcast at his convenience where he lived out in Stanford, Connecticut, and where if he would have stayed in the studios in order to broadcast it meant, with the train schedules as they are, he would get home at 2:00, 3:00 o'clock in the morning, and with all the other things, offices in town and a real organization, apparently, going — I was never in one of his offices, but this kind of talk you hear, I mean, that Freed is a great success.

"Mr. Hunter: From what you have already said, previous I think you said it didn't concern you because it was for his own convenience.

"Mr. McCaw: That's right. I was aware of the arrangement. Knowing those circumstances, without knowing the amounts involved or ever having compared them, it seemed a perfectly logical thing. There was a logical explanation where he would want to broadcast in some other location but he [we] would have no objection if we would be paid for additional costs. This happens not in connection with this station only, but many people who have shows, maybe television shows,

and they go out on a personal appearance, and in order to broadcast their show from another city, the network bills them for the additional cost, or the station. This is a common practice.

"Mr. Sporkin: When you spoke of an arrangement you were talking about the arrangement to broadcast from his home?

"Mr. McCaw: Yes, sir, from his home. There is nothing unusual about it. Other people around the country had frequently had occasion to do that.

"Mr. Hunter: I deliberately brought it up because I thought you would want it on the record."

D. The Commission's letter states that "the licensee received ten percent of the profits of Alan Freed's promotions which were advertised over the station and that the required sponsorship identification announcements were not made."

During the May 1, 1961 conference at WINS there was some misunderstanding concerning the 10% of the profits of Freed's promotions. This misunderstanding evidently arose in a discussion between members of the Commission's staff and the president of the licensee. (Transcript, pp. 254-255; 400) Documentary evidence, located subsequent to that conference, indicates that the 10% payments were not payments for advertising. The pertinent provision of a contract between the licensee and Sieg Music Corporation dated January, 1955 (Exhibit 10) reads as follows:

"In consideration of the aforesaid waiver and release by the GOTHAM BROADCASTING CORPORATION in favor of the SIEG MUSIC CORP. to the exclusive personal services of Alan Freed for promotions, and of the further permission and license from the GOTHAM BROADCASTING CORPORATION to the SIEG MUSIC CORP. to use the name and/or title 'ROCK 'N ROLL', 'ROCK 'N ROLL PARTY' and/or similar names and titles solely in connection with, and for the sole purpose of, the Theater, Dance and Concert promotions carried on, and/or to be carried on, by the said ALAN FREED, SIEG MUSIC CORP. herein and hereby agrees to pay to the GOTHAM BROADCASTING CORPORATION ten (10%) percent of its gross profits derived or to be derived from the aforesaid Theater, Dance, Concert promotions; said gross ten (10%) percent profit

to be paid prior to any other distribution of profits and/or salaries paid to its principals by the SIEG MUSIC CORP., except the salaries of TALENT, such exception immediately aforesaid excluding the salary or any other income or profit whatsoever derived or to be derived by ALAN FREED as TALENT or otherwise from the SIEG MUSIC CORP."

Thus, under the contract, the payments were for a partial release of the station's rights to the exclusive services of Freed and for a granting of the right to use the name "Rock 'N Roll" in connection with Freed's promotions. Since the licensee apparently was not paid for any promotion of Freed's enterprises, no Section 317 announcements would have been required. Even today, under the new law, sponsorship announcements are not required merely because a licensee has a financial interest in a product promoted. The current "plugola" rulemaking (Docket No. 14119) proposal will, if adopted, impose such a requirement for the first time.

E. The Commission's letter states that "the licensee attempted to induce Alan Freed to arrange with record manufacturers and/or distributors whereby the latter would pay the licensee directly for the broadcasting of records."

This appears to be a wholly new assertion never raised in the exhaustive conferences held by the Commission's staff with the licensee. The answer must be speculative because the basis, if any, for the charge has been withheld from the licensee.

In telephone conversations in mid-July, 1961, between the president of the licensee and Mr. Morris Levy, former manager of Alan Freed, it was disclosed that a statement containing incorrect and misleading information had been made to the Commission by Freed, which the licensee inferred to have been a possible source of the unwarranted and wholly false charge stated in the Commission's letter. Levy stated that Freed was willing to meet with Mr. McCaw to explain the statement and the circumstances surrounding it.

On July 18, 1961, Mr. McCaw and his local attorney, Mr. Bernard Tannenbaum of the New York Bar, met with Alan Freed, his wife, and Alan Freed's former manager, Mr. Morris Levy, at Mr. Levy's office in New York. At this meeting Mr. Freed stated that he had caused the president of licensee a great injustice in that Freed had made certain erroneous statements to the Commission's staff concerning Mr. McCaw and Station WINS.

Freed stated that he desired to right any wrong he had caused. Freed indicated, however, that he was concerned about what could happen to him if he corrected his statement to the Commission.

Mr. Tannenbaum stated that he thought Freed would be in more trouble if he permitted a false statement to stand, but suggested that the matter was of such importance that Freed ought to have the advice of his own attorney. An appointment was made for 11:00 a.m. the following morning (July 19, 1961) to meet with Freed and his attorney, Mr. Warren Troub. Neither Freed nor his attorney kept the appointment.

The substance of the July 18, 1961 Meeting is set forth in affidavits of Mr. Morris Levy and Mr. Bernard Tannenbaum (Exhibits 11 and 12). The meeting was also reported to the New York District Attorney.

Mr. Levy's affidavit is as follows (Exhibit 11):

"About the middle of July, 1961 Mr. Elroy McCaw of WINS telephoned me and asked to look at some of the records of SIEG Music and Jackie Music Companies in which my partners and I once had interests with Alan Freed. These companies handle theatre promotions and also had a contract with WINS in regard to such promotions. We made the records available for inspection.

"About the same time, Alan Freed was in New York. In a conversation with him Alan told me that he had signed an affidavit for the FCC concerning Elroy McCaw and WINS. He intimated that he was sorry he had made the affidavit. He suggested that he would like to speak to Elroy McCaw with whom I then arranged for a meeting with Alan Freed.

"The meeting was held at my office in the afternoon of July 18, 1961. Mr. McCaw, his attorney, Mr. Tannenbaum, Alan Freed and his wife, who came in later, were present. Mr. Freed made statements to the effect that he had been brainwashed by Mr. Keating and Mel Leeds who persuaded him to sign the affidavit for the FCC and that he did so because then he believed his loyalty was to Mr. Keating and Mr. Leeds, people for whom he was working, he knew when he made the affidavit that it was not true, that it was harmful to Mr. McCaw, and that Mr. Keating, to whose home he had often gone had personal differences with Mr. McCaw.

"When Mr. McCaw asked Mr. Freed, on July 18, 1961, whether he had ever asked Mr. Freed for anything; the latter said that Mr. McCaw had never asked him for anything and that he had met with Mr. McCaw only a few times. Mr. Freed said that in the affidavit for the FCC he referred to a meeting when his second wife, Jackie, and a Mr. Fernhead were present, where Mr. Fernhead was supposed to have asked whether there was any way by which the radio station could participate with record manufacturing companies as sponsors. Mr. Freed said that his wife answered that there was not much involved in it and that the matter was treated as a joke and laughed off.

"Mr. McCaw asked Mr. Freed whether he (Mr. McCaw) had ever been present at such a meeting. Mr. Freed said that Mr. McCaw had not been present at such a meeting and again stated that during the entire period of his dealings with the radio station he had met with Mr. McCaw only a few times. Mr. Freed indicated that the reason Mr. Keating was mad at Mr. McCaw was because Mr. McCaw sold him Radio Station KDAY which he (Keating) said was a "toilet" and he was losing \$25,000 a month in it.

"Mr. McCaw's attorney, Mr. Tannenbaum, told Mr. Freed that he should consult with his own attorney about correcting the FCC affidavit where it was untruthful or incomplete. After Mr. McCaw and Mr. Tannenbaum left, having arranged to meet the next day with Mr. Freed and his attorney, Mr. Freed said that he could not show them the affidavit. He said that they would be mad when they read it because they would find out that he said that McCaw was present at the meeting. He then said that he didn't owe McCaw anything and that McCaw did not stick by him when he (Freed) got in trouble in Boston.

"During the next few days I received telephone calls informing me that Alan Freed had said that he was going to 'bury' me and Elroy McCaw. I was told that Mr. Freed had called the FCC in Washington and given them a false version of the conversation had in my office on July 18. It seems that after he left my office he talked with some people in the recording industry about the meeting.

"I called Mr. Freed and told him about these reports. He suggested that we meet at my office the next day. He came with his present wife and his attorney, Warren Troob. Present also were Mr. Inge and Mr. Tarnopol. At the time Mr. Freed used foul language in referring to Mr. McCaw saying that he would do anything to hurt Mr. McCaw and would 'bury' him if possible. Mr. Freed said, concerning me, that he would rather hurt himself than hurt me in any way. At the time he also said, in substance, that he was going to stay in the radio business, that the FCC would look out for him. He said also that the FCC were his best friends and at this point he owed his loyalty to them. In the course of that conversation I believe he made the statement that he had to keep WINS in the picture of having knowledge of payola because it destroyed the District Attorney's case in New York City.

"Most of Mr. Freed's statements concerned his hate for McCaw, WINS and WABC." (Also see Exhibit 11A.)

Mr. Tannenbaum's affidavit is as follows (Exhibit 12):

"The following is a report of a certain meeting which took place in the afternoon of July 18, 1961, at the offices of a Mr. Morris Levy, 1631 Broadway, New York City. Present at the meeting were Messrs. Morris Levy, J. Elroy McCaw, Alan Freed, Mrs. Alan (Inga) Freed and myself.

"The purpose of the meeting was that Mr. Freed wanted to disclose the fact that he had supplied to the Federal Communications Commission an erroneous statement which he felt was very harmful to Mr. McCaw. He stated that this statement was prepared by a Mr. Schaaf, an Investigator for the Commission after an interview with Freed, and signed by Freed. Freed explained the background of his having worked for Mr. Jack Keating at Radio Station KDAY in Los Angeles. He stated that he had been 'brainwashed' by Mr. Keating for a year, and that Mr. Keating had it in for Mr. McCaw. Freed kept quoting Keating as having stated that he was 'going to bury McCaw' and that every evening he was with Keating,

even when they were out socially, he was 'brainwashed for six hours' against Elroy McCaw.

"Freed said that he felt he caused an injustice to Mr. McCaw by an erroneous or misleading statement given by him to the FCC. This related to an alleged conversation in early 1958 with Jock Fearnhead, who was then General Manager of Station WINS. Freed said that his aforesaid statement alleged that Mr. Fearnhead stated to Freed something to the effect that 'we know you have been taking payola so how about letting us have some of it.'

"Freed said that while the statement may have been made by Fearnhead, it had been made in a light and joking manner, but that the statement he gave to the FCC failed to disclose the joking aspect of this conversation.

"Freed also stated that the conversation with Fearnhead referred to the possibility of getting some of the record companies to advertise directly on WINS, which fact he thinks was not disclosed in his statement to the Commission. Mr. Freed said that his former wife, Jackie Freed, was the only other person present while this conversation took place, and specifically stated that Mr. McCaw was not present. Mr. Freed asked if he would get in trouble if he corrected his FCC statement at this date and I advised him that I thought he would be in more trouble if he let a false affidavit stand; and advised that he consult his own attorney in this matter.

"An appointment was set up for 11:00 AM the following day at the office of his attorney, Mr. Warren Troub, in which he promised to produce a copy of the statement filed with the FCC, and to discuss with his attorney whether he should file a corrected statement disclosing the truth.

"Freed further stated that in the four years that he was at WINS, he believes that he saw Mr. McCaw not more than ten times, but that he dealt with Messrs. Leder, Fearnhead and Keating; in fact, he and Keating were very close with each other socially until quite recently. Freed further stated that Mel Leeds who was also employed at Radio Station KDAY (now promoted to General Manager) also hates Mr. McCaw."

We have no desire to impugn Mr. Freed's sincerity or motives and certainly cannot adequately respond to an alleged statement by him which has not been furnished to us, but it is clear that the statements of Freed

at the above described meeting completely destroy Freed's credibility. In any event, on the basis of the information available to the licensee, the charge is wholly without foundation.

F. The Commission's letter asserts that "the licensee attempted to induce Mel Leeds to arrange for participation in the profits of record companies for the mutual benefit of Leeds and the licensee."

The only conceivable basis for this charge is derived from a licensee intra-office memorandum dated November 2, 1959 from Harold E. Anderson to Mel Leeds. (Exhibit 13) Paragraph 6 of the memorandum states:

"Record Companies—Elroy would like to have you set up ways and means of tying into Record Company profits. He has suggested that this be done so that a percentage of the profits would accrue to you."

Although the memorandum was poorly phrased, it certainly does not state or imply that under-the-table payments were contemplated or that required announcements would be omitted. The statement was no more than a direction to Leeds as program director to develop ways whereby record promotion money could be channeled into regular advertising budgets. The reference in the memorandum to certain of the profits accruing to Leeds meant that Leeds, as program director, would receive a regular sales percentage commission on the resultant time sales.

In essence the memorandum was designed to have Leeds seek to establish a method whereby Station WINS would sell time to record companies so that their new record releases would receive broadcast exposure. Such an arrangement, it was thought, would minimize any incentive for possible payola practices.

This type of format was not new to the licensee. In early 1959 a substantially similar plan was experimented with by Station KDAY, Los Angeles, California, which was then owned by the licensee. A program

format was devised whereby record companies would be afforded the opportunity to present their new releases to the public by purchasing time at a stated station rate with full announcement of the program's sponsorship. This policy was announced to the industry and was discussed in the August 31, 1959 issue of Broadcasting Magazine (Exhibit 14, p. 5):

"KDAY, incidentally, is one of those stations that have tried to skirt the payola possibility by selling time outright to record companies and letting them program it with their releases. Mr. Phillips hasn't had much success on that score, but he thinks this is because he hasn't had much time to work on it. He still feels it would work if someone took the time to pitch it to major manufacturers."

The November 2, 1959 Memorandum was written at a time when payola was being widely discussed. (Exhibit 15) It would be absurd to suggest that a broadcaster, at this critical period, would set out to inaugurate payola practices.

Harold Anderson, the author of the November 2, 1959 Memorandum, in a formal statement dated August 8, 1960, explains fully what was intended in the November 2, 1959 Memorandum as follows (Exhibit 16):

"This is to stipulate the intent of paragraph (6) of my memorandum dated November 2, 1959 to Mel Leeds, then program director of Radio WINS.

"For several months prior to the above date, we had held many discussions regarding the possibility of Payola being present in radio stations in general and Radio WINS in particular. To the best of our knowledge we knew of no existing cases. However, we felt we should take every precaution to insure against the possibility of its occurrence.

"It was in light of these past discussions that we again delved into preventative measures in a meeting held Friday evening October 30, 1959. At that meeting it was suggested that means be developed for diverting record company promotional funds into normal advertising channels. Since Mel Leeds, by virtue of his position as Program Director, knew the promotion personnel of the record companies, it was

decided that he would be the logical sales contact man for our station. As such, he would be paid the regular sales percentage commission on any promotional budgets which could be converted into regular radio spot advertising.

"A copy of this memo was given to Mr. Joseph Stone, Assistant New York City District Attorney together with a full explanation of the background and meaning of its contents. In addition the subject was covered in my testimony before the Grand Jury."

The intention of the November 2, 1959 memorandum is further clarified in a memorandum dated November 18, 1959, the daily report of Harold Anderson for November 17, 1959, which states (Exhibit 17):

"Record Company Formula

Spoke with JEM regarding a formula and statement for the purpose of charging record companies a set amount for the playing of their records and the plugging of same."

On February 15, 1960 in his daily report for February 9, 1960 Anderson stated as follows (Exhibit 18):

"D.A.

JEM, Lee Gorman and Albert Felix and myself met with Mr. Stone [Assistant New York District Attorney] and his two assistants, Davidowitz & Hammer. We discussed as clearly as possible the chronological events concerning the payola situation as pertains to WINS. At this time they were advised of the memorandum of Nov. 2 which I wrote to Mel regarding the cooperation of Mel in obtaining advertising monies from the record companies. Mr. Stone asked Mr. Felix to provide him with such a memo. At that time it was set up for JEM and myself to appear before the Grand Jury on Thursday the 11th."

It seems abundantly clear that a charge against the licensee of bad motives or evil intent cannot be seriously rested on such a flimsy foundation.

G. The Commission's letter states: "that the licensee had been informed that Ronnie Granger had been paid by a record manufacturer for the 'plugging' of its records."

This charge has been fully answered in the discussion relating to Ronnie Granger (supra, pp. 6-8). The correspondence concerning this matter is detailed below.

In the latter part of May, 1959 the licensee received a letter dated May 19, 1959 from Maurice Joachim. (Exhibit 1) It stated:

"We regret to have to bring to your attention a matter which involves Ronnie Granger, music librarian at your station.

"The attached letter to the undersigned from Jim Grubbe who contacts radio stations for the airing of our records, speaks for itself.

"We believe you can instruct Mr. Granger to return the sum of \$100.00 which was paid him and for which he failed to carry out certain obligations.

"On receipt of this sum we will consider the matter closed and we thank you for your co-operation."

The letter attachment from Jim Grubbe to Maurice Joachim dated May 13, 1959 stated (Exhibit 2):

"I took Mr. Ronnie Granger to lunch in March of this year and gave him copies of all Sentry and Nostalgic releases and suggested that we would be glad to have him serve in an advisory capacity with Creative Record Enterprises, Inc. and help us in the selection of masters, in distribution and other pertinent matters. For this service he was offered a part interest in the company. He said because of his coming marriage he would rather have money than an interest in the company. And we would pay him monthly for plugs on WINS and also to meet with us from time to time. We have set several appointments with him which he didn't keep and also none of us who have monitored have heard any of the records plugged.

"Mr. Joe Hintz and I called on Mr. Granger on April 12, 1959 and gave him \$100 in cash. We both have taken records to him also have set appointments with him which were not met even after several telephone calls."

On May 22, 1959 the president of licensee wrote to Mr. Joachim as follows (Exhibit 3):

"Thank you for your letter of May the 19th. We are naturally disturbed by the information contained therein and intend to investigate the matter.

"We will be in touch with you shortly."

This letter was answered by a letter dated June 16, 1959 wherein Mr. Joachim writing to Mr. McCaw stated (Exhibit 3):

"I received your letter of May 22nd and am wondering if there are any further developments in regard to the matter of the money paid to your music librarian.

"You advised that you would be getting in touch with me shortly, hence this letter.

"I would appreciate an early reply."

The last written correspondence to Mr. Joachim from Station WINS was written by Mel Leeds on July 9, 1959. Mr. Leeds at that time concluded the incident by writing to Mr. Joachim as follows (Exhibit 3):

"This is to notify you that Ronnie Granger, our music librarian is no longer in our employ."

The mere detailing of the above correspondence demonstrates the positive manner in which licensee dealt with payola problems when brought to its attention. Moreover, on June 6, 1959 Granger was married and left on a honeymoon. Immediately after his return, he was transferred from the music department, and on July 8, 1958 he resigned from the station. Six weeks after WINS was advised that its record librarian might be involved in payola the record librarian was no longer with the station.

In view of the corrective measures taken by the licensee in this matter as detailed here and under the previous discussions, it would seem that the "Granger incident" has been definitively resolved.

H. The Commission's letter states that "officers of the licensee solicited and accepted gifts of substantial value from record companies."

This is another instance in which the pre-hearing letter was the first occasion that the licensee had knowledge of a charge. This charge

is wholly vague. It does not identify the officers who allegedly solicited and accepted gifts of substantial value from record companies, nor does the charge specify the period of time since the licensee acquired the station in 1954 during which these gifts were purportedly solicited and accepted.

The licensee affirms that to the best of its knowledge and belief no present officer of licensee has, during his association with Station WINS, solicited or accepted gifts of substantial value from record companies.

With respect to the five former officers of the licensee, four of the former officers presently are either owners or hold key positions in Commission licensees, which we assume are in good standing with Commission. The fifth officer, Mr. Henry G. Kirwan, held an accounting position with Station WINS and was in no position to influence programming. At no time during their association with Station WINS, did the licensee have any knowledge of, or reason to have knowledge of, any solicitation or acceptance of substantial gifts from record companies by any of the officers.

I. The Commission's letter states that "it also appears that the licensee was aware of the prevalence of payola practices with respect to broadcast material at least as early as 1954 and that certain of its employees were alleged to be engaged in said practices."

The president of licensee testified at the May 2, 1961 conference as to his early concern with payola from the standpoint of the interests of the station in connection with questions as to the inclusion of an anti-payola clause in a 1955 WINS talent contract (Transcript, pp. 565-567):

"MR. McCRAW: * * * I would like to make a point right here. Is it fair to point out that at that time the obvious purpose of having such a clause was to protect the station? It was not construed in terms of all of the other significance that later has been attached to it. It was not at that time construed as something that a failure to be — to pay any attention

to payola was a matter of lazy irresponsibility and I am sure you will find a vast number of contracts of many stations maybe still don't contain such a clause because I have seen many others of different people, of different stations, I have asked the questions, I have asked the questions of other station managers, did they have it, and they have said, well, they didn't have it before, but they do now, and therefore it would not have been construed as irresponsibility if we didn't show great attention to it; we became aware of it and we felt firmly, we established it not to satisfy someone else, not to merely get some self-serving item in a contract to protect ourselves only in terms of saying, 'See, we had it,' but it was to protect us.

"We considered anything that any of the effects that payola would have [been] tremendously detrimental to the station itself, to any company. Just as if in a hotel, the reason, as I understand it, for the commercial bribery statute in the State of New York was that many employers were being victimized because the chefs in hotels would buy meat, maybe inferior grades, or pay much too much for it, and be taking a payoff from the people selling that meat.

"I once owned a hotel. I had the case where I found out that our chef was having liberal supplies of everything delivered to his home. Well, we felt pretty strongly about that. We felt that this was a highly detrimental thing. It was extremely costly to us. It was a thing that is essentially vicious and something which, if any outside factor such as that can influence the operation, and we consider this an important operation, we consider that we would be the most stupid and shortsighted people in the world, if we were, strictly from a self-interest standpoint, to tolerate such a thing; . . ."

It should be clearly understood that the licensee's early actions to prevent payola were not based upon any specific knowledge of payola practices in broadcasting, or of any assertions that payola existed at WINS. As Mr. McCaw testified (May 1, 1961, Transcript, pp. 410-411):

"Somewhere along the line we became aware of the fact that payola could happen. It was not a big issue. I must make this point clear. When you said a while ago, 'Were you aware of payola payments back in 1955,' as you put it, I must say I was not aware of them. I was aware of a lot of talk about them. We, at that time, were certainly at the beginning, a

station that was so unimportant that rating-wise or anything else in the market — that this was not a thing where we immediately came into a thing where it was a problem at the station."

The charge that licensee knew that certain of its employees were alleged to be engaged in payola practices is presumably based upon circumstances surrounding the hiring of Alan Freed in September, 1954. This subject was covered at great length at the May 1, 1961 conference. At that time, as on a previous occasion, the president of licensee denied any knowledge of Freed having engaged in payola practices prior to coming to Station WINS. At the March 14, 1961 conference the president of licensee testified as follows (March 14, 1961, Transcript, pp. 91-92):

"Q. [Mr. Harrington] Now, shortly after you took over the station, I believe it was — well, in September of that first year Alan Freed was employed as a disk jockey, or at least he was a talent —

"A. [Mr. McCaw] Approximately that time, as I recall.

"Q. Well, do you know who hired Alan Freed?

"A. Mr. Leder.

"Q. Mr. Leder. Was it discussed with you?

"A. No, sir. Well, I should say that I don't recall any particular discussion because that was in an area in which he proceeded more or less on his own and there may have been some discussion, but I believe he had been brought in there at the time I first discussed with him.

"Q. You mean Alan Freed had been brought in at the time you discussed the matter with Leder?

"A. At least, they were pretty well along in their discussions with him.

"I don't recall at this time what the timing was and the compensation was discussed with me somewhere along the line.

"Q. Now, are you familiar with the story, which, I believe was in the New York Post in December of 1959 about Alan Freed's coming to work in New York at WINS?

"Briefly, it has to do with a meeting in New York City, attended by a Mr. Freeman, a record distributor in Cleveland, and the meeting was attended by, I think, reporters from 'Variety' magazine, 'Billboard' and a representative for WINS.

"And after that meeting Mr. Freeman produced a letter allegedly from Alan Freed, in which he demanded money to play records on the Cleveland station, at which he was formerly employed.

"Do you have, or did you have any knowledge of that meeting at that time?

"It was supposed to have taken place in August of 1954.

"A. No, sir, I did not.

"Q. Has it ever been called to your attention before?

"A. It was called to my attention — the only time that I would call was by Mr. Joe Stone, who was assistant district attorney in New York, who showed me a photostat of a page in 'Variety' dated back about 1954 or '55 about that meeting.

"I don't recall having seen any reference to it in the New York Post, but there were so many stories on that subject that it could well have been mentioned there.

"But my first knowledge of it was the photostat which Mr. Stone showed to me."

Further discussion of this matter at the May 1, 1961 conference (Transcript, pp. 233-236) developed that the Commission's staff apparently had some indication that one Freeman had written a letter to the station containing something concerning Freed and that some members of the staff of WINS may have been aware of this letter in August, 1954. The substance of the information thought to have been in the letter has never been stated by the Commission's staff. In fact, Mr. Harrington stated that he had never seen the alleged letter (Transcript, p. 245). The Chief of the Complaints and Compliance Division, moreover, explicitly indicated that his alleged information "about four people that would have or should remember the letter coming in" (ibid.) did not include Mr. McCaw. At one point Mr. Harrington admitted that "I am not certain that there was any letter from Freeman to Mr. Leeder, although he said there was such a letter". (May 2, 1961 Transcript, p. 562)

The licensee has been unable to locate any such letter and it is abundantly clear from the transcript that there has at no time been any indication that the existence of any such letter or its contents were communicated to Mr. McCaw who, indeed, was away at the time the Commission's staff conjectures that the supposed letter was received (id., pp. 228-247).

In sum, it is evident that the supposition that the licensee was aware of some undefined information concerning Alan Freed in 1954 rests upon a conjecture that some letter containing such information was received by the station and communicated to its president. Against this unsupported conjecture is the explicit denial of Mr. McCaw and the statement of the Commission's staff that Mr. Leder (the only person recalling such a letter) indicated he had not communicated information concerning it to Mr. McCaw. (May 1, 1961 Transcript, pp. 236, 564)

The extended investigation (See, e.g. Transcript, pp. 228-247, 561-565) of this most remote and conjectural point about possible information as to payola in 1954 is illustrative of the extraordinary lengths to which this inquiry has gone. The Commission, recognizing that emphasis on payola practices was of recent origin, had limited its December 2, 1959 payola inquiry to matters occurring since November 1, 1958, yet the present inquiry has placed great emphasis upon an incident which, if it occurred, took place more than four years prior to the cut-off date and the existence of which rests upon admittedly vague information.

J. The Commission's letter states that "payments made to the licensee's employees by the record manufacturers and/or distributors were known or should have been known, to the licensee and constituted payment or other consideration, directly or indirectly to the licensee for the purpose of having certain recorded material broadcast by Station WINS and for other purposes."

Licensee emphatically denies that it knew or should have known that its employees were accepting payola. This charge is completely unsubstantiated by the facts on the basis of what now appears in the extensive record that has been developed during many months of rigorous investigation. After these many months of investigation, there remain but three cases of individuals purported to be involved with payola at Station WINS. These revolve around the activities of Ronald Granger, Mel Leeds and Alan Freed. As has been established above, the licensee acted with diligence with respect to Granger and Leeds when facts first came to its attention suggesting payola activities. Evidence as to Freed was not developed until after he had left the station's employ in 1958.

The licensee made a full and proper disclosure as to Leeds and Granger in its response to the Commission's December 2, 1959 payola inquiry. No disclosure as to Freed was appropriate because his connection with the station ended long prior to the time period covered by the inquiry.

By any reasonable standard, the assertion that the licensee condoned payola is refuted by the results of the Commission's own investigation. Surely, if the licensee condoned payola, there would have been more evidence of its existence at Station WINS than three isolated cases. If the licensee condoned payola then certainly the climate existing at Station WINS would have been considerably different from that which led to the Granger and Leeds resignations.

Licensee's actions with respect to payola practices demonstrate that it acted diligently in taking corrective action to eliminate payola problems when they arose and to prevent possible recurrences. The facts which have been developed through this long investigation lead clearly to this conclusion. The following salient points must be borne in mind:

1. After intensive investigation by the licensee, the New York District Attorney and the Federal Communications Commission, only three cases have been found in which WINS personnel have been alleged to have accepted payola.

2. The first case, involving a possible questionable practice (Granger), was effectively dealt with by the licensee long prior to the time that either the District Attorney or the Federal Communications Commission had evidenced any interest in the payola problem.

3. The second case (Leeds) was disclosed during an investigation commenced by the licensee prior to the time that either the District Attorney or the Federal Communications Commission had publicly expressed concern with the payola problem.

4. The third case (Freed) involved a person who had left the employ of WINS in May 1958 — long prior to the Commission inquiry or the announcement of the investigation by the District Attorney.

5. Of the three persons alleged to have accepted payola, only one was an on-the-air personality, although the station has a number of such personalities.

6. The licensee moved fairly, diligently, and effectively in an effort to develop the facts and to eliminate any possible payola problem. Both the Granger and Leeds cases culminated in the resignations of the individuals concerned.

7. Each of these three individuals has been formally charged with the crime under the New York commercial bribery statute of having accepted payola "without the knowledge and consent of his principal and employer."

8. Long before payola became the subject of Congressional or regulatory agency attention, the licensee established a policy against payola practices as a matter of prudent business judgment.

9. So far as the licensee is aware there have been no known instances of payola at the other stations operated by it (KTVR, Denver) or by its owner (KTVW, Tacoma).

SUMMATION

In this extended reply to the Commission's letter Gotham Broadcasting Corporation has endeavored to respond fully to all questions raised by the Commission. If any questions remain, it is earnestly requested that the licensee be given an opportunity to reply to them.

- In all deference to the vigorous investigation conducted by the Commission's competent and devoted staff, it is submitted that the results have merely confirmed facts already available. No evidence of wrongdoing by anyone except the three employees whose activities were disclosed by the station and the New York authorities has been developed. No credible evidence of negligence or indulgence of payola by the licensee has been produced; on the contrary, the licensee believes it has been more vigorous than most in taking steps against payola.

We do not say that the payola situation has been perfect at Station WINS. No business with a substantial number of employees is likely to have a 100% record of resistance to temptation. The point is that Station WINS has been assiduous in discharging its responsibilities as licensee.

Long before any public disclosures of the existence of payola, licensee had a firm policy against it.(Exhibit 19.) Since the first disclosure with respect to Granger, positive steps have been taken to investigate the existence of possible instances of payola and to assure that there will be no payola at WINS. The procedures of the station to prevent payola have included the following:

1. Staff meetings. (Exhibit 20)
2. Memoranda to employees. (Exhibits 21 and 22)
3. Industry questionnaire. (Exhibit 23 - 23Q)
4. Internal investigations. (Exhibits 24, 25 and 26)

5. Public and private enunciations of station policy. (Exhibits 27 and 28)
6. Certifications by employees of compliance with station policy. (Exhibit 29)
7. Announcements to new employees of station policy.
8. Consultations with the management of other stations as to measures to combat payola.
9. Taping of entire broadcast day and spot checking of tapes against station logs and music lists. (Exhibit 30)
10. Establishment of a music selection board. (Exhibit 31)
11. Monitoring by management of programs.

Since the acquisition of the station in 1954 by the licensee, WINS has been brought from mediocrity to the position of one of the leading stations in the United States. The achievement has been the direct result of the efforts of an ownership and staff which have been responsive to the needs and aspirations of the community the station serves.

The Commission must have already spent thousands of dollars in connection with this investigation. There are a vast number of exhibits already on file and nearly a thousand pages of testimony have been transcribed of the questioning by the Commission's staff of the licensee's officers and employees. In addition to the transcribed proceedings there were many preliminary conferences.

In the timely speech of the Commission's Chairman on May 9, 1961, it was said:

"I think it would be foolish and wasteful for us to continue any worn-out wrangle over the problems of payola, rigged quiz shows, and other mistakes of the past. There are laws on the books which we will enforce. But there is no chip on my shoulder. We live together in perilous, uncertain times; we face together staggering problems; and we must not waste much time now by re-hashing the cliches of past controversy. To quarrel over the past is to lose the future."

A long and costly hearing on the WINS renewal application would not contribute in any material way to the information which has already been so

completely and carefully gathered and which is now before the Commission. Such a hearing cannot be deemed in the public interest when it can only be a forum for "rehashing the cliches of past controversy".

CONCLUSION

For the foregoing reasons, and those contained in previous submissions to the Commission, the application for renewal of license for Station WINS should be granted.

Respectfully submitted,

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