

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

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

File No. BR 211

**RECEIVED**

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RESPONSE OF GOTHAM BROADCASTING CORPORATION  
TO LETTER OF AUGUST 22, 1961 FROM FEDERAL  
COMMUNICATIONS COMMISSION

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Andrew G. Haley  
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1735 DeSales Street, N.W.  
Washington 6, D.C.

Attorneys for Applicant

September 6, 1961

WINS 8

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September 6, 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 August 22, 1961 (Exhibit "A" hereto) sent to the licensee for the purpose of supplementing the Commission's letter to the licensee dated July 6, 1961, and in reply to the licensee's Response of August 4, 1961.

The Commission in its letter of August 22, 1961 clarifies certain of the allegations contained in its letter of July 6, 1961, which had not previously been stated with particularity. This letter is in reply to the new information contained in the Commission's supplemental letter, rather than a restatement of ground previously covered. Where appropriate, in order to avoid repetition, references are made herein to the licensee's Response of August 4, 1961.

I

The Commission's letter states that:

"With respect to the statement 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, ' the information in the Commission's files is in substance, that Mr. Alan Freed, while an employee of the station, was called by Mr. Fearnhead into Mr. Fearnhead's office at Station WINS and, in the presence of Mr. McCaw, Mr. Fearnhead said, 'Come on Alan, we know you are getting paid. Alan is there any way to go to the record distributors and manufacturers and make a deal with them, whereby they can pay the radio station for getting their records played, ' or words to that effect; and that Mr. Freed replied, 'The record companies are not that big an operation and there would not be that much money involved, ' or words to that effect. "

The information set forth in the Commission's letter is to the effect that there were three parties involved in the supposed conversation; namely, Mr. Alan Freed, Mr. Jock Fearnhead, then general manager of Station WINS, and Mr. J. Elroy McCaw, president of the licensee. We now have sworn statements or affidavits as to statements, of all three of the persons who supposedly participated in the alleged conversation. All confirm that Mr. McCaw was never present at any such meeting.

Attached to this letter as Exhibit "B" is the affidavit of Mr. McCaw which affirms that he was not present at any such alleged conversation between Freed and Fearnhead. That Mr. McCaw was not present is further confirmed by an affidavit

of Mr. Jock Fearnhead (Exhibit "C" hereto) which we understand has been filed with the Commission. The pertinent language of the affidavit dated August 31, 1961 is as follows:

"With reference to the statement by Mr. Alan Freed contained in paragraph 2 of the above mentioned letter, I absolutely deny that at any time either in the presence of Mr. McCaw or alone with Mr. Freed that I ever referred to the fact that I knew Mr. Freed was getting paid by record companies or even referring to that fact in any way whatsoever. In order to be sure and cover the statements made in said paragraph completely, I deny that I ever made the statement in quotes attributed to me by Alan Freed and I deny that I ever said anything like that at any time to Mr. Freed or to anyone else; and I further deny that Mr. Freed made the reply also quoted in said second paragraph or anything like it in my presence or to my knowledge. I further deny that there was any such meeting as that referred to between Mr. McCaw, Mr. Freed and myself.

"In this connection and to make my statement complete on the subject of payola, which is implied in this paragraph, I want to state that at no time did I ever tolerate payola as a practice at WINS."

The third person who, according to the Commission's letter, was present while the questioned conversation was supposed to have taken place, also stated in the presence of witnesses that Mr. McCaw was not present. On July 18, 1961 at a meeting held in New York, N. Y. with Alan Freed in the presence of Mr. Morris J. Levy, his former manager, Mr. J. Elroy McCaw, Mr. Bernard

Tannenbaum (Mr. McCaw's local counsel) and Alan Freed's present wife, Freed stated that Mr. McCaw was not present during any such conversation. A detailed account of what was said by Alan Freed and what took place at the July 18, 1961 meeting is contained in the affidavits of Mr. Morris Levy and Mr. Bernard Tannenbaum. (The originals of these affidavits appear as Exhibits 11 and 12 to the August 4, 1961 Response of Gotham Broadcasting to the July 6, 1961 letter to the Commission.) (See also licensee's Response of August 4, 1961 at pp. 22-27.)

With respect to the asserted meeting between Freed, Fearnhead and McCaw, Mr. Tannenbaum's affidavit contains the following:

"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. " (Emphasis supplied.)

Mr. Levy's affidavit concerning the same meeting with Freed states as follows concerning Freed's discussion of the alleged Freed-Fearnhead-McCaw conference:

"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."

On the basis of the Fearnhead, McCaw, Levy and Tannenbaum affidavits, it has been clearly established that Mr. McCaw was not present during the alleged conversation between Fearnhead and Freed which gave rise to the Commission's statement 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." All those who the Commission suggests were present during such a conversation state that Mr. McCaw was not present during any such conversation. Two of the three originally alleged to be present (Messrs. Fearnhead and McCaw) have categorically denied under oath that the meeting took place. The third, Mr. Freed,

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has stated in the presence of witnesses that, in any event, the supposed remarks of Mr. Fearnhead were not made in a serious vein nor taken seriously. (See Exhibits 11, 11A and 12 to the licensee's Response of August 4, 1961 and accompanying text.)

A charge could hardly be refuted more conclusively.

## II

The Commission's letter states:

"With reference to the statement 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 basis for the statement is the fifth paragraph of the WINS inter-office correspondence dated November 2, 1959 from Hap Anderson to Mel Leeds."

This assertion was exhaustively treated in our Response to the Commission's letter of July 6, 1961. Although the precise basis of the Commission's statement was not known at the time we prepared our Response to the Commission's July 6, 1961 letter, we observed that "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" (p. 27). The Commission has now confirmed our assumption that the November 2, 1959 intra-office memorandum is the entire basis for the statement.

The pertinent language of the November 2, 1959 intra-office memorandum of Harold Anderson is as follows: "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."

The precise meaning of the November 2, 1959 memorandum is fully set forth in our August 4, 1961 Response to the Commission's letter of July 6, 1961. We incorporate here pages 27 through 29 of that Response.

The statement in question is at the least inarticulate. The precise language of the questioned statement is not self-explanatory. It does not with any degree of specificity indicate the idea that is to be conveyed by the entire statement. In view of the incomplete nature and imprecise terms of the statement contained in the November 2, 1959 intra-office memorandum, the best source for determining what was meant by the language is the person who made the statement. We must, therefore, determine what Mr. Anderson, the writer of the statement, intended to convey in the fifth paragraph of that memorandum.

We have already set out in detail statements made by Mr. Anderson which spell out precisely what he meant in his



November 2, 1959 memorandum. In our reply to the Commission's letter of July 6, 1961 we referred to other documents which have been presented to the Commission previously that clearly set the November 2, 1959 statement in perspective. Three of these documents referred to were also written by Harold Anderson in connection with the same subject. Mr. Anderson in a statement on August 8, 1960 (submitted to the Commission with an affidavit in January 9, 1961 (Gotham August 4, 1961 Response, Exhibit 25)) summed up what he meant by his November 2, 1959 memorandum notation as follows:

"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."

In our Response to the Commission's letter of July 6, 1961, we also referred to a similar expression of these same thoughts by Mr. Anderson which were set forth in writing within three weeks of the November 2, 1959 memorandum. Thus, Mr. Anderson in his daily report for November 17, 1959 stated:

"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. "

Mr. Anderson in his daily report for February 9, 1960 also expressed the same thought that his November 2, 1959 memorandum was to obtain Mel Leeds' "cooperation . . . in obtaining advertising monies from the record companies. " Mr. Anderson also reported in this memorandum that this matter was discussed with Mr. Stone of the New York District Attorney's office. But in addition to these statements of Mr. Anderson, which were set out in detail in our response to the Commission's letter of July 6, 1961, Mr. Anderson was thoroughly interrogated on this very subject by the Commission's staff on March 14, 1961 at a conference held in Washington, D. C.

Mr. Anderson at that conference initially referred to this problem of selling time to record companies in giving his recollection of discussions and meetings in which he participated wherein the subject of payola was discussed at Station WINS. Commencing at page 54 of the transcript of the March 14, 1961 Proceedings, Mr. Anderson observed:

The next one [meeting] that I recall, of a meeting of any importance, was after the story came out following the Todd Storz' Music Jamboree or some sponsored music jamboree in Florida when there were a lot of accusations made, and I think it was on booze, broads, and I forgot what the other 'B' was, but there were three B's on it, and at that time Elroy McCaw brought to our attention the fact that in KDAY, in Los Angeles, which he owned, they had tried to circumvent the possibility of payola by instituting a payment on the regular rate card as a regular advertiser by the record companies, which eventually didn't work out but it gave us a start on trying to think of some way in which we could divert money, if there was this much money going around, or why shouldn't we have it through legitimate channels, accruing to the ownership and the station?

"I think the next time we got into the payola bit, that I recall, was the 30th of October, which was a Friday night just before Mr. McCaw left for Seattle in which he, Mel Leeds, and myself had a discussion on several items and which was followed up by the memo which you have on Monday, November 2nd.

"And, again, it was a case of trying to explore the possibility of approaching the record companies to buy spots, plugging their label, plugging their stars, and keeping it on a legitimate basis.

"Naturally, with Mel being the program director, he knew the record promoters better than anyone else. So it was deemed wise that he would be the contact man with these people and to use the exact same rate card we used for every other advertiser, and to be paid on the same basis of that the salesmen were for any business which resulted in this.

"Unfortunately, before we go implementing it everything else broke loose and nothing was done on it by mail."

Mr. John Harrington, Chief of the Commission's Complaints and Compliance Division, then commenced to interrogate Mr. Anderson with respect to the November 2, 1959 Memorandum. The examination of Mr. Anderson by Mr. Harrington follows:

[Harrington] "I will show you a memo, dated November 2, 1959, from you to Mel Leeds and you will notice one paragraph on the record companies --"

[Anderson] "Right. This is the one I was referring to."

[Harrington] "Yes. Was the discussion that you have just given to us in the explanation for that paragraph?"

[Anderson] "Yes. Yes, it was. The terminology I used, apparently, was very unwise, but in light of the meetings that we had had prior to this time I could see no area of misunderstanding on Mel's part in just recounting item by item what we had gone over in the meeting the Friday before."

[Harrington] "Yes. Mel Leeds was at that meeting the Friday before?"

[Anderson] "Yes, sir."

[Harrington] "Had he been in on any of the other discussions as to selling of time to record companies?"

[Anderson] "Yes. In the latter part of August or the first part of September, when Elroy brought up the recounting of KDAY's attempt to sell time, that was related in this payola story in broadcasting."

Commencing at page 75, Mr. Hunter and Mr. Harrington of the Commission's staff pursued this same line of questioning:

[Hunter] "Now, I would like to go to the meetings that you held prior to November 2d, 1959, of that memorandum, in which you, I understood you to say, had discussed how you could channel moneys into ownership by record companies."

[Anderson] "That is through advertising, yes."

[Hunter] "Through advertising. Actually, how many meetings were there prior to that November 2d memorandum?"

[Anderson] "Well, the one full scale meeting was around the first of September. Again, following this article of Broadcasting which outlined what KDAY Station was doing in Los Angeles.

"Prior to that and following that, it was mentioned on several occasions but not that deeply, such as Elroy asking me:

'Have you figured out what type of a packaged plan to set up in selling advertising?'

'Have you figured out whether it would be best to have the advertising appear before the record of that same company or completely independent?'

"I mean, questions such as this. I can't pin point the dates."

[Hunter] "Can you pin point who else, other than yourself and Mr. McCaw, attended these meetings? "

[Anderson] "Yes. Lee was there on occasion, as I recall. Mel, I know, was. There was one meeting whereby Charles LeMieux, who was the then sales manager of the station, was brought into the discussion from the standpoint of setting it up in the sales department. "

[Hunter] "Mr. Leeds was there at the same time that Mr. LeMieux or whatever his name is --"

[Anderson] "LeMieux. "

[Hunter] " -- was also there? "

[Anderson] "Yes. "

[Harrington] "Was that meeting after November 2d? "

[Anderson] "No. That was prior to November 2d. That was after a long, full scale meeting we had around the first of September or somewhere in that area. "

[Hunter] "Can you pin point who was at the full scale meeting? I assumed this involved more people than some of the other meetings? "

[Anderson] "Yes, and over a long period of time. You must understand, and I am sure you do, after being out there, that we are subject to interruption quite frequently, and go back into session and it is pretty hard to pin point who was

there at one time and who was there at the other.

"But I do know there involved in this discussion were Gorman, Leeds, LeMieux, and, as a matter of fact, I believe one of the salesmen, who had within his agencies the motion picture industry, who are now in the record business, too, like Columbia, and Twentieth Century Fox, and he was brought in for his expression and ideas of what kind of budgets would these people have set up.

"Beyond that, I don't recall anyone else, and I don't know whether they were all there at one time or not, but this was during the period of two or three days."

[Hunter] "Then, this meeting in September and your November 2d memorandum, this had not been resolved or finalized in any way as to how this could be done, which was evidence (sic) also by some written memorandum at the station?"

[Anderson] "I am not following you. Written memorandum? Let me answer the first part of this. We had set up a packaged plan through the sales department, whereby they would be able to use the end rate of the packaged plan on this strictly run of schedule basis and not tied in with a particular record of the company by big advertising.

"In other words, to be treated strictly as an account who is buying time on the station as any other account would be."

[Hunter] "Did you discuss that a little more as to actually how many spots, how much time, how much money would be realized?"

"Just what did the plan consist of?"

[Anderson] "Well, the plan that was felt would be the most ideal plan would be the ten plan which is \$594 ten spots, to be specific, per week, on a run of schedule basis.

"That means all time classifications.

"The Sales Department did not get involved in buying it because they did not have the contacts. This was not an agency call, but it was strictly to the distributor of the manufacturer himself.

"Mel was the one who was supposed to follow through on it and did not. "

The discussion of this subject continued to page 81 of the transcript.

At this same conference of March 14, 1961, Mr. McCaw also was questioned extensively with respect to this subject (see transcript of March 14, 1961 meeting, pp. 119-129).

Against the background of the documents submitted in our response to the Commission's July 6, 1961 letter, and in view of the extensive questioning by the Commission's staff of Mr. Anderson and Mr. McCaw on this subject, we believe that any unfavorable inferences which might be drawn from the WINS intra-office memorandum of November 2, 1959, standing alone, have been conclusively dispelled.

### III

The Commission's letter states that:

"Referring to the statement that 'officers of the licensee solicited and accepted gifts of substantial value from record companies,' the information in the Commission's files reflects, in substance, that in August or September, 1959 Mr. McCaw asked Mr. Leeds what connections he had to get Mr. McCaw a Hi-Fi set for his office and requested Mr. Leeds to get one; that Mr. Leeds obtained a console set from Columbia Records and it was installed by the record company in Mr. McCaw's office at the station; that after the 'payola' investigation started, late in November 1959, Mr. McCaw asked Mr. Leeds to get a bill for the set from Columbia Records and stated to Mr. Leeds, 'Well, I wanted to pay for it, but just wanted to find out if you had connections,' or words to that effect; that this was the only

time Mr. McCaw asked about the bill; and that the bill for the set was presented to Mr. McCaw in December 1959. The information further reflects, in substance, that Mr. Leeds obtained a Hi-Fi set from Capital [sic] Records in 1958 which was accepted by Mr. Fearnhead for his office knowing that the set had not been paid for. And the information further reflects, in substance, that in late 1958 or early 1959 Mr. Fearnhead was in the process of buying a refrigerator for use in his home; that Mr. Leeds told Mr. Fearnhead that he (Leeds) could get a refrigerator for Mr. Fearnhead from RCA for nothing; that RCA sent the refrigerator to Mr. Fearnhead's home; and that Mr. Fearnhead knew that the refrigerator was obtained from RCA for his personal use without cost. "

The statement that "officers of the licensee solicited and accepted gifts of substantial value from record companies" centers around three specific items of personal property. The first involves a console received from Columbia Record Distributors Inc., the second a Hi-Fi set from Capitol Records, and the third a refrigerator from RCA. With respect to each of these items it will be shown that there is no substance to the contention that officers of the licensee solicited and accepted gifts thereof. Although the Commission has not charged that the alleged gifts were solicited and accepted to influence programming, or that programming was in fact influenced, the licensee nevertheless welcomes the opportunity to discuss these matters in detail to dispel the slightest question concerning them. Each of the items set forth in the Commission's statement on this point will be discussed separately.



A. Record Player

The circumstances surrounding the purchase of a record console from Columbia Record Distributors Inc. by the licensee follow.

In the early part of November, 1959, as a part of the investigation instituted by Mr. McCaw into possible payola practices at Station WINS, Mr. McCaw decided to review the WINS "pick hit of the week" records for the prior 12 months. Mr. McCaw requested Mr. Leeds, the program director of Station WINS at the time, to bring these records to him and to obtain a record player so that Mr. McCaw would be able to listen to them in his office. From the time Mr. Leeds was requested to obtain the record player it was always Mr. McCaw's intent that the record player obtained would be paid for by the licensee. This is demonstrated by the circumstances surrounding the purchase, billing and payment for the record player. Columbia Records has confirmed that its files establish that an order for purchase of the record player was made on November 12, 1959, and not in August or September as the information in the Commission's files evidently indicates. The record player was delivered to Station WINS on the following day, November 13, 1959. The vendor billed for the record player on December 4, 1959 and payment was duly made by Gotham Broadcasting Corporation (Exhibits D and E).

The implication that Mr. McCaw asked Mr. Leeds to get a bill for the record player in late November, 1959, as a belated afterthought in light of the payola investigation is as inaccurate as the information that the record player was requested by Mr. McCaw in August or September 1959. Mr. McCaw left for Seattle, Washington on November 20, 1959 (7 days after delivery of the player) and did not return to New York until December 7, 1959 (see Exhibit "F"), three days after Station WINS had been billed for the record player by Columbia Record Distributors Inc.

In order to give any credence to the information relied upon by the Commission, the assertedly belated decision of Mr. McCaw to have the station billed for the Columbia record player necessarily would have had to be made prior to November 20, 1959, since after that date Mr. McCaw was in Seattle, Washington and did not return to New York until after the billing had occurred. From the documentary evidence, which conclusively establishes the dates on which the record player was ordered, delivered and billed, and Mr. McCaw's absence from New York City at the time he was supposed to have communicated the alleged belated decision and until after the billing occurred, it is clear that the charge that Mr. McCaw "solicited and accepted" this record player as a gift is obviously without foundation. Nevertheless, to

remove any remaining question, the attached affidavit of Mr. McCaw sets forth the facts as they occurred. (See Exhibit "B".)

B. Hi-Fi Set

The circumstances surrounding the receipt of a record player in 1958 by Mr. Jock Fearnhead from Capitol Records are set forth in the August 31, 1961 affidavit of Mr. Fearnhead referred to earlier in this response. Mr. Fearnhead states that a "hi-fi set was delivered to my office at WINS in . . . November 1958." He further states, however, that he could be wrong as to the exact date that the set was received. The next statement of Mr. Fearnhead on this point is crucial. He states:

"This set was delivered without any authorization from myself and without any knowledge at that time. Upon questioning Mr. Leeds as to the origin of the Hi-Fi set, he told me that he had obtained it from Capitol Records and that it was a gift to the radio station."

Not only does Mr. Fearnhead's affidavit establish that Mr. Leeds was the person who obtained the Hi-Fi set, but this fact is acknowledged in the Commission's letter of August 22, 1961. It is therefore established that no officer of the licensee "solicited and accepted" the Hi-Fi set.

It should be noted that in November 1958, when Fearnhead indicates the set was delivered to Station WINS, Mr. McCaw,

shortly before, had been released from the hospital, and was in Seattle, Washington, recuperating from very serious injuries received in an automobile accident, which occurred in the latter part of September, 1958. As a result of the injuries received from this accident, Mr. McCaw was not able to return to his New York office until after the first week of December, 1958. It should also be noted that the Hi-Fi set served no function at the station. Early in 1959, long before any investigation of payola practices had commenced, the unwanted Hi-Fi set was given by the licensee to the invalid sister of a secretarial employee of Station WINS.

C. Refrigerator

Mr. Fearnhead's affidavit (Exhibit "C" ) details the circumstances surrounding the receipt by him of a refrigerator. Mr. Fearnhead in his affidavit on this point states:

"Further referring to the fourth paragraph of the aforesaid letter, I wish to clarify exactly what happened with reference to the refrigerator that in late 1958 in, I believe, the month of October while Mr. and Mrs. Leeds were visiting my home in Mamaroneck, we were comparing notes on the furnishing of our homes; that in the course of the conversation I mentioned that among other things, we were buying a refrigerator; that Mr. and Mrs. Leeds said that they had a refrigerator on order from RCA but that they no longer needed it; that they had long admired one of our Oriental rugs, and Leeds said to me that if I would give him the rug, he would give me the refrigerator in trade. Nothing was said by

Mr. Leeds about his getting the refrigerator for nothing and I assumed at that time and always have assumed that he had bought the refrigerator, but no longer had any use for it himself. The trade was made . . . I gave him the rug and he gave me the refrigerator. The rug, incidentally, being a Nichols Oriental rug, was valued by us at between \$400 and \$500, and I believe this was about the same evaluation as placed on the refrigerator. I certainly would not have given Mr. Leeds a rug of this value if I hadn't believed I was receiving in return a refrigerator which had cost him approximately the same amount. I further categorically deny that I knew that the refrigerator was obtained from RCA for my use without cost, and it was definitely my understanding that Leeds either had bought the refrigerator or had it on order and had no further use for it.

"Also I have been informed recently by Mr. Leeds' present employer, Mr. Keating, that when Leeds was confronted with the fact that I have stated above regarding the exchange of the rug for the refrigerator, Mr. Leeds admitted to Mr. Keating that this was the truth and said that he had forgotten all about the rug incident when he made his affidavit. "

On the basis of Mr. Fearnhead's affidavit, no charge of an officer of the licensee soliciting and accepting a gift from a record company can be established. In the first place, no gift of any kind was involved because Mr. Fearnhead paid full consideration for the refrigerator. In addition, Mr. Fearnhead denies under oath any knowledge that the refrigerator was obtained by Mr. Leeds from RCA without cost. Indeed, Mr. Fearnhead states that it was his definite understanding that "Leeds either had bought the refrigerator or had it on order and had no further use for it. "

The licensee is not in a position to state with certainty what the motives or precise conduct of Mr. Leeds or RCA may have been in this matter, It does appear, however, that the transaction reflects no discredit on Mr. Fearnhead and certainly reflects no discredit upon the licensee which was wholly unaware of the matter.

### CONCLUSION

Gotham Broadcasting Corporation has fully and painstakingly responded to each of the questions raised in the Commission's letters of July 6, 1961 and August 22, 1961. Indeed, consistent with the time available, it has instituted further investigation to ascertain the full facts concerning the new matters raised by the Commission for the first time. The staff of the Commission has received the complete cooperation of the licensee throughout every phase of this long investigation and has permitted free access to the files of Station WINS to facilitate the inquiry.

The Commission's inquiry in this case is probably without precedent in scope and depth, involving exhaustive examination of every rumor or whisper of a possible payola practice over a 7 year period. The results are that isolated instances of possible payola have been developed but there is not a shred of credible evidence that the licensee participated in, knew of, or condoned

payola activities, and it has shown that the licensee has been diligent in its efforts to prevent payola. No sound basis exists for ordering a hearing to explore further into these thoroughly investigated matters, all of which relate to activities of an increasingly remote past.

For the foregoing reasons, and those stated in the licensee's Response of August 4, 1961, and in previous submissions, the application for renewal of license for Station WINS should be granted.

Respectfully submitted,

GOTHAM BROADCASTING CORPORATION

By Haley, Wollenberg & Bader

/s/ Andrew G. Haley

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Andrew G. Haley

/s/ J. Roger Wollenberg

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J. Roger Wollenberg

/s/ Stanley Sporkin

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Stanley Sporkin

Its Attorneys

1735 De Sales Street, N.W.  
Washington 6, D. C.

September 6, 1961

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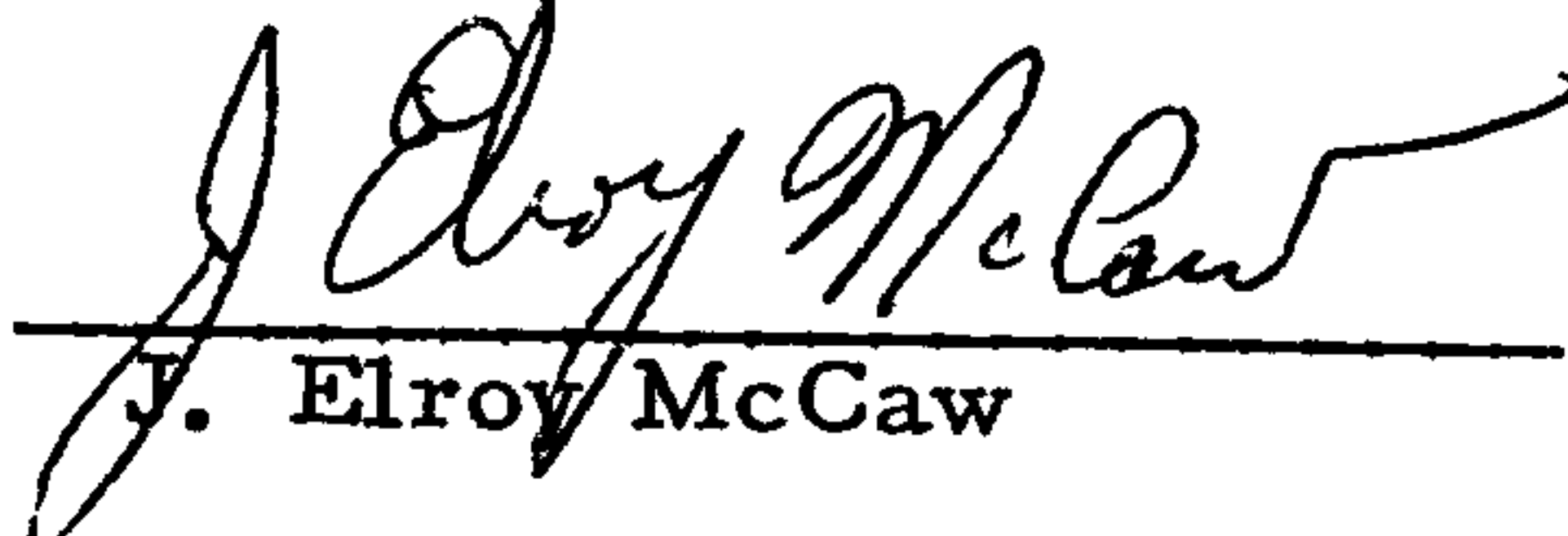
CITY OF WASHINGTON )  
                                  )    ss  
DISTRICT OF COLUMBIA )

J. ELROY McCAW, being first duly sworn, deposes  
and says:

That he is the president of the Gotham Broadcasting  
Corporation, New York, New York;

That he knows the contents of the foregoing document;  
and

That the factual matters therein stated are true to the  
best of his knowledge, information and belief.

  
\_\_\_\_\_  
J. Elroy McCaw

Subscribed and sworn to before me this *4<sup>th</sup>* day of *August*  
1961.

  
\_\_\_\_\_  
Notary Public, D.C.

My commission expires: *Feb. 28* 1966.



AFFIDAVIT

CITY OF WASHINGTON )

ss

DISTRICT OF COLUMBIA )

J. ELROY McCaw, being first duly sworn, deposes  
and says:

That he is the president of the Gotham Broadcasting  
Corporation, New York, New York;

That he knows the contents of the foregoing document;  
and

That the factual matters therein stated are true to  
the best of his knowledge, information and belief.

/s/ J. Elroy McCaw  
J. Elroy McCaw

Subscribed and sworn to before me this  
6th day of September 1961.

[Seal]

/s/ Ethna White  
Notary Public, D. C.

My commission expires: Feb. 28, 1966.

EXHIBIT A

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON 25, D. C.

Address All Communications  
to the Secretary

August 22, 1961

Gotham Broadcasting Corporation  
Station WINS  
Radio Circle 7  
Central Park West  
New York 23, New York

Gentlemen:

This letter is for the purpose of supplementing the Commission's letter dated July 6, 1961 addressed to you relating to the Commission's inquiry into the activities, practices and operation of Station WINS. This also acknowledges receipt of your letters of August 7 and 8, 1961, transmitting to the Commission your "Response" and "Exhibits" supplemental thereto, respectively, to the Commission's July 6, 1961 letter. In your response, you state that certain statements or assertions in the Commission's July 6, 1961 letter are new and had not been raised in the conferences held by the Commission's staff with the licensee; and that your answer to these assertions must be speculative because you do not know the basis for the assertions. This letter is to apprise you of the substance of the information in the Commission's possession relating to said assertions.

With respect to the statement 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," the information in the Commission's files in substance, that Mr. Alan Freed, while an employee of the station, was called by Mr. Fearnhead into Mr. Fearnhead's office at Station WINS and, in the presence of Mr. McCaw, Mr. Fearnhead said, "Come on Alan, we know you are getting paid. Alan is there any way to go to the record distributors and manufacturers and make a deal with them, whereby they can pay the radio station for getting their records played," or words to that effect; and that Mr. Freed replied, "The record companies are not that big an operation and there would not be that much money involved," or words to that effect.

With reference to the statement 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 basis for the statement is the fifth paragraph of the WINS inter-office correspondence dated November 2, 1959 from Hap Anderson to Mel Leeds.

Referring to the statement that "officers of the licensee solicited and accepted gifts of substantial value from record companies," the information in the Commission's files reflects, in substance, that in August or September, 1959 Mr. McCaw asked Mr. Leeds what connections he had to get Mr. McCaw a Hi-Fi set for his office and requested Mr. Leeds to get one; that Mr. Leeds obtained a console set from Columbia Records and it was installed by the record company in Mr. McCaw's office at the station; that after the "payola" investigation started, late in November 1959, Mr. McCaw asked Mr. Leeds to get a bill for the set from Columbia Records and stated to Mr. Leeds, "Well, I wanted to pay for it, but just wanted to find out if you had connections," or words to that effect; that this was the only time Mr. McCaw asked about the bill; and that the bill for the set was presented to Mr. McCaw in December 1959. The information further reflects, in substance, that Mr. Leeds obtained a Hi-Fi set from Capital Records in 1958 which was accepted by Mr. Fearnhead for his office knowing that the set had not been paid for. And the information further reflects, in substance, that in late 1958 or early 1959 Mr. Fearnhead was in the process of buying a refrigerator for use in his home; that Mr. Leeds told Mr. Fearnhead that he (Leeds) could get a refrigerator for Mr. Fearnhead from RCA for nothing; that RCA sent the refrigerator to Mr. Fearnhead's home; and that Mr. Fearnhead knew that the refrigerator was obtained from RCA for his personal use without cost.

Any reply you may wish to make should be filed in triplicate within 15 days from the date of this notice.

Very truly yours,

/s/ Ben F. Waple

Ben F. Waple  
Acting Secretary

cc - Haley, Wollenberg & Bader  
J. Elroy McCaw (At Seattle)



I requested Mel Leeds to get me a recording of each pick hit of the week for the preceding 52 weeks and to put a record player in my office in order that I might have a chance to check the recordings that had been selected.

A day or two later a record player was delivered and installed in my office. When I saw it, I asked Mr. Leeds how much it cost. His response was to the effect that he did not think that Gotham Broadcasting Corporation would be charged for it. I instructed him immediately to arrange to determine the price and to have proper billing made. Leeds checked the price and reported back to me that the matter had been taken care of.

The following is an approximate chronology of the pertinent facts:

November 12, 1959 -- The record player was ordered.

November 13, 1959 -- The record player was delivered.

Within a day or two thereafter the price was determined and billing was ordered.

November 20, 1959 -- The WINS investigation cul-

minated in the admission to me by Leeds that he had accepted money from record companies. On that same day I left New York for Seattle, where I remained until December 7, 1959.

December 4, 1959 -- Actual billing was made by

Columbia Record Distributors Inc. for the  
purchase price of the player.

The sole purpose of ordering the player was for use  
in connection with the payola investigation being conducted  
by Gotham Broadcasting Corporation.

/s/ J. ELROY McCAW

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J. ELROY McCAW

Subscribed and sworn to before me

this 6th day of September, 1961.

/s/ Ethna White

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Notary Public, D. C.

My commission expires Feb. 28, 1966.

City of Honolulu  
State of Hawaii SS

H. G. Fearnhead, being first duly sworn, deposes and says:

That I am H. G. Fearnhead of 6053 Summer Street, Honolulu, Hawaii; that I am one of the owners and President of Radio Station K-FOI in Honolulu; that I am the H. G. Fearnhead referred to in The Federal Communications Commissions letter from Washington, D. C. dated August 22, 1961, addressed to Gotham Broadcasting Corporation, New York City, New York, and that I am the person who was formerly general manager of Radio Station WINS in New York City; that I am making this affidavit of my own volition and also at the request of Elroy McCaw, who brought this communication to my notice in order to clarify certain matters stated in that letter referring to myself at the time I was general manager of Radio Station WINS and for a short period of time thereafter.

With reference to the statement by Mr. Alan Freed contained in paragraph 2 of the above mentioned letter, I absolutely deny that at any time either in the presence of Mr. McCaw or alone with Mr. Freed that I ever referred to the fact that I knew Mr. Freed was getting paid by record companies or even referring to that fact in any way whatsoever. In order to be sure and cover the statements made in said paragraph completely, I deny that I ever made the statement in quotes attributed to me by Alan Freed and I deny that I ever said anything like that at any time to Mr. Freed or to anyone else; and I further deny that Mr. Freed made the reply also quoted in said second paragraph or anything like it in my presence or to my knowledge. I further deny that there was any such meeting as that referred to between Mr. McCaw, Mr. Freed and myself.

In this connection and to make my statement complete on the subject of payola, which is implied in this paragraph, I want to state that at no time did I ever

tolerate payola as a practice at WINS. With reference to the fourth paragraph of said letter and the alleged statements by Mr. Leeds regarding a Hi-Fi set in my office, it is true that a Hi-Fi set was delivered to my office at WINS in, I believe, November of 1958, but I could be wrong as to this exact date. This set was delivered without any authorization from myself and without any knowledge at that time. Upon questioning Mr. Leeds as to the origin of the Hi-Fi set, he told me that he had obtained it from Capitol Records and that it was a gift to the radio station.

Further referring to the fourth paragraph of the aforesaid letter, I wish to clarify exactly what happened with reference to the refrigerator that in late 1958 in, I believe, the month of October while Mr. and Mrs. Leeds were visiting my home in the Mamaroneck, we were comparing notes on the furnishing of our homes; that in the course of the conversation I mentioned that among other things, we were buying a refrigerator; that Mr. and Mrs. Leeds said that they had a refrigerator on order from RCA but that they no longer needed it; that they had long admired one of our Oriental rugs, and Leeds said to me that if I would give him the rug, he would give me the refrigerator in trade. Nothing was said by Mr. Leeds about his getting the refrigerator for nothing and I assumed at that time and always have assumed that he had bought the refrigerator, but no longer had any use for it himself. The trade was made... I gave him the rug and he gave me the refrigerator. The rug, incidentally, being a Nichols Oriental rug, was valued by us at between \$400 and \$500, and I believe this was about the same evaluation as placed on the refrigerator. I certainly would not have given Mr. Leeds a rug of this value if I hadn't believed I was receiving in return a refrigerator which had cost him approximately the same amount. I further categorically deny that I knew that the refrigerator was obtained from RCA for my use without cost, and it was definitely my understanding that Leeds either had bought the refrigerator or had it on order and had no further use for it.

HGF



Also I have been informed recently by Mr. Leeds' present employer, Mr. Keating, that when Leeds was confronted with the fact that I have stated above regarding the exchange of the rug for the refrigerator, Mr. Leeds admitted to Mr. Keating that this was the truth and said that he had forgotten all about the rug incident when he made his affidavit.

Dated this 31st day of  
August, 1961

/s/ H. G. Fearnhead  
SIGNED  
H. G. FEARNHEAD

Individual

STATE OF HAWAII,                    )  
City and County of Honolulu.    )    ss:

On this 31 day of August, A. D. 1961, before me personally appeared ---H. G. Fearnhead--- to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[SEAL]

/s/ Vern V. Gilligan  
Notary Public, First Judicial Circuit  
State of Hawaii  
Notary Public, First Judicial Circuit  
State of Hawaii

My Commission Expires Aug. 6, 1963

EXHIBIT "D"

COLUMBIA RECORDS

A Division of Columbia Broadcasting System, Inc.

799 Seventh Avenue, New York 19, New York . Circle 5-7300

Harvey L. Schein  
General Attorney

September 5, 1961

Gotham Broadcasting Corp.  
Seven Central Park West  
New York, N. Y.

Gentlemen:

At your request, I have looked into the background of our having sent a phonograph to Mr. Mel Leeds at Station WINS in New York.

On or about November 12, 1959, Mr. Leeds requested that we send a phonograph to the station; and on or about November 13, 1959, the phonograph was transported to him at WINS. I am told that thereafter Mr. Leeds requested that we bill him for this phonograph, and we did so on or about December 4, 1959. This bill was paid sometime in March of 1960.

I hope this information serves your purposes.

Very truly yours,

/s/ Harvey L. Schein

HLS:mhs

cc: Ralph Colin, Esq.

353 FOURTH AVENUE, NEW YORK 10, N. Y.

DATE 12/11/59

Murray Hill 5-3200

BILL TO: MEE. LEEDS S  
% WINS H TO: Room 256  
7 Central Park West, I  
New York, N.Y. P

VIA:

DATE	DEALER	QUAN.	SELECTION	NUMBER	UNIT PRICE	AMOUNT	DEALER RECEIVING CHECK
	900	1	634			110.00	
		1	VM Spindle			1.33	
						111.33	
<p>705-00</p> <p>0344</p> <p>JAN 20 1960</p> <p>#4017</p> <p>TERMS: NET 10TH PROX.</p>							
NOTE—NO CLAIM ALLOWED 5 DAYS AFTER RECEIPT OF GOODS. FOR OUR MUTUAL PROTECTION NOTIFY US OF ANY ERRORS OR OMISSIONS. WE WILL NOT ACCEPT ANY MERCHANDISE FOR CREDIT OR REPLACEMENT WITHOUT OUR WRITTEN PERMISSION.						CASH DISCOUNT	
						SALES TAX	3.34
						NET	114.67

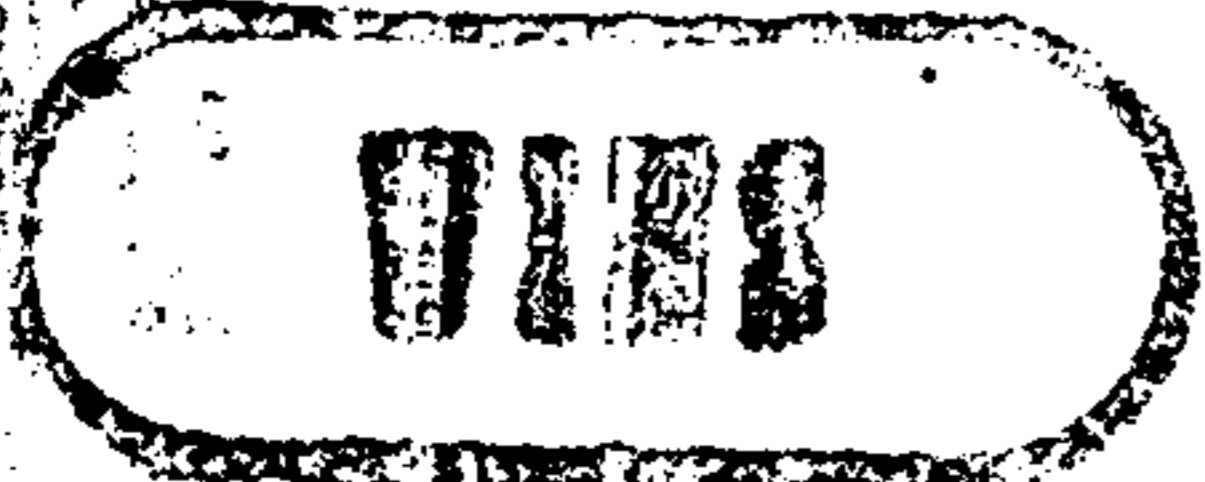
NO. OF PKGS.

TERMS

PICKED BY

PACKED BY

**THIS IS YOUR INVOICE. WE DO NOT REBILL.**



FROM: A. Alfred

SUBJECT:

Following is the information you requested re Mr. Hooper's time spent in New York in 1959, and other points - outside of Seattle.

Jan. 31st through Feb. 1st	NY	2 weeks
Feb. 8th	9th - Washington, D.C.	2 days
Feb. 10th	12th - NY	3 days
Feb. 21st	March 1st - NY	8 days
March 16th	NY	1 day
March 17th	March 21st - Chicago, Ill.	4 days
March 21st	April 1st - NY	3 weeks
April 11th	April 12th - Washington, D.C.	3 days
April 13th	April 17th - Las Vegas - MOO	4 days
April 21st	May 1st - NY	8 days
May 1st	Philadelphia	1 day
May 6th	May 20th - NY	17 days
May 21st	Washington, D.C.	1 day
May 28th	May 29th - NY	2 days
June 1st	June 1st - NY	2 days
June 5th	Philadelphia	1 day
June 6th	NY	1 day
June 15th	June 23rd - NY	9 days
July 7th	July 11th - NY	6 days
July 15th	July 16th - Washington	1 day
July 17th	July 18th - NY	2 days
August 3rd	August 3rd - NY	0 days
August 5th	September 1st - NY	5 days
September 1st	September 7th - Washington, D.C.	6 days
September 8th	September 11th - NY	3 days
September 20th	September 21st - Los Angeles	1 day
September 22nd	through September 28th	15 days
October 1st	NY	1 day
October 1st	Washington, D.C.	1 day
October 15th	October 15th - NY	16 days
November 7th	NY	1 day
November 8th	Nov. 10th - Chicago	2 days
November 11th	NY	1 day
November 15th	Philadelphia	1 day
Nov. 23rd	November 23rd	8 days
Nov. 28th	December 1st	11 days

FOL