

LAW OFFICES
HALEY BADER & POTTS P.L.C.
4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345
E-MAIL: haleybp@haleybp.com

JOHN M. PELKEY
ADMITTED IN VA AND D.C.

August 14, 1997

OUR FILE NO.
0020-102-63

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20559

RECEIVED
AUG 14 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Carter Broadcasting Corporation
Supplement to Complaint and
Request for Investigation
Stations W232AJ, W240AM, W288AN
and W288AZ

Dear Mr. Caton:

Transmitted herewith on behalf of Carter Broadcasting Corporation are an original and four copies of a Supplement to Complaint and Request for Investigation filed with respect to the above-referenced stations.

Kindly communicate any questions concerning this matter directly to this office.

Very truly yours,



John M. Pelkey

JMPapp
Enclosures

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:]	W232AJ
)	W240AM
Brian A. Dodge)	W288AN
Harvest Broadcasting Association)	W288AZ

To: The Commission

Supplement to Complaint and Request for
Investigation

On June 18, 1997, Carter Broadcasting Corporation ("Carter Broadcasting") filed a Complaint and Request for Investigation (the "Complaint") wherein it requested that the Commission commence an investigation of the activities of Harvest Broadcasting Association ("HBA") and HBA principal Brian A. Dodge to determine the fitness of HBA and Mr. Dodge to be Commission licensees. Carter Broadcasting demonstrated in its Complaint that Mr. Dodge is the *alter ego* of HBA and that both HBA and he have engaged in a course of conduct of willful violations of the Commission's rules. In the time since Carter Broadcasting filed its complaint, additional evidence has come to light that serves to reinforce Carter Broadcasting's assertions with respect to HBA's and Mr. Dodge's lack of qualifications to be a Commission licensee. The purpose of this supplement is to bring this additional information to the Commission's attention.

RECEIVED
AUG 14 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I. The Recently-Accepted HBA Translator Renewal Applications Contain Affirmative Misrepresentations.

A. HBA has Misrepresented the Operational Status of Its Translators.

On July 15, 1997, the Commission issued a Public Notice announcing the acceptance for filing of a number of translators of which Harvest Translators, Inc., is listed in the Commission's records as being the licensee (*Broadcast Applications*, Report No. 24033).¹ Included among those renewal applications was a renewal application for W240AL, which is licensed to Bernardston, Massachusetts and other nearby communities.

Question 1 to Section IV of the renewal application asks the question: "Is the applicant's station currently operating and rebroadcasting the signal of an FM, TV or LPTV station?" In response to this question, HBA stated that it was in operation.

This response is false. W240AL has been off the air for at least one year. In mid-August, 1996, Robert A. Shotwell, who is a principal in Cardwell Broadcasting, Inc., the licensee of WPVQ(FM), Turners Falls, Massachusetts, investigated a number of frequencies so as to permit Cardwell to find a suitable frequency for use by a translator to retransmit the WPVQ(FM) signal. In the process of that investigation, Mr. Shotwell

¹ According to the renewal applications, Harvest Translators, Inc., is the name under which Harvest Broadcasting Association is doing business. As was pointed out at page 16 of the Complaint, Harvest Translators, Inc., was involuntarily terminated by the State of New Hampshire on November 1, 1995.

noted that 95.9 MHz, which is the frequency upon which W240AL is licensed to operate, was silent. Since that time to the present, Mr. Shotwell has periodically monitored 95.9 MHz to determine whether W240AL has returned to the air. Mr. Shotwell has never found 95.9 MHz to be in use in the area around Bernardston.²

In fact, Mr. Shotwell, after carefully studying the frequencies used by the HBA translators that are part of the so-called Love Radio Network³ has concluded that W240AL *cannot* operate on 95.9 MHz because of the way in which the Love Radio Network is configured. At the time that the W240AL renewal application was filed, the Love Radio Network was using W288AZ, which is co-located with W240AL, to retransmit programming initiated by WHAZ, Troy, New York. WHAZ is an AM facility whose programming is also carried on both WBAR, which operates on 94.7 MHz in Lake Luzerne, New York, and WMYY, which operates on 97.3 MHz in Schoharie, New York. Neither WBAR nor WMYY can be received off the air in the Bernardston area due to the fact that Class B WMAS-FM operates on 94.7 MHz in Springfield, Massachusetts, and places a 0.5 mV/m signal in the area surrounding W240AL and W288AZ, and WJDF(FM), Orange, Massachusetts, which operates at 97.3 MHz, also places a signal of 0.5 mV/m in the area.

² This recitation of facts is based on the attached *Declaration of Robert A. Shotwell*.

³ As was explained in the Complaint, the Love Radio Network is a translator network that is owned and operated by Brian Dodge.

Because of the inability of the Bernardston translators to receive an over-the-air signal from either WBAR and WMYY, it becomes necessary to receive that signal from another source. That source is W240AM, which is another Love Radio Network translator that operates from Keene, New Hampshire. The Keene translator can be received off the air on the mountain top where both W240AL and W288AZ are located. In fact, mounted on the tower used by W240AL and W288AZ is an FM Yagi receive antenna that is aimed in the correct direction for the reception of the Keene translator.

The fact to note, however, is that the Keene translator operates on 95.9 MHz, which is the very frequency upon which W240AL is licensed to operate. This means that W240AL *cannot operate* without causing interference to the input of W288AZ. The conclusion is inescapable that HBA was required to take W240AL dark in order to permit W288AZ to carry the Love Radio Network programming. HBA's misrepresentation in this case is thus willful and knowing. Not only is W240AL dark, but HBA actively took steps to take it dark to prevent interference to a co-located, co-owned translator. The situation screams for effective enforcement action by the Commission to prevent this type of activity.

A similar situation exists with respect to W261CE in Arlington, Vermont. The renewal application filed by HBA for that station also represents that the station is on the air and is re-broadcasting WMYY. In

fact, however, W261CE has not been on the air for approximately two years. According to a representative of The Carthusian Foundation, which controls the site, W261CE went dark at that time and has not been on the air since. Early this year, the Foundation instructed Mr. Dodge to remove the translator equipment from the site. In late spring or early summer, Mr. Dodge, along with an employee of the Foundation, removed the equipment.

B. HBA has Failed to Disclose the Support that It has received From the Primary Station.

Several of the HBA renewal applications specify that the translator in question is retransmitting the signal of WMYT.⁴ Item 5 of Section IV of the translator renewal application asks whether the applicant is receiving any support from the primary station or from any person or entity having any interest in, or any connection with, the primary station. In response to this item, HBA states, in the case of each application for a translator that is retransmitting WMYT, that it is receiving no such support.

As Carter Broadcasting demonstrated in its Complaint, however, HBA has received support from WMYT, WHAZ and WBAR. Such support has come in the form of time donated by that station. That free time has been used by Brian Dodge to solicit funds to be used for transmitter

⁴ Specifically, the applications for W288AU, North Bennington, VT; W288AN, West Brattleboro, VT.; W240AM, West Keene, NH; W261CE, Arlington, VT; W288AZ, Bernardston, MA; W232AJ, Greenville, NH; and W240AL, Bernardston, MA all recite that the translators for which renewal is therein being sought retransmit the signal of WMYT.

maintenance and operations. In addition, the primary station and Mr. Dodge maintained an arrangement whereby the primary station and Mr. Dodge split advertising revenues. Such an arrangement would be in violation of the Commission's support rules even if Mr. Dodge were not HBA's *alter ego* inasmuch as Mr. Dodge's mother is a named HBA principal. Nevertheless, HBA has attempted to hide this support from the Commission by denying its existence and misrepresenting facts to the Commission.⁵ This is yet one more example of the course of conduct that has become routine for Mr. Dodge and HBA and which the Commission simply can no longer countenance if it is to protect the integrity of its own processes.⁶

⁵ Apparently, it is not only the Commission that has been misled by Mr. Dodge. In its July 11, 1997, "Comments" filed in response to Carter Broadcasting's Complaint, Capital Media Corporation ("Capital Media"), which is the licensee of WMYT, WHAZ and WBAR, explained that Brian Dodge told it that he had no connection with HBA, other than acting as a consultant. Mr. Dodge never disclosed that his mother was an HBA principal, that HBA, throughout its existence, has shared various addresses with other Dodge entities, that HBA is a trade name owned by We Trust in Jesus Broadcasting, Inc., a corporation of which Mr. Dodge was President at the time that the corporation registered the trade name, that Mr. Dodge has filed numerous applications with the FCC in the name of HBA and has even signed the applicant's certification portion of those applications, or any of the other factors – set forth in detail in the Complaint – that demonstrate that HBA is Mr. Dodge's alter ego. To its credit, Capital Media, when presented with this information, rescinded the retransmission consent it had granted to HBA. Although such retransmission consent has been rescinded, the misrepresentations do not thereby evaporate. The fact of the matter is that the HBA misrepresentations contained in the translator renewal applications are just one more indication of Mr. Dodge's and HBA's unfitness to be Commission licensees. The HBA translators that are part of Mr. Dodge's Love Radio Network and that previously retransmitted the Capital Media stations now retransmit WJIV in Cherry Valley, New York.

It is also significant that Capital Media states that it had no contact with any person other than Mr. Dodge in the course of HBA's attempt to obtain retransmission consent. That is yet a further indication that it is Mr. Dodge, and no one else, who controls HBA.

⁶ The renewal applications are also noteworthy in that they provide yet additional evidence of Mr. Dodge's involvement in HBA. Although the HBA applications are signed

II. Brian Dodge and HBA Continue To Be Less Than Candid in Their Dealings With the Commission.

By Public Notice of July 18, 1997, the Commission announced that it had granted an application for a voluntary assignment of the construction permit for W259AB from Rothschild Broadcasting, Inc., to Friends of WHAZ ("Friends") (*Broadcast Actions*, Report No. 44036). W259AB is one of the stations that is part of the Love Radio Network. Because Rothschild Broadcasting, Inc., is a Commission licensee, it is prohibited from owning any translator station that rebroadcasts the signal of a primary station beyond the primary station's 1 mV/m per meter contour. Its operation to retransmit the signal of WHAZ is in violation of the Commission's rules as long as Rothschild is the permittee.⁷ One of the purposes of the assignment of the construction permit from W259AB from Rothschild to Friends may have been to eliminate this rule violation.

Regardless of the motivation of the parties in assigning the construction permit to Friends, the fact is that a close examination of the assignment application reveals a now familiar pattern. Although the only

by Etta Dodge, they, like Mr. Dodge's own renewal application for his W240AK in Enfield, VT, are all handwritten. They, like Mr. Dodge's application, are dated May 28, 1997. The explanation as to why no Environmental Assessment is required is the same in the HBA applications as in Mr. Dodge's application, both in form and content. In each case, the explanation consists of a handwritten notation at the bottom of page 2 that states "Power is less than 100 watts." These coincidences continue the trend, explained at length in the Complaint, of Mr. Dodge's extensive involvement in HBA activities.

⁷ Although W259AB is operational, it appears that the station has never been granted a license.

principal of Friends who is identified in the assignment application is one Patricia A. Leland, Ms. Leland's signature on the purchase agreement was witnessed by Brian A. Dodge. The address listed for Friends on the assignment application is P. O. Box 2401, West Brattleboro, Vermont. This address is the address for Mr. Dodge's Love Radio.⁸ The phone number that is listed as the assignee's phone number is 802/254-6078. That is the telephone number of Etta Dodge, who is Mr. Dodge's mother.^{9 10}

This is not the first time that there has been a questionable involvement between Rothschild and HBA. In 1995, the Commission, in rejecting a claim that Rothschild was the real party in interest behind Harvest's W261CE in Arlington, Vermont, noted that it had "serious concerns" regarding Harvest's operation of W261CE and that it would address that issue in a separate proceeding. See *Rothschild Broadcasting, Inc.*, 10 FCC Rcd. 7226, 7227n.6 (1995).

⁸ See Complaint at p. 20.

⁹ See Attachment B, hereto, which is a print-out from the "Switchboard" Internet Directory.

¹⁰ Curiously, although the assignor's portion of the application is signed by Robin Rothschild, who clearly spells her name with an "s", all written references to the licensee in the application and the asset purchase agreement misspell the licensee's name by omitting the "s". Even the typed name immediately below Ms. Rothschild's signature is misspelled -- thus indicating that the nominal assignor had little involvement with the application. It is also worthy of mention that the second paragraph of the Asset Purchase Agreement that is attached to the assignment application begins with the phrase, "Now comes Seller", an archaic formulation that has become a Brian Dodge signature.

Given the fact that Brian Dodge's Love Radio Network has been programming W259AB for many months, and given the similarity in phone numbers and addresses between Friends and Mr. Dodge's other entities, it is now apparent that Mr. Dodge is in the process of taking over control of W259AB. As has been true with so many of the other Brian Dodge entities, moreover, Friends does not even rise to the level of being a legal fiction. According to the assignment application, Friends is a limited partnership. The State of Vermont, however, has no record of any such limited partnership having ever filed a Certificate of Limited Partnership with the State.

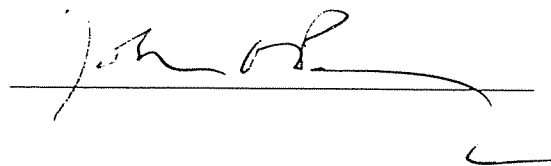
Conclusion

The Dodge/HBA application mill continues to work full time. The total disregard and contempt in which Mr. Dodge and HBA hold the Commission has now become apparent, as is evidenced by the several affirmative misrepresentations contained in the renewal applications. In addition, the recent assignment of W259AB from Rothschild Broadcasting, Inc., to Friends of WHAZ only highlights the need for immediate Commission action on the Carter Broadcasting Complaint inasmuch as it demonstrates the ingenuity of Mr. Dodge and HBA to create new *ad hoc* entities in an obvious attempt to circumvent effective Commission review of the operations of Mr. Dodge and HBA.

Accordingly, Carter Broadcasting hereby supplements its Complaint, and hereby reasserts its request that the Commission commence an investigation of Mr. Dodge, HBA, and Love Radio Network to determine whether any of those entities, or any other entity associated with Mr. Dodge, is entitled to be a Commission licensee.

Respectfully submitted,

CARTER BROADCASTING CORPORATION

A handwritten signature in dark ink, appearing to read "John Potts", is written over a horizontal line. The signature is fluid and cursive.

HALEY, BADER & POTTS P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633
703/841-0606
August 14, 1997

ATTACHMENT A

DECLARATION OF ROBERT A. SHOTWELL

I, Robert A. Shotwell, do hereby declare under penalty of perjury that the following is true and correct:

In mid-August 1996, in the process of investigating possible frequencies for translator use, I observed that 95.9MHz, the frequency of W240AL, was silent in the area of Bernardston and Greenfield, Massachusetts. Since that time, I have made it a practice to periodically monitor this frequency and have never found it to be in use in this geographical area.

Further, it is my conviction that its use is precluded by the manner in which I believe the translator network known as the Love Radio Network is retransmitted from site to site.

During the period in which I have been monitoring both 95.9 as well as co-located translator W240AZ, 105.5, W240AL has been retransmitting WHAZ Troy, NY. (WHAZ is an AM facility whose programming is also carried on WBAR 94.7, Lake Luzerne, NY and WMYY 97.3, Schoharie, NY). Neither FM facility would be capable of direct off-air retransmission due to the fact that Class B WMAS-FM, Springfield, MA at 94.7 places a 0.5mV/m signal in the general area of W240AL. Additionally, WJDF, Orange, MA at 97.3 also places an almost 0.5mV/m signal in this area. Both of the local facilities would make it practically impossible to directly retransmit either of the NY facilities.

W240AL would, however, be capable of retransmitting another Love Radio Network translator, W240AM, 95.9, Keene, NH. On the mountain-top where both W240AL and W288AZ are located W240AM can be received off-the-air. Furthermore, an FM Yagi receive antenna is visible and is aimed in the correct direction for reception of 95.9 in Keene.

The only other Love Radio Network facility which might possibly have been used for an input to W288AZ is W288AN in Brattleboro, VT, however, being a co-channel facility direct rebroadcast would be out of the question.

Thus, it is my belief that W288AZ, Bernardston, MA receives W240AM off air precluding any possible use of W240AL during the period of time in which the Love Radio Network was in operation.

On August 5, 1997, I contacted the office of the Vermont Secretary of State. That office confirmed that a limited partnership must be registered with the Secretary of State's office and that they have no record that Friends of WHAZ has so registered.

The peak of Mt Equinox, where the transmitter for W261CE is supposed to be located, is owned by THE CARTHUSIAN FOUNDATION. On August 5, 1997, I spoke with Diane Jennings who works in the office of the individual at the foundation who manages the site. She was able to confirm certain facts for me. W261CE was rebroadcasting WWAY until approximately two years ago when the translator was shut down. She is unaware of any further operation of it since then. Early this year, Brian Dodge requested access to the transmitter building because, she said, he wanted to operate the transmitter "for one day". Not only was this denied, but the foundation instructed Mr. Dodge to remove the translator equipment. She then said that in "late spring or early summer" of this year, Brian Dodge, along with one of the foundation's employees, went to the site and removed all the translator equipment.

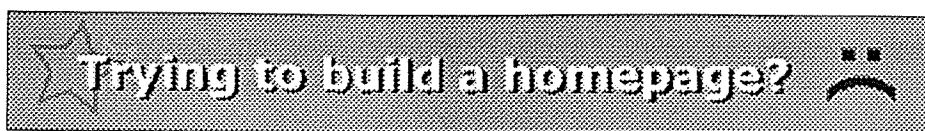


Robert A. Shotwell

Date: August 14 , 1997

ATTACHMENT B


Switchboard results People Business Home



Help us serve you better: tell us how we're doing by filling out our brief
Find People (White Pages) survey.

Listing 1

[Modify Search](#) | [New Search](#)

Dodge, Etta M Brattleboro, VT 05301 
Phone: (802)254-6078

Help that special someone find you, too. Become a Switchboard member now!

Copyright © 1996, 1997 Switchboard Incorporated [Questions? Visit the Support Center.](#)
Copyright © 1997 Database America Inc. DATABASE AMERICA Enabled

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

Mr. Brian Dodge
93 Landmark Drive
Apartment E-3
Brattleboro, VT 05301

Ms. Etta Dodge
Secretary
Harvest Broadcasting Association
93 Landmark Drive
Apartment E-3
Brattleboro, VT 05301

Pioneer Valley Educational
Fellowship, Inc.
41 Russell Street
Hadley, MA 01035

Northeastern Educational Radio
Fellowship, Inc.
27 Jones Avenue
Hampton, NH 03842

Green Mountain Educational
Fellowship, Inc.
P.O. Box 126
Hartford, VT 05047

Erwin G. Krasnow, Esquire
Verner Liipfert Bernhard
McPherson & Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
Counsel for Mad River
Broadcasting, L.L.C.

Mr. Gary P. Marshall
88 Dudley Road
Brentwood, NH 03833

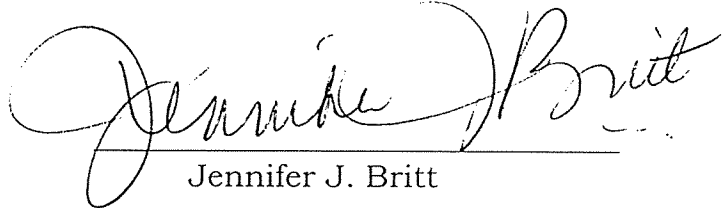
Farmington Radio Partners
19 Boas Lane
Wilton, CT 06897-1031

Mr. Robert L. Demers
c/o Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1851

Robin Rothschild, President
Rothschild Broadcasting, Inc.
Box 850, Route 100
West Dover, VT 05356

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
Counsel for WJIV Radio, Inc.

Ms. Linda B. Blair*
Mass Media Bureau
Federal Communications
Commission
1919 M Street, N.W.
Room 302
Washington, D.C. 20554



Jennifer J. Britt

August 14, 1997

*By Hand