

1962

Intermountain Electronics, Inc. v. Board of Education, Tintic School District et al : Brief of Respondents

Utah Supreme Court

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

**INTERMOUNTAIN ELEC-
TRONICS, INC., a corporation,**
Plaintiff-Appellant,

vs.

**BOARD OF EDUCATION, TIN-
TIC SCHOOL DISTRICT, a body
Corporate of the State of Utah;
BOARD OF COUNTY COMMIS-
SIONERS OF JUAB COUNTY,
STATE OF UTAH; CITY OF EU-
REKA, UTAH; and TV PIX, INC.,
a corporation,**

Defendants-Respondents.

FILED
28 1962
Clerk Supreme Court, Utah

**No.
9676**

BRIEF OF RESPONDENTS

**Appeal from Judgment of the Fifth District Court
Honorable Maurice Harding, Judge**

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IN THE SUPREME COURT
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INTERMOUNTAIN ELEC-
TRONICS, INC., a corporation,
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BOARD OF EDUCATION, TIN-
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STATE OF UTAH; CITY OF EU-
REKA, UTAH; and TV PIX, INC.,
a corporation,

Defendants-Respondents.

No.
9676

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

Plaintiff, as owner and operator of a so-called community antenna service in Eureka, Juab County, Utah, brought this action against the Board of Education of Tintic School District, the Board of County Commissioners of Juab County, the City of Eureka, and TV Pix, Inc., a corporation, to enjoin the con-

struction and operation of a translator broadcast facility.

DISPOSITION IN LOWER COURT

At a hearing on March 26, 1962, the District Court of the Fifth District, Judge Maurice Harding presiding, determined that the plaintiff's complaint did not state facts sufficient to constitute a claim for relief against the defendants and dismissed the action with prejudice (R. 23-25).

STATEMENT OF FACTS

Plaintiff is the operator of a so-called community antenna system in the City of Eureka (R. 2). The nature of a community antenna system has been accurately described by the Federal Communications Commission in its Order and Report adopted April 13, 1955, Docket No. 12443 *In the Matter of Inquiry Into the Impact of Community Antenna Systems, TV Translators, TV Satellite Stations and TV Repeaters on the Orderly Development of TV Broadcasting* (26 FCC 403):

“A community antenna system (CATV) consists of a receiving antenna located on a high elevation so as to receive signals to best advantage, and wire lines whereby the signals received are transmitted to the receiving sets of the subscribers in the community, together with necessary amplifying equipment and sometimes equip-

ment to 'convert' to another channel at which it appears on the subscriber's set." (FCC Docket No. 12443, *ibid.*, para. 10).

CATV systems obtain revenue by charging subscribers a monthly fee, and in most cases, additionally, an installation fee (*ibid.* para. 10). Plaintiff makes such charges. (Appellant's brief, 2; complaint para. 3, R. 1). Plaintiff alleges in its complaint that it obtained a "franchise" to operate and maintain the distribution system from the city of Eureka (R. 1, para. 3). As will be demonstrated in Point II of this memorandum, however, it is clear as a matter of law that the federal government has plenary power in the field of communications and that the only rights or privileges which plaintiff could validly assert as grantee of the city of Eureka would be appropriate easements to maintain rights of way in the city for the operation of the system. Plaintiff does not and cannot allege any authority as a public utility. The plaintiff does not allege and it is not a fact that it has obtained the consent of the stations whose signals are furnished by them to his subscribers. Plaintiff does not and cannot allege that it has obtained the right from the television networks or other program distributors for the exclusive use, and indeed, for any commercial use of these programs in Eureka, or otherwise. Plaintiff does not and cannot allege that it has obtained any franchise or other authority for the operation of his so-called community antenna service from the Federal Communications Commission.

Plaintiff alleges in paragraphs 4 and 5 of its complaint (R. 2) that the Board of County Commissioners of Juab County and the Board of Education of Tintic School District have entered into an agreement with TV Pix, Inc., for the construction of a television translator station on Eureka Peak. While it alleges in Paragraph 7 that the city of Eureka was required to give it certain notice under the terms of his so-called franchise from the city, plaintiff studiously avoids asserting that it did not have notice of this proposed contract or that either the Board of County Commissioners of the Board of Education did not give it an opportunity to present its views at the time it was determined to install the translator station. Paragraph 7 of its complaint asserts that no notice has been received from the city of Eureka, but plaintiff does not allege and it is not the fact that it did not have ample notice of the proposed action by the Juab Board of County Commissioners and the Board of Education of Tintic School District.

Plaintiff's theory is that it has such a right in the operation of the business of conducting a community antenna service and that it can enjoin the construction and maintenance of a translator within the city of Eureka by some or all of the defendants.

A translator might be described as a broadcast station in miniature. The translator station does not originate programs but it obtains the consent of the stations whose signals are rebroadcast in accordance

with the provisions of 325 (a) of the Federal Communications Act. Just co is authorized to operate the translator by the Federal Communications Commission. While copies of the appropriate construction permits are not in the record in the District Court, this court can take notice of them since they are official actions by the Federal Communications Commission and copies of the actual construction permits appear in the appendix of this brief as Appendix A. The Federal Communications Act contains provisions whereby any person who is aggrieved by the issuance of any construction permits as are involved here may appear and protest and detailed procedures are established for the determination of the question as to whether the issuance of the permit conforms to public convenience and necessity.

POINT I.

PLAINTIFF AS THE OPERATOR OF A SO-CALLED COMMUNITY ANTENNA SYSTEM DOES NOT HAVE JUDICIAL STANDING TO ENJOIN THE OPERATION OF A BROADCAST SERVICE IN THE SAME COMMUNITY.

Plaintiff frankly admits in its brief that the translator station operated or to be operated by one or more of the defendants would be "in competition with plaintiff" (Appellant's brief, p. 2). The question pre-

sented is whether as the operator of a community antenna system plaintiff has such a legally protectible interest as would enable it to enjoin the translator service from operation. On this phase of the case, it must be clearly understood that the defendant does not maintain this action as a taxpayer. Plaintiff makes no allegation that it is a taxpayer. Plaintiff's theory is that as the owner and operator of a community antenna system as such, it has the right to enjoin the operation of a broadcast service. Point III of its brief on appeal makes clear its legal position that it is entitled to protection as the operator of a business. It must be clearly kept in mind that while plaintiff asserts that it has a so-called "franchise" from the city of Eureka, the contract which it asserts to be illegal is between the Board of Commissioners of Juab County and the Board of Education of Tintic School District on the one hand and TV Pix, Inc., on the other. Plaintiff does not allege that it has not been given notice by the school district and the board of county commissioners that such contract was to be executed and that the proposed translator station was to be operated by these political subdivisions. No question is raised by the pleading as to the propriety or necessity of any notice of any hearing by the county commissioners; nor is there any allegation that the decision to construct a translator was arbitrary or capricious. It is submitted that even if such allegations had been made, the determination would be supportable from the present record because (a) only paying subscribers can enjoy television

through plaintiff's facilities, and (b) plaintiff's system is limited to the city of Eureka where lines and cables are laid. Farmers and other out-of-town residents have no access to television through plaintiff's cable. Plaintiff charges subscribers for the service rendered in delivering sounds and images broadcast by the Salt Lake City stations, and the proposed translator would operate without any similar direct expense to views of the television programs of the same stations.

The case of *Jackson v. Howard*, (1959) 9 Ut. (2d) 136, 339 P.(2d) 1026, is substantially in point. The holding in that case is directly opposed to the plaintiff's position here. In the *Jackson* case, the plaintiff asserted not only that the county commissioners and other defendants imposed upon his rights upon the theory of trespass, nuisance, negligence, mis-use of public funds in violation of the state statute, but in addition, that the so-called booster facility which defendants proposed to operate in that case was in controvention of the federal statute. In the case at bar the translator has been expressly authorized by the federal agency directly concerned with establishing communications policy for the United States. There is thus no question here that the federal statute is being violated.

The community antenna opertaor in the *Jackson* case asserted that the members of the Board of Commissioners of Sevier County failed to comply with the provisions of the state statute at the time they adopted a resolution similar to that adopted by the Board of

Commissioners of Juab County in the case at bar. The plaintiff there also asserted directly in its fourth cause of action that the defendants' actions constituted a tort against the plaintiff in that they interfered with the rights plaintiff had in its business, and particularly the contracts between plaintiff and his subscribers. The fourth cause of action specifically alleged that defendants were spending tax monies of Sevier County in an unlawful manner. This court said in the *Jackson* case that the community antenna operator did not have any private right which entitled him to enjoin the operation of a broadcast facility by other persons.

“Here, we believe, is something akin to the flying of a kite over an uncontrolled area of the public and private domain for the entertainment of a paid onlooker, whose vision is obscured by a collision with another kite flown by another entrepreneur. Concededly, regulation by proper authority might protect against such eventuality, but absent such regulation, it could not be said that one arbitrarily could pre-empt the use of the atmosphere to the protectable exclusion of others on a theory of first user. It is like one who may operate a telescope for hire so that persons may look at the firmament, but hardly could such operator claim an enjoinder of passing traffic that might disturb the focus,—unless such a situation were regulable by proper authority. *It does not appear from the pleadings and the discovery procedure employed in this case that plaintiff had any protectable right that could result in injunctive relief and defendants had no duty to refrain from doing that which was not prohibited by any proper authority.*” (Emphasis supplied).

Judge Harding granted the Motion for Summary Judgment substantially upon the authority of the *Jackson* case. It is submitted that the rule of that case is controlling here and that the motion was properly granted.

The appellant urges in Point I of its brief that the court must consider the issues of fact alleged in the complaint, but appellant does not state what issues of fact the court should consider. It may be assumed that the appellant urges that the court should pass upon the question as to whether the Board of County Commissioners or the School District appropriately determined that "adequate economical and proper television is not available to the public by private sources." In Point II of appellant's brief, it argues that it was entitled to notice and an opportunity to be heard. As we have pointed out, however, the plaintiff did not allege that it was denied an opportunity to be heard by the School District or the County Commission. On this basis alone the complaint is fatally defective, but the weakness inherent in plaintiff's position may be placed upon a broader basis. In the *Jackson* case this court ruled that even if a county violated the state or the federal law, the community antenna operator did not have such an interest that it could complain. The court held that plaintiff did not have "any protectible right that could result in injunctive relief. It is this point that plaintiff-appellant fails to reckon with, both in its argument to this court and before Judge Harding. Not having any protectible right, plaintiff has no right

to be heard, nor does it have any right to ask the court to review the action of the political subdivisions.

In order to appropriately consider the plaintiff's position here, it is desirable to consider the implications inherent in its argument. The theory of community antenna operation is that the CATV operator simply acts as an extension of the subscriber's antenna to enable the subscriber to receive television sound and images from an originating station which it could otherwise not receive. It is only upon this theory that the community antenna operator avoids the payment of royalties and other fees to copyright owners, program suppliers, originating stations and other persons whose skill and energy are combined in the production of television signals and programs. Suppose that John Doe, a hypothetical resident of Juab County, decided to construct a high antenna and connected that antenna to his television set so that he could receive signals off the air directly from the Salt Lake City stations without subscribing to the plaintiff's so-called community antenna service. Neither plaintiff nor anyone else in a similar position could enjoin John Doe from such activity. No so-called franchise granted by a city to a community antenna operator could prevent John Doe from exercising his privilege to obtain direct reception of the television programs. Suppose John Doe permitted a neighbor to make a connection from the neighbor's set to the John Doe antenna. Neither plaintiff nor the city of Eureka could validly stop the neighbor from using the antenna.

The translator to be operated by the Tintic School District and the Juab County Board of Commissioners in the case a bar does not require the utilization of wires or cables from the point of transmission of the signals to the point of reception by the television viewers of Juab County. A translator, is, in effect, a miniature television station except that it does not create any programs of its own. It represents, in effect, a co-operative effort to enjoy such benefits as are derived from watching television and without the more expensive and elaborate system of cables and connections and fees as are inherent in community antenna system operation.

It is submitted that the plaintiff has no more judicial standing to prevent the operation of a translator simply because its business is adversely affected than he would have to prevent his neighbors from sharing an antenna in the city of Eureka. Plaintiff's position must be, in substance, that it has acquired from the city of Eureka a monopoly to television reception in the whole county. Such position is legally untenable because of the nature of the broadcast art and because the city cannot validly grant any such monopoly.

The *Jackson* case, *supra*, is certainly a correct and appropriate statement of the law with respect to the standing of a community antenna operator to enjoin the operation of some other broadcast service. The community antenna operator simply does not have a

judicially protectible interest that could result in an injunctive relief against the defendants.

It should be realized that the ruling of the District Court was upon a motion to dismiss. The Board of Education of Tintic School District and the Board of County Commissioners of Juab County apparently were joined as parties on the theory that plaintiff has a legally protectible interest to prevent them from operating the translator. It has been shown that plaintiff does not allege that it was not given adequate and sufficient notice of the proposed action by the school district and the county commissioners. Moreover, it has been demonstrated that it has no judicial standing which would entitle him to enjoin their action.

TV Pix, Inc., was joined as a party only because of a contract between it and the school district and the board of county commissioners. There is nothing illegal or contrary to public policy in this proposed contract or its subject matter. It is difficult to see how the plaintiff has any judicial standing as against the defendant TV Pix, Inc.

Since the granting by the city of Eureka to plaintiff of a so-called franchise on May 18, 1955 (Plaintiff's complaint, para. 3), it does not appear that the city of Eureka has done or has threatened to do anything vis-a-vis plaintiff. The city of Eureka does not propose to enter into a contract with TV Pix, Inc., or any other person to construct a translator or to take any other action which the plaintiff might feel had some impact

on its business activities. The city of Eureka certainly had no legal power or right to stop the Board of Education of Tintic School District or the Board of County Commissioners of Juab County from constructing a translator station, or even if they desired to do so, from constructing and maintaining their own commercial or educational television station. Paragraph 7 of plaintiff's complaint, where it alleges in substance that Eureka City had some duty to advise plaintiff of action to be taken by the Tintic School District and the Juab County Board, is specious and without any merit whatever. In any event, there is no claim for relief whatever in the prayer or otherwise as against the city of Eureka.

Upon no legal theory does the plaintiff state any claim for relief against any of the defendants named parties to the action.

POINT II.

THE RELIEF PRAYED BY THE PLAINTIFF WOULD CONSTITUTE AN UNLAWFUL INTERFERENCE BY THE STATE OF UTAH WITH A RIGHT AND PRIVILEGE GRANTED BY THE FEDERAL GOVERNMENT.

In the *Jackson* case, *supra*, the court pointed out that:

“Preliminarily, it may be pointed out that the state statute authorizes no clash with any federal

legislation having to do with interstate air wave activity.”

The court assumed that both the booster and CATV operator in the *Jackson* case operated intrastate.

In the case at bar the translator station has been expressly authorized by the Federal Communications Commission under authority of the Communications Act of 1934. (See construction permits attached to this brief as Appendix A). The translator is a broadcast service. Broadcasting by its very nature is interstate, and the federal government has taken full and plenary control of the broadcast function. In *Allen B. Dumont Laboratories, Inc. v. Carroll* (E.D. Pa. 1949) 86 F. Supp. 813, the District Court held that it was: “. . . satisfied that in the field of television there has been a plenary exercise by Congress of a power to regulate and a complete occupation of the field.” On appeal the Circuit Court held (CCA 3 1950) 184 F.2d 153 that the language of the Act was “so all inclusive as to leave no doubt but that it was the intention of Congress to occupy the television broadcasting field in its entirety. . . . We think it is clear that Congress has fully occupied the field of television regulation and that that field is no longer open to the states.” Certiorari in this case was denied (1951) 340 U.S. 929, 85 L.Ed. 570, 71 S. Ct. 490. The District Court in New Jersey held in *National Broadcasting Co. v. Board of Public Utilities Commissioners of New Jersey*, (D. N.J. 1938) 25 F.Supp. 761, that the doctrine of federal pre-emp-

tion forbade a state from attempting to impose additional requirements to those imposed by the federal agency. *A fortiori* it is submitted that the state court could not, in express terms, forbid or enjoin what the federal government has expressly authorized in the precise field fully occupied by the federal government.

Admitting, therefore, for the sake of argument only, that public monies were to be improperly expended for the construction of a broadcast facility, the relief prayed for by the plaintiff in this case is wholly and completely inappropriate. It may be within the power of the state to enjoin improper expenditures of monies by a taxing subdivision, but it is not within the power of the state court to enjoin the construction of a television translator station expressly authorized pursuant to the licensing authority of a federal agency.

It is submitted, therefore, that the instant complaint is fatally defective upon the ground that the state is without power to grant the relief prayed, whether or not the plaintiff has a legally protectible interest as against the defendant's activities.

SUMMARY AND CONCLUSION

The decision in the *Jackson v. Harward* case to the effect that a community antenna operator has no protectible right to justify injunctive relief against the operator of a competing broadcast service is controlling. This court there considered and rejected the exact legal

theories upon which plaintiff relies in the instant case. Further, plaintiff's complaint in the case at bar prays relief which would be in direct conflict with the authority specifically granted by the United States in a field in which it has exercised plenary jurisdiction. The complaint, therefore, is fatally defective in praying relief beyond the power of the state court. The decision of the District Court dismissing the plaintiff's complaint with prejudice should be affirmed.

Respectfully submitted this 29th day of August,
1962.

JAMES F. HOUSLEY
UDELL R. JENSEN
GEORGE M. McMILLAN

By GEORGE M. McMILLAN

Attorneys for Defendants-
Respondents

APPENDIX A

File No. BPTTV-1166

Call Sign K13D1

United States of America
Federal Communications Commission

CONSTRUCTION PERMIT

for a

Television Broadcast Translator Station

Subject to the provisions of the Communications Act of 1934, subsequent Acts and Treaties, and Commission Rules made thereunder, and further subject to the conditions set forth in this permit, authority is hereby granted to JUAB COUNTY to construct a television broadcast translator station located and described as follows:

1. Transmitting antenna location: approximately 1 mile South of City of Eureka, County of Juab, State of Utah

Geographic coordinates 39° 56' 27" N. Lat. 112° 07' 11" W. Long.

Principal community to be served Eureka and Mammoth, Utah

2. Transmitting apparatus:
Make EMCEE Type No. HRV Rated visual
power output 1 watt

3. Transmitting Antenna:

Two, 5-element Yagis staggered 139 degrees
Make Scala Type 1

Main radiation lobe oriented 0 and 221 degrees true
Antenna supporting structure Transmitting antennas mounted on two separate 20- foot poles overall height above ground 30 feet.

Obstruction marking specifications in accordance with None required.

4. Operating assignment:

Channel No. 13 Frequency band 20-216 Mc.

Input channel No. 7

Transmitter visual power output one watt.

Hours of operation: Unlimited Emission: 6000
A5/F3

Primary TV station call sign KUED Location
Salt Lake City, Utah

5. Date of required commencement of construction

April 8, 1962

Date of required completion of construction

October 8, 1962

6. This permit **DOES NOT AUTHORIZE OPERATION OF THE FACILITIES SPECIFIED HEREIN** except for the conduct of **EQUIPMENT TESTS** pursuant to Section 4.13 of the Commission's Rules.

7. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow for good cause shown.

Dated this 8th day of February, 1962.

(Seal) Federal Communications Commission
BEN F. WAPLE, Acting Secretary

File No. BPTTV-1163

Call Sign K4624

United States of America
Federal Communications Commission

CONSTRUCTION PERMIT

for a

Television Broadcast Translator Station

Subject to the provisions of the Communications Act of 1934, subsequent Acts and Treaties, and Commission Rules made thereunder, and further subject to the conditions set forth in this permit, authority is hereby granted to **JUAB COUNTY** to construct a television broadcast translator station located and described as follows:

1. Transmitting antenna location: approximately 1 mile South of City of Eureka, County of Juab, State of Utah

Geographic coordinates 39° 56' 27" N. Lat. 112° 07' 11" W. Long.

Principal community to be served Eureka and Mam-

2. Transmitting apparatus:
Make **EMCEE** Type No. **HRV** Rated visual power output 1 watt

3. Transmitting Antenna:
Two, 5-element Yagis staggered 139 degrees
Make **Scala** Type 1
Main radiation lobe oriented 0 and 221 degrees true
Antenna supporting structure Transmitting antennas mounted on two separate 20- foot poles overall height above ground 30 feet.
Obstruction marking specifications in accordance with None required.

4. Operating assignment:
Channel No. 6 Frequency band 82-88 Mc.
Input channel No. 2
Transmitter visual power output one watt.
Hours of operation: Unlimited Emission: 6000
A5/F3
Primary TV station call sign Location
Salt Lake City, Utah
5. Date of required commencement of construction
April 8, 1962
Date of required completion of construction
October 8, 1962
6. This permit **DOES NOT AUTHORIZE OPERATION OF THE FACILITIES SPECIFIED HEREIN** except for the conduct of **EQUIPMENT TESTS** pursuant to Section 4.13 of the Commission's Rules.
7. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow for good cause shown.
Dated this 8th day of February, 1962.

Federal Communications Commission

(Seal) BEN F. WAPLE, Acting Secretary

File No. BPTTV-1164

Call Sign K11EN

United States of America
Federal Communications Commission

CONSTRUCTION PERMIT

for a

Television Broadcast Translator Station

Subject to the provisions of the Communications Act of 1934, subsequent Acts and Treaties, and Commission Rules made thereunder, and further subject to the conditions set forth in this permit, authority is hereby granted to JUAB COUNTY to construct a television broadcast translator station located and described as follows:

1. Transmitting antenna location: approximately 1 mile South of City of Eureka, County of Juab, State of Utah
Geographic coordinates 39° 56' 27" N. Lat. 112° 07' 11" W. Long.
Principal community to be served Eureka and Mammoth, Utah
2. Transmitting apparatus:
Make EMCEE Type No. HRV Rated visual power output 1 watt
3. Transmitting Antenna:
Two, 5-element Yagis staggered 139 degrees
Make Scala Type 1
Main radiation lobe oriented 0 and 221 degrees true
Antenna supporting structure Transmitting antennas mounted on two separate 20- foot poles overall height above ground 30 feet.

Obstruction marking specifications in accordance with None required.

4. Operating assignment:

Channel No. 11 Frequency band 198-204 Mc.

Input channel No. 5

Transmitter visual power output one watt.

Hours of operation: Unlimited Emission: 6000

A5/F3

Primary TV station call sign KSL-TV Location
Salt Lake City, Utah

5. Date of required commencement of construction
April 8, 1962

Date of required completion of construction
October 8, 1962

6. This permit **DOES NOT AUTHORIZE OPERATION OF THE FACILITIES SPECIFIED HEREIN** except for the conduct of **EQUIPMENT TESTS** pursuant to Section 4.13 of the Commission's Rules.

7. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow for good cause shown.

Dated this 8th day of February, 1962.

Federal Communications Commission

(Seal)

BEN F. WAPLE, Acting Secretary

File No. BBPTV-1165

Call Sign K19EB

United States of America
Federal Communications Commission

CONSTRUCTION PERMIT

for a

Television Broadcast Translator Station

Subject to the provisions of the Communications Act of 1934, subsequent Acts and Treaties, and Commission Rules made thereunder, and further subject to the conditions set forth in this permit, authority is hereby granted to **JUAB COUNTY** to construct a television broadcast translator station located and described as follows:

1. Transmitting antenna location: approximately 1 mile South of City of Eureka, County of Juab, State of Utah

Geographic coordinates 39° 56' 27" N. Lat. 112° 07' 11" W. Long.

Principal community to be served Eureka and Mammoth, Utah

2. Transmitting apparatus:

Make EMCEE Type No. HRV Rated visual
power output 1 watt

3. Transmitting Antenna:

Two, 5-element Yagis staggered 139 degrees

Make Scala Type 1

Main radiation lobe oriented 0 and 221 degrees true
Antenna supporting structure Transmitting antennas mounted on two separate 20- foot poles overall height above ground 30 feet.

Obstruction marking specifications in accordance with None required.

4. Operating assignment:
Channel 9 Frequency Band 186-192 Mc.
Input Channel No. 4
Transmitter visual power output one watt.
Hours of operation: Unlimited Emission: 6000
A5/F3
Primary TV station call sign KCPX-TV Location
Salt Lake City, Utah
5. Date of required commencement of construction
April 8, 1962
Date of required completion of construction
October 8, 1962
6. This permit DOES NOT AUTHORIZE OPERATION OF THE FACILITIES SPECIFIED HEREIN except for the conduct of EQUIPMENT TESTS pursuant to Section 4.13 of the Commission's Rules.
7. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow for good cause shown.
Dated this 8th day of February, 1962.

Federal Communications Commission

(Seal) BEN F. WAPLE, Acting Secretary

Nothing contained herein shall be construed as a finding by the Commission on the question of marking or lighting of the antenna system should future conditions require. The licensee expressly agrees to install such marking or lighting as the Commission may hereafter require under the provisions of Section 303(q) of the Communications Act of 1934, as amended.