said, the FCC has put a hold on the WDAS-AM-FM transfer application because those stations, owned by Max Leon, are themselves being investigated for similar charges.

William B. Ray, chief of the commission's complaints and compliance division, said he was "not sure" how the commission would act on the proposed merger. Under normal procedures, Mr. Ray said, the commission defers action on applications that "might go to a hearing."

One more snag develops in San Francisco station deal

Proposed three-way station sale, already under fire on programing grounds, is challenged with charges of ex parte contacts

A three-way FM station-transfer case that involves a proposal to open the door to station ownership in San Francisco to a black group and that is already complicated by a petition to deny filed by a local group concerned about losing a "unique" format has taken on another level of complexity: It involves a charge, which has been denied, that the black group violated the commission's ex parte rules by hiring two media activists to contact FCC personnel with a view to expediting commission action on the applications.

The stations—all in San Francisco—are CBS's KCBS-FM, Family Stations' KEAR(FM) and National Science Network's KMPX(FM). Under the plan, CBS would buy KEAR (more powerful than KCBS-FM) for $2 million; and Family Stations would buy KMPX for $1 million. KCBS-FM would be sold to Golden Gate Radio Inc. for $850,000(BROADCASTING,Sept.6,1976).

Golden Gate is owned by Lloyd Edwards and his wife, Barbara, who are black, a circumstance that would normally be an argument in favor of commission approval of the three-sided transfer. However, the net effect of the exchanges would be the disappearance of KMPX's format featuring "big band" and jazz music of the 1920's, 30's and 40's. For Family Stations would continue its religious programing and CBS, its "mellow sound," while Golden Gate would introduce an "adult contemporary" format.

It was to prevent the loss of KMPX's "unique" format that a local group, The KMPX Listeners Guild, was organized, and filed a petition seeking denial of the KMPX sale (BROADCASTING, Nov. 15, 1976).

And it was the guild that introduced the ex parte charge, which was based on a court suit the activists in question—Marcus Garvey Wilcher and Edwin Terry—filed in Oakland, Calif., municipal court against Golden Gate and PACT, a corporation that assists minorities in entering business. Messrs. Wilcher and Terry alleged failure to pay them the full amount they said Golden Gate was committed by a contract to pay them—$2,075, plus reimbursement for newspaper advertisements—for opposing the guild's petition and undertaking various efforts to expedite FCC approval of the transfers, including "direct contact with [former] Commissioner Benjamin L. Hooks ... and influential staff members in the [commission's] Renewal and Transfer Division."

The contract was signed by the president of PACT, Louis M. Barnett, on Oct. 29, 1976. According to the suit, Golden Gate paid Messrs. Wilcher and Terry $1,000 but, on Nov. 16, 1976, notified them they "would no longer accept plaintiffs' services." The suit sought $1,075 "in lost earnings," as well as $3,000 for each of the plaintiffs "in loss of reputation and loss of awarding of other contracts." A settlement in the suit was reached two weeks ago.

The guild said that execution of the contract constitutes a violation of the ex parte rules, and warrants denial of the Golden Gate application—which would collapse the three-station sale. The guild is also seeking an order requiring Golden Gate to pay the guild's attorneys' fees.

Golden Gate, however, said no ex parte violation occurred. It said the contract in question was signed before the guild's petition to deny, Nov. 1, 1976. Thus, "there was no restricted proceeding" in which ex parte contacts were barred, Golden State said. What's more, it said, the complaining parties were ordered to desist not on Nov. 16, as they contend, but on Nov. 2, after Golden Gate's Mr. Edwards was advised by counsel, on Nov. 1, that the proposal would violate the commission rules if a petition to deny the sale was filed. (Golden gate pointed out in a response, however, that the contract requires that "95%" of the "effective work" be completed "within 20 days" after the Guild's petition is filed.)

Golden Gate also pinned a large share of the responsibility for the contract on Mr. Wilcher, who since the early 1970's has been prominent figure in citizen group dealings with San Francisco area stations. The pleading said that Mr. Wilcher "represented" that he might be able to persuade guild leaders not to file a petition to deny and that PACT signed the contract "not knowing that Mr. Wilcher proposed action that would be violative of the commission's rules if the guild filed a petition, and unnecessary if the guild did not file."

Furthermore, the pleading said, "the original plan was to concentrate solely on local personnel in the guild, and not the FCC, despite what the purported agreement states."

Golden Gate buttressed its case on March 7 with an affidavit from Mr. Wilcher supporting its assertion that no ex parte contacts were made. Mr. Wilcher said that neither he nor Mr. Terry, nor anyone acting on their behalf, contacted FCC commissioners or staff, nor did they solicit help from persons outside the commission in contacting anyone at the FCC in connection with the applications. However, one commission official said the fact that ex parte contacts were not made might not be determinative. If the contract was designed to produce "improper contacts," he said, "that might cause a problem."

Meanwhile, the applications in the case, which have been pending some 18 months, are expected to reach the commission's agenda in the next several weeks. Staff members who have working on them hope to see final commission action by the end of April.

Why the delay? One official said the case is a "tough one." On the one hand there is a minority ownership issue, and "we have court cases on both sides," he said. The staff has been faced with questions of whether and to what degree the commission should concern itself with uniqueness of format, in accordance with one line of cases (see page 32) and whether a decision should be made based on race in accordance with another. And those questions are independent of the others raised by the guild with its allegations of ex parte activity.

The National Science Network, which claims KMPX is losing money—$137,133 in 1976 and a total of $734,246 for the five years ending in 1975—apparently is not suffering while the commission ponders the case. The contract calls for CBS to pay NSN $8,000 a month during the life of the agreement.

Climbing the corporate ladder at CBS Inc.

Purcell is named senior vice president, while Frank becomes chief operating officer of publishing division

John R. Purcell, president of the CBS/Publishing Group, last week was named to the additional post of senior vice president, CBS Inc. Stanley D. Frank, president of Holt, Rinehart & Winston and of its parent CBS Educational Publishing division since 1974, was appointed executive vice president and chief operating officer of the CBS/Publishing Group.

Mr. Purcell succeeds Peter A. Derow, who left the CBS senior vice presidency after six months to return to the presidency of Newsweek Inc. (BROADCASTING, March 6). Mr. Purcell, like Mr. Derow, will coordinate all corporate staff work and have reporting to him the vice presidents of administration, corporate affairs, development, finance, law and CBS Washington.

The announcement by CBS President John D. Backe did not mention two responsibilities that had been in Mr. Derow's portfolio, but CBS spokesmen said Mr. Purcell has them anyway: advising on future diversification plans for CBS and working with the presidents of the four CBS operating groups—broadcast, records, Columbia and publishing—to help define and establish corporate policy (BROADCASTING, Aug. 22, 1977).

Mr. Purcell joined CBS in February 1977