

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In re Applications of) MM Docket No. 91-10
)
WHITE BROADCASTING PARTNERSHIP) File No. BPH-891214MM
et al.)

For Construction Permit for a New FM Station
Station on Channel 289A in Baldwin, Florida

To: Hon. Edward Luton, Administrative Law Judge

RECEIVED

AUG - 5 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION TO WITNESS NOTIFICATION

Peaches Broadcasting, Ltd. ("Peaches") respectfully opposes the notifications of witnesses filed by JEM Productions Limited Partnership ("JEM"), Northeast Florida Broadcasting Corp. ("Northeast") and White Broadcasting Partnership ("White").^{1/}

JEM's notification of Frederick Matthews, Anna Matthews and Lawrence Doss was defective. Although dated on the due date of July 30, 1991, it was not faxed until 2:45 P.M. on July 31, the day after JEM had learned that Peaches was noticing five JEM witnesses. JEM's fax cover sheet and notification are appended hereto. Peaches received no mail copy of JEM's notification. JEM has offered no explanation for its late notification. Therefore, JEM should not be permitted to participate in the crossexamination of any of Peaches' witnesses.

^{1/} Douglas Johnson served no witness notification on Peaches. Therefore, it is unclear whether Johnson is continuing to prosecute his case. In any event, Johnson appears to have waived his right to crossexamination. Peaches objects to Johnson's participation in the crossexamination of any of Peaches' witnesses.

The Northeast, White and JEM notifications were also defective in noticing Lawrence Doss, who sponsored none of Peaches' direct case exhibits. These notifications contain not a word of a showing of need for Mr. Doss' testimony. The notifications do not even identify Mr. Doss.

Under the Commission's newly enacted §1.248(d)(4), oral testimony and crossexamination are to be limited to instances where material issues of decisional fact cannot be resolved without oral hearing (or where the public interest otherwise requires). The Commission's goal in adopting new §1.248(d)(4) was to expedite the comparative hearing process with the aim of "substantially reduc[ing] the time consumed in the conduct of comparative hearings and agency review[.] R&Q, FCC 90-410, released December 20, 1990, recon. granted in part by MO&Q, FCC 91-154, released May 15, 1991. Under this new rule, witnesses are not to be required for crossexamination "unless there is a legitimate expectation that some part of their direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance." R&Q, FCC 90-410 at 36.

Mr. Doss is the President of United Communications, Inc. ("UCI"). UCI has only been Peaches' limited partner for 4 1/2 months -- since March 23, 1991.

UCI was not involved in Peaches' formation. Peaches had existed for over 15 months before UCI bought the limited partnership interest initially held by Steven Weissman, Peaches' original limited partner. Since no applicant has noticed Mr. Weissman, and he was not even deposed, it must be assumed that none of the applicants believes that Peaches' formation or organization was flawed or that Peaches lacks the corporate form it claims in its direct case.

Therefore, the usual motivation for having limited partners testify -- to discern their role in the formation of the applicant -- is absent here.

Peaches Exhibit 5 contains all of Peaches' formation documents as well as the documents manifesting the transfer of limited partnership interests to UCI. Fred and Anna Matthews have sponsored that exhibit, and are competent to testify to it. Peaches notes that §VII of its Partnership Agreement, on its face, fully insulates UCI within the meaning of the Commission's Attribution Rules. Northeast and White took Mr. Doss' deposition, and nothing in the transcript thereof shows any improper conduct by UCI or the slightest variance by UCI from the terms of Peaches' Partnership Agreement.

Consequently, no party has demonstrated or even asserted its need for crossexamination of Mr. Doss, and the evidence proffered by Peaches' direct case demonstrates that there is no need for Mr. Doss' testimony. A full record can be developed by the testimony of Mr. and Mrs. Matthews.

WHEREFORE, the Presiding Judge should issue an order to the effect that Mr. Doss need not appear for crossexamination,^{2/} and JEM and Johnson should not be permitted to crossexamine any of Peaches' witnesses.

Respectfully submitted,



David Honig
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(305) 628-3600

Counsel for Peaches Broadcasting, Ltd.

August 5, 1991

^{2/} While not asserted as a basis for this Opposition, Peaches wishes to report that Mr. Doss, who is 65 years of age, is rather ill. On July 31, he was unable to be deposed in another proceeding on the orders of his physician. He is able to travel now, but consistent with his medical condition would probably require a couple of days of advance notice. That is why Peaches is filing this Opposition early. Consequently, Peaches respectfully requests that the Presiding Judge or his Legal Technician contact the undersigned counsel upon ruling on this Opposition.

PHONE NO. :

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JUL-31-91 WED 14:45

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FACSIMILE TRANSMISSION

TO: ALL COUNSEL, BALDWIN, FLORIDA PROCEEDING
FAX: SEE BELOW
FROM: Avelino G. Halagao
DATE: July 30, 1991

TOTAL PAGES (Including this one): 2

MESSAGE:

OUR TELEPHONE NUMBER IS (703) 847-6803; FAX NUMBER IS (703) 847-9396

PLEASE NOTIFY US IMMEDIATELY IF YOU DO NOT RECEIVE ALL OF THE FOLLOWING PAGES OR IF THEY ARE ILLEGIBLE.

PLEASE NOTE:

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July 30, 1991

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MEMORANDUM

To: All Counsel; MM Docket No. 91-10
White Broadcasting Partnership, et al.

From: Avelino G. Halagao

Re: Notification of Witnesses Requested For Cross Examination

JFM Productions Limited Partnership ("JEM") pursuant to Order of Presiding Judge Edward Luton, Order No. 91M-1455 released April 26, 1991 hereby submits notice of the witnesses JEM seeks to cross-examine at the hearing:

1. White Broadcasting Partnership: Charley Cecil White, Diana Mae White
2. Peaches Broadcasting, Ltd. : Frederick Matthews, Anna Matthews, Lawrence Doss
3. Northeast Florida Broadcasting Corp. : Lillian Holt, Dorothy Wade.

cc: Honorable Edward Luton

Paulette Laden, Esq.

CERTIFICATE OF SERVICE

I, David Honig, this 5th day of August, 1991, hereby certify that I have caused to be placed in the Washington, D.C. U.S. First Class Mail, postage prepaid (or arranged for hand-service) a copy of the foregoing "Opposition to Witness Notification" addressed to the following:

Hon. Edward Luton
Administrative Law Judge
Federal Communications
Commission
2000 L Street N.W.
Washington, D.C. 20554

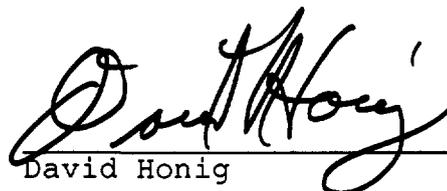
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