

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

ORIGINAL

In re Applications of

) MM Docket No. 91-10

WHITE BROADCASTING PARTNERSHIP  
et al.

) File No. BPH-891214MM

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

RECEIVED

To: Hon. Edward Luton, Administrative Law Judge

OCT 10 1991

Federal Communications Commission  
Office of the Secretary

OPPOSITION TO MOTION TO ENLARGE ISSUES

Peaches Broadcasting, Ltd. ("Peaches") respectfully opposes the "Motion to Reopen the Record and to Enlarge Issues Against Peaches Broadcasting, Ltd." ("Motion") filed September 19, 1991 by Northeast Florida Broadcasting Corp. ("NEF").

NEF's only substantive allegations are contained in the three sentences of its Motion at 4, ¶7. There, NEF notes that Fred Matthews, the President of Peaches' General Partner, testified that he did not know why Peaches' former limited partner, Steve Weissman, had sent him two financial documents related to Weissman's ability to meet prosecution expenses. On that basis alone, NEF wants general, all-encompassing, no holds barred, financial and misrepresentation issues against Peaches.

That is ludicrous. NEF does not allege that the documents were insufficient, or that Mr. Matthews did not know what they were. More fundamentally, NEF does not allege that Peached ever lacked the ability to construct and operate its proposed station for three months without revenue.

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NEF did not mention that the two documents relate only to funds earmarked for \$50,000 of the \$65,000 Peaches had reserved for prosecution expenses. See Peaches' Application, Form 301, P. 6 (Attachment 1 to NEF's Motion), showing that Steve Weissman had pledged "65,000 toward prosecution expenses"; Tr. 165, 218 (hearing transcript pages contained in Exhibit 1 hereto). Of this \$65,000, \$15,000 was Steve Weissman's initial capital contribution, which he made when Peaches filed its application. The other \$50,000 had been committed by Mr. Weissman to be called upon by Peaches when needed in the future. Tr. 218, 227-229; Declaration of Fred Matthews, October 8, 1991, Exhibit 2 hereto, at 1; Declaration of Steve Weissman, October 8, 1991, Exhibit 3 hereto, at 1.

It is elementary that a financial issue has never been added, and will not be added, based on a claim that an applicant lacked prosecution expenses. Muncie Broadcasting Corp., 54 RR2d 42, 46-47 (1983); Weyburn Broadcasting Limited Partnership, 6 FCC Rcd 1262, 1265 (Rev. Bd. 1991); Northampton Media Associates, 3 FCC Rcd 5164, 5167 (Rev. Bd. 1988), review denied, 4 RCC Rcd 3853 (1989). It would be the ultimate Catch-22 to force an applicant to expend prosecution funds only for the purpose of proving that it had prosecution funds.

Nonetheless, assuming that this is potentially the first case in which a "prosecution expenses" issue might be designated, Peaches respectfully points out the following.

1. Mr. Weissman had the ability to meet his share of prosecution expenses from his own income. A writer and television producer, Steve Weissman was a financially sophisticated person of substance. Mr. Matthews had met with Mr. Weissman in Tampa and, before certifying to the application, had been provided with the Weissmans' November 30, 1989 balance sheet. That balance sheet is Exhibit 6 hereto. See Tr. 156; Fred Matthews Declaration, supra, at 1; Steve Weissman Declaration, supra, at 1. Mr. Weissman assured Mr. Matthews that he could carry his share of prosecution expenses on a "pay as you go" basis. Fred Matthews Declaration, supra, at 1; Steve Weissman Declaration, supra, at 1. Thus, Mr. Matthews was justifiably confident that Mr. Weissman could pull his weight in the application.

2. Mr. Weissman, out of an abundance of caution, decided to ask his mother, Cyril Weissman, to commit \$50,000 to him for his share of the cost of prosecuting Peaches' application. Mr. Weissman reasoned as follows:

I am self-employed as a writer and television producer. Those occupations are characterized by high but sometimes irregular income, as compensation is derived on a project-by-project basis.

Consequently, I thought it best that to be absolutely sure I would have no difficulty meeting my obligations to Peaches, I should obtain a written commitment of \$50,000 from my mother, and I did so. I sent Mr. Matthews a courtesy copy of that commitment, and a copy of a written assignment, from my wife Carolle, of any interest she might have in the \$50,000.

Steve Weissman Declaration, supra, at 1-2. Cyril Weissman did in fact make that \$50,000 commitment in writing. Motion at 4 and at Attachment 3.

3. Mr. Weissman knew that his mother was independently wealthy. Steve Weissman Declaration, supra at 1. She is in fact independently wealthy, having had far more than sufficient net liquid assets to handle this \$50,000 commitment in cash. See Cyril Weissman Declaration, October 8, 1991, Exhibit 5 hereto; Cyril Weissman Florida Individual and Fiduciary Intangible Tax Return for 1989, Exhibit 7 hereto.

4. Mr. Weissman's wife, Carolle Weissman, signed a written assignment of her interest in Cyril Weissman's gift.<sup>1/</sup> Motion at Attachment 4. Carolle Weissman also advised Steve Weissman that she consented to the use of some of Steve Weissman's income to help prosecute Peaches' application on a pay as you go basis. Carolle Weissman Declaration, October 8, 1991, Exhibit 4 hereto.

5. Mr. Matthews testified that he knew what the documents sent to him by Steve Weissman were about, but did not know for sure why Mr. Weissman had sent him the documents. Tr. 162-164 (found in Attachment 5 to Motion). That is because Mr. Weissman had already assured Mr. Matthews that he personally could handle his share of prosecution expenses, and Mr. Matthews had already been provided with the Weissmans' balance sheet as evidence of Mr. Weissman's financial good standing. Mr. Matthews testified:

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<sup>1/</sup> NEF claims it does not know whether Cyril Weissman intended to make a gift or a loan to Steve Weissman. Cyril Weissman's letter to Steve and Carolle Weissman (Motion at 4 and at Attachment 3) states that the \$50,000 was a loan to be forgiven in two to three years. The loan was to Steve Weissman, not to Peaches; thus, whether it was a gift or a loan is irrelevant to Peaches' financial ability. In any event, as Steve Weissman's Declaration, supra, at 2, indicates, "[t]echnically, the \$50,000 was a loan to be forgiven in two to three years. Essentially, it would have been a gift."

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I did not ask Mr. Weissman where he would get his money from. As I think I testified previously, that [the Cyril Weissman pledge of \$50,000] was one of the documents that came to me. I took it as verification that he, in fact, had additional money. I did not get into where he would get it from.

Tr. 219. Mr. Matthews, quite reasonably, did not think he needed any additional documentation from Mr. Weissman. Mr. Matthews reasoned:

Mr. Weissman sent me a letter from his mother pledging \$50,000 to him, and a note from his wife Carolle assigning her interest in the \$50,000 to Mr. Weissman. Since I already understood that Mr. Weissman could meet his share of prosecution expenses, I did not know why he sent me these documents. I presume he was just being extra careful to keep me fully informed; I really didn't think I needed them.

Fred Matthews Declaration, supra, at 2.

6. Steve Weissman's initial \$15,000 contribution, plus the Matthews' initial contributions, were sufficient to handle the filing of the application and most pre-designation expenses. Thus, there was no need for Peaches to call on Steve Weissman for additional funds. Mr. Weissman, nonetheless, "remained ready, willing and able" to respond to any Peaches calls for cash during the time when Mr. Weissman was a limited partner in Peaches. Steve Weissman Declaration, supra, at 2.

7. Mr. Weissman left the partnership to pursue other business interests, not because he hadn't had the money to be a partner. Id.

NEF's Motion seeks to add a disqualifying issue against Peaches on the sole basis that Mr. Matthews was not sure why Steve Weissman was being so careful in sending Peaches extra documentation of Mr. Weissman's ability to meet his share of prosecution expenses. The issue sought relates only to prosecution expenses, which is not a proper basis for an issue in any event. The Motion is frivolous and should be denied.<sup>2/</sup>

\* \* \* \* \*

If the Motion is granted, NEF's \$1.229(e) Request must be considered.

NEF's document production requests are apparently designed for a general, all purpose financial and misrepresentation issue aimed largely at construction and operating expenses. If the requested prosecution expenses issue is added, the only relevant documents are those germane to prosecution expenses -- specifically, the portion of prosecution expenses which Peaches expected to receive from Steve Weissman. Those documents are requested only by Requests 1(m) (to the extent that the expenses were incurred during Weissman's tenure as a limited partner); (2), (4), and (13(a)); and (7), (17), (18), (19), (20) and (21) (to the extent that they relate only to prosecution expenses). All other requests except (5) and (15) are germane only to construction and initial operation and are therefore irrelevant to the scope of the issue sought by NEF. Requests (5) and (15) would only be relevant if Peaches had not actually paid prosecution expenses; since it did pay them, these requests are irrelevant.

However, among the above-referenced production requests whose subject matter is theoretically relevant, some requests are impermissible for other reasons besides relevance. Requests (4) and (19) are excessive, oppressive and overbroad, inasmuch as the Weissmans' balance sheet has already been produced. Requests (20) and (21) are so vague and indeterminate as to be meaningless.

NEF's witness list includes individuals who had little or nothing to do with Peaches' initial plan for meeting prosecution expenses. Anna Matthews had no role in the matter. See Fred Matthews' Declaration, supra, at 1. Carolle Weissman's only role was to waive technical legal claims to the use of joint funds or Steve Weissman's funds. That is far too tangential to require the taking of Carolle Weissman's deposition, especially in light of her sworn, unequivocal declaration on the matter. See Carolle Weissman Declaration, supra. NEF does not claim that Cyril Weissman's financial abilities were inadequate or that her letter to Steve Weissman is not genuine. Therefore, there is no basis, within the scope of the issue sought by NEF, to cross-examine Cyril Weissman. Only Fred Matthews and Steve Weissman are proper witnesses if the requested "prosecution expenses" issue is added.

Respectfully submitted,



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Counsel for Peaches Broadcasting, Ltd.

October 10, 1991

**EXHIBIT 1**

1 Q Did you bring any documents to Tampa or had  
2 you --

3 A I didn't bring any documents.

4 Q Had you sent him any documents prior to your  
5 meeting in Tampa?

6 A I don't recall. Certainly we sent him  
7 documents, but I don't recall if it was prior to or  
8 subsequent to that meeting.

9 Q There came a time, though, that you did sent  
10 him some documents?

11 A Certainly.

12 Q What did you send him?

13 A My resume, business plan for the partnership,  
14 and certainly a draft of that, of the partnership  
15 agreement.

16 Q Where did the drafted partnership agreement  
17 come from?

18 A The basic skeleton for that agreement came  
19 from counsel.

20 Q When was the Tampa meeting, if you recall?

21 A Probably October-early November.

22 Q Of 1989?

23 A Of 1989.

24 Q What was the next step after you sent him  
25 that document, including the limited partnership

1 providing that \$65,000 commitment?

2 A Yes, that was part of -- when we got into  
3 discussions -- again, timeframe -- within the period of  
4 timeframe we began and ended, certainly we talked about  
5 that and what his commitment would be.

6 Q How did you go about obtaining the \$65,000  
7 commitment from Mr. Weissman?

8 A Again, I think that was indicated to him in  
9 the partnership agreement that was put together and it  
10 was also indicated -- I think it was indicated to  
11 extend that business plan that he had for review.

12 Certainly in discussions that we had from the  
13 initial phone call to the time that we completed the  
14 agreement itself, we had -- we discussed those matters,  
15 cleared them up. He understood what his commitment  
16 would be and how far -- how long the process could  
17 take.

18 Q So -- and this was the \$65,000 commitment,  
19 was that part of the draft that Mr. Honig had sent?  
20 You stated that the original partnership draft was a  
21 document that Mr. Honig prepared, is that correct?

22 A Yes.

23 Q So was it his proposal to put the \$65,000 in?

24 MR. HONIG: Objection.

25 Ask for a waiver of the privilege. The

1 witnesses choice of whether to do that.

2 JUDGE LUTON: What's the question again?

3 MR. WINSTON: The question was whether that  
4 was Mr. Honig's suggestion to put the \$65,000 in?

5 JUDGE LUTON: I'll sustain.

6 MR. WINSTON: You sustain it, Your Honor?

7 JUDGE LUTON: Um-hum.

8 BY MR. WINSTON:

9 Q When did you first discuss with Mr. Weissman  
10 the \$65,000 commitment?

11 A Again, as I've indicated before, I really  
12 don't know when we discussed it.

13 JUDGE LUTON: That's really enough of an  
14 answer. You don't need to explain any more, if you  
15 can't answer it.

16 THE WITNESS: I can't answer it --

17 MR. WINSTON: Mr. Honig has successfully  
18 succeeded in inundating me with paper here. It's kind  
19 of hard to keep it all straight.

20 MR. HONIG: I don't know whether that's a  
21 compliment.

22 (Laughter.)

23 BY MR. WINSTON:

24 Q Mr. Mathews, have you made any capital  
25 contributions -- let me back up.

1                   MR. HONIG: I would object. I don't  
2 understand the relevancy of the question. Perhaps  
3 counsel can enlighten us.

4                   JUDGE LUTON: Overruled.

5                   THE WITNESS: The \$65,000, I think the term  
6 you used was assurance. I believe that if I'm  
7 understanding you correctly, his initial contribution  
8 was as per the agreement he purchased the 15 units.  
9 The prosecution costs were part of what we estimated  
10 the costs --

11                  Q     I would like to repeat my question. When you  
12 filed your application, you stated the permission that  
13 Mr. Wiseman had committed \$65,000 to prosecute the  
14 application.

15                   But up to the time that Mr. Wiseman left the  
16 partnership, he only contributed \$15,000.

17                  A     Well, our agreement provided --

18                   JUDGE LUTON: Let's hear the whole question.

19                   BY MR. HALAGAO:

20                  Q     What I'm trying to say is the \$65,000  
21 commitment that you certified to the Commission, I'm  
22 just trying to see how much came in and you said  
23 \$15,000. Is that correct? Up to the time that he left  
24 the partnership?

25                  A     Yes, he had put in \$15,000.

1 Q That's good enough. You testified in your  
2 deposition that there was a \$50,000 gift from the  
3 parents of, I think, Mr. Wiseman. Is that correct?

4 MR. HONIG: Objection. I think that  
5 mischaracterizes the testimony.

6 JUDGE LUTON: Well, he's asking if it's  
7 correct. It's a question. He put it in the form of a  
8 question.

9 MR. HONIG: I'll withdraw the objection.

10 BY MR. HALAGAO:

11 Q Is that correct?

12 A That's, yes, that's what we --

13 Q Okay. The \$50,000 gift from -- was that to  
14 cover the supposedly \$15,000 that was committed to the  
15 partnership?

16 A I did not ask Mr. Wiseman where we would get  
17 his money from. As I think I testified previously,  
18 that was one of the documents that came to me. I took  
19 it as verification that he, in fact, had additional  
20 money. I did not get into where he would get it from.

21 Q The original sharing of the partnership, the  
22 25 percent for the general partners and 75 percent to  
23 the limited partner. How did that come about?

24 A That was part of the language that we  
25 determined would be best to allocate to each area of

1 which was already in a great deal of things happening  
2 from there. That was as early as 1984.

3 Mr. Gregory, we retained him, I think, almost  
4 at the outset of formulating Peaches Productions group,  
5 which would have been early 1988, when we put it into  
6 its present mode. And he continued on as our counsel.

7 And of course, Mr. Gregory works with us also  
8 as counsel to the Jacksonville branch. He's a Board  
9 member there, which I'm a Board member also. So our  
10 relationship is rather lengthy. It's not that it just  
11 started.

12 Q Now, today, you testified concerning a  
13 television program, Rising Star. Now would you  
14 describe in your own words what plans you have for  
15 Rising Star if Peaches is awarded the station?

16 A Well, our plans for Rising Star would be, as  
17 would be most of the activities, all of those would be  
18 put on the back burner, as we indicated. Our full  
19 attention would be focused on making the station a  
20 success.

21 Q Finally, Mr. Halagao asked you about a pledge  
22 of prosecution expenses, \$65,000 from Mr. Wiseman. I  
23 believed you testified that he had put in \$15,000 of  
24 that.

25 Would you describe the status of the other

1           \$50,000?

2           A       There was no need, at that point, for Mr.  
3           Wiseman to put in any more. The nature of our  
4           agreement was that whenever we called for those  
5           particular funds for their usage, his guarantee, his  
6           agreement to the partnership, indicated that he had to  
7           provide them.

8                        He had no input into day to day operations  
9           and he can not tell us what to do. He agreed to  
10          provide the funds on an as needed basis and that's what  
11          we continue.

12                       MR. HONIG: I have no further questions.

13                       JUDGE LUTON: Recross?

14                                RECCROSS EXAMINATION

15                       BY MR. WINSTON:

16                       Q       What steps did you take to determine that Mr.  
17          Wiseman could provide \$65,000?

18                       MR. HONIG: Objection. Not within the scope  
19          of redirect.

20                       JUDGE LUTON: It sure doesn't seem to be.  
21          Sustained.

22                       BY MR. WINSTON:

23                       Q       Was there a document that obligated Mr.  
24          Wiseman to put up \$65,000?

25                       MR. HONIG: Same objection.

1 JUDGE LUTON: Sustained.

2 MR. WINSTON: Your Honor, I think that the  
3 second question -- if I may be heard -- he testified at  
4 length on redirect about where this money was and what  
5 happened to it and I'm just trying to find out if there  
6 ever a document that memorialized these things that he  
7 just testified to.

8 MR. HONIG: Your Honor, if I may --

9 JUDGE LUTON: I didn't hear that on redirect.  
10 Go ahead.

11 MR. HONIG: The purpose of the question on  
12 redirect was just to find out what was its status, had  
13 it been called. It didn't make reference to what was  
14 the applicant's reliance on that. That was thoroughly  
15 covered --

16 JUDGE LUTON: Objection sustained.

17 BY MR. WINSTON:

18 Q Mr. Matthews, you just testified that you  
19 will discontinue the Rising Star program after your  
20 application would be granted.

21 Is that your testimony?

22 Let me rephrase the question. Was your  
23 testimony that you would discontinue production of the  
24 Rising Star program if your pending application was  
25 granted?

**EXHIBIT 2**

DECLARATION OF FREDERICK MATTHEWS

I am the President of Peaches Productions Group, Inc., General Partner of Peaches Broadcasting, Ltd. ("Peaches"). I performed all tasks accomplished by Peaches in connection with my financial certification to Peaches' application.

The \$65,000 pledged by Steve Weissman toward Peaches' construction and initial operation was targeted only for prosecution expenses. That sum is reflected both in Form 301, which I signed, and in Peaches' initial limited partnership agreement, signed by Mr. Weissman and by me.

The first \$15,000 of this sum was contributed by Mr. Weissman when Peaches filed its application. That sum was intended to, and did cover essentially all of our first year costs.

I visited with Mr. Weissman in Tampa in late October or early November, 1989, several weeks before Peaches filed its application. When I met with Mr. Weissman, he mentioned that he could handle Peaches' calls for prosecution expenses out of income he anticipated earning in his occupation as a writer and television producer. He may have made reference to obtaining the funds from his mother, Cyril Weissman, but the meeting took place two years ago and honestly I don't remember.

Later, Mr. Weissman supplied me with the November 30, 1989 Statement of Net Worth of himself and his wife Carolle. That Statement confirmed that Mr. Weissman had access to substantial assets. Knowing Mr. Weissman's background and having met with him, I was confident that he would have no difficulty meeting calls for prosecution expenses on a "pay as you go" basis.

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Later, Mr. Weissman sent me a letter from his mother pledging \$50,000 to him, and a note from his wife Carolle assigning her interest in the \$50,000 to Mr. Weissman. Since I already understood that Mr. Weissman could meet his share of prosecution expenses, I did not know why he sent me these documents. I presume he was just being extra careful to keep me fully informed; I really didn't think I needed them.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct. Executed 8 Oct 91.

  
Frederick Matthews

**EXHIBIT 3**

DECLARATION OF STEVE WEISSMAN

I am the former limited partner of Peaches Broadcasting, Ltd. ("Peaches").

Before Peaches filed its application, I pledged \$65,000 toward Peaches' prosecution expenses. That sum is reflected in Peaches' initial limited partnership agreement, which I signed. I paid the first \$15,000 of this sum to Peaches when it filed its application.

Fred Matthews met with me in Tampa several weeks before Peaches filed its application. At that time, I explained to Mr. Matthews that I did not think I would have any difficulty meeting my share of Peaches' prosecution expenses on a "pay as you go" basis. I told Mr. Matthews that I would handle Peaches' calls for prosecution expenses out of income I anticipated earning in my occupation as a writer and television producer, or I would obtain the funds from my mother, Cyril Weissman, who is independently wealthy.

Later, I supplied Mr. Matthews with the November 30, 1989 Statement of Net Worth of my wife Carolle and myself. At that time, I discussed Peaches' plans with Carolle, and she consented to the application of some of my income, and any funds obtained from my mother, for the prosecution of Peaches' application.

I am self-employed as a writer and television producer. Those occupations are characterized by high but sometimes irregular income, as compensation is derived on a project-by-project basis.

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Consequently, I thought it best that to be absolutely sure I would have no difficulty meeting my obligations to Peaches, I should obtain a written commitment of \$50,000 from my mother, and I did so. I sent Mr. Matthews a courtesy copy of that commitment, and a copy of a written assignment, from my wife Carolle, of any interest she might have in the \$50,000.

Technically, the \$50,000 was a loan to be forgiven in two to three years. Essentially, it would have been a gift.

Peaches made no further calls for prosecution expenses beyond the initial \$15,000, and I never needed to obtain the \$50,000 from my mother or pay Peaches any additional money, although I remained ready, willing and able to do so during the time I was a limited partner. I left the partnership in 1990 to pursue other business interests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct. Executed 7 Oct 1991.

  
\_\_\_\_\_  
Steve Weissman

**EXHIBIT 4**

DECLARATION OF CAROLLE WEISSMAN

I am Steve Weissman's wife

My husband met Fred Matthews in Tampa in the fall of 1989. Soon afterward, Steve discussed Peaches' plans with me. On the suggestion of Jerry Kasriel, our family attorney, I executed an assignment of interest in such gift as Steve's mother might make to Steve. I understood that Florida law requires that such an assignment be made if Steve were to have the use of funds supplied by his mother. I did not understand that a similar written assignment of interest was needed for income to be earned by Steve. In any event, I had assured Steve that I consented to the application of some of his income for the prosecution of Peaches' application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct. Executed 7 October 1991

Carolle Weissman  
Carolle Weissman

**EXHIBIT 5**