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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

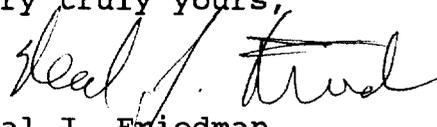
Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **New FM Station, Ocean City, MD**
(File No. BPH-901224MF)
Webb Broadcasting, Inc.

Dear Ms. Searcy:

Transmitted herewith on behalf of Webb Broadcasting, Inc., applicant in the above-referenced proceeding, are an original and four (4) copies of its Motion to Dismiss. Kindly direct this information to the Chief of the Mass Media Bureau.

Should any questions arise concerning this matter please communicate directly with the undersigned.

Very truly yours,

Neal J. Friedman

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
)
WEBB BROADCASTING, INC.)
) File No. BPH-901224MF
For Construction Permit for)
New FM Broadcast Station on)
Channel 295A at Ocean City, MD)

To: Chief, Mass Media Bureau

MOTION TO DISMISS

Webb Broadcasting, Inc. ("Webb"), by its attorney and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended and Section 73.3584 of the Rules of the Commission, hereby moves to dismiss the Petition to Deny filed by Robert L. Purcell on October 28, 1991 as patently defective.^{1/} Webb is an applicant for a new FM station at Ocean City, Maryland. Purcell's wholly frivolous pleading is an abuse of the Commission's processes filed for the sole purpose of harassing certain of Webb's principals who are also principals of an unrelated entity against whom Purcell is attempting to enforce an alleged debt in the courts of the State of Maryland.^{2/} In support thereof the following is shown.

1. Section 309(d)(1) of the Act provides that a Petition to Deny must: (1) be filed by a party in interest; (2) be filed within the time period established in the Act or by the Commission; (3)

^{1/} Out of an abundance of caution, Webb is also filing its Opposition based on the substantive issues raised in the Petition.

^{2/} Webb, together with Ocean Media, Inc., also the target of a Petition to Deny Purcell has filed, Five Star Broadcasting, Inc., licensee of WDVM(AM), Ocean City, Maryland, and Group Six, Inc., licensee of WWOE(FM), Avalon, New Jersey, are separately asking the Commission to impose sanctions pursuant to Section 1.80 of the Rules of the Commission.

contain specific allegations that the petitioner is a party in interest and that grant of the application would be prima facie inconsistent with the public interest, convenience and necessity; and, (4) be supported by the affidavit of a person or persons with personal knowledge thereof or documents of which official notice can be taken. As will be shown below, Purcell fails to meet even a single one of these basic criteria.

2. Purcell has failed to demonstrate that he is a party in interest. He has made no showing that he is a resident of the service area of the proposed Ocean City station. See Citizens Communications Center v. FCC, 359 F.2d 994 (D.C. Cir. 1966) and Effingham Broadcasting Co., Inc., 51 FCC 2d 453 (1975). Purcell's claimed economic injury (the alleged failure of Five Star Broadcasting, Inc., a corporation wholly unrelated to Webb, to make timely payments on a promissory note) is not sufficient to give him standing. See FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1939).

3. Purcell's Petition is far too late. Webb's application was announced as having been accepted for filing in Report NA-143 on March 11, 1991, which established an April 12, 1991 deadline for petitions to deny. Section 73.3584 of the Rules requires that petitions to deny must be filed by the date specified. Purcell failed to do so. The rule further states that extensions of time in which to file petitions to deny will only be granted unless the applicant consents or there is a "compelling showing" that unusual circumstances prevented the timely filing. Purcell has neither requested nor obtained Webb's consent to the late filing, nor has he

made any showing, compelling or otherwise, as to why his petition could not have been filed in a timely fashion.

4. Purcell has failed to make any prima facie showing as to how the grant of Webb's application would be inconsistent with the public interest, convenience and necessity. Purcell makes vague and unsupported allegations that the principals of Webb are unqualified. In point of fact, the only interest at issue is Purcell's private interest in collecting an alleged debt. The validity of Purcell's claim is properly a matter for decision in the courts of the State of Maryland. Purcell's complaint was filed on September 20, 1991 in the Circuit Court for Montgomery County, Maryland and has not yet come to trial.

5. Purcell has failed to meet the bedrock requirement of Section 309(d)(1) of the Act that a petition to deny be supported by an affidavit or documents of which official notice can be taken. Although Purcell has executed a boilerplate declaration, no official notice may be taken of the alleged promissory note attached to Purcell's complaint as it is neither dated nor executed.

6. The remedy for an untimely and defective petition to deny, such as that filed by Purcell, is return without consideration. See Section 73.3584(d) of the Rules.

For the forgoing reasons, Webb Broadcasting, Inc. respectfully requests that the petition to deny its application filed by

Robert L. Purcell on October 28, 1991 be dismissed and given no further consideration.

Respectfully submitted,

WEBB BROADCASTING, INC.

By 

Neal J. Friedman
Its Attorney

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November 13, 1991

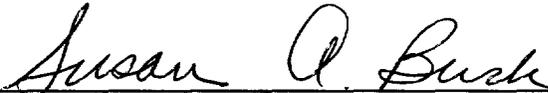
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CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, do hereby certify that a true and correct copy of the foregoing Motion to Dismiss was served by U.S. mail, postage prepaid, first class on the 13th day of November, 1991, on the following individuals:

* Mr. Larry D. Eads
Federal Communications Commission
Mass Media Bureau
Room 302
1919 M Street. N.W.
Washington, DC 20554

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Baraff, Koerner, Olender & Hochberg
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Susan A. Burk

* Hand Delivery