

ORIGINAL RECEIVED
FILE

MAY 11 1992

Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of)	MM Docket No. 92-62
)	
CRYSTAL CLEAR COMMUNICATIONS, INC.)	File No. BPH-901214MA
)	
THE RADIO MINISTRIES BOARD OF VICTORY)	File NO. BPH-901217MJ
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.)	
)	
For a Construction Permit for a New)	
FM Station on Channel 240A)	
Seelyville, Indiana)	

To: Administrative Law Judge John M. Frysiak

**MOTION TO DISMISS APPLICATION OF
CRYSTAL CLEAR COMMUNICATIONS, INC.**

The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. ("Radio Board"), by counsel, and pursuant to Section 1.221(c) of the rules, hereby moves for dismissal of the application of Crystal Clear Communications, Inc. ("Crystal Clear") for failure to file a notice of appearance. In support thereof, the following is stated:

The Hearing Designation Order, DA 92-361 (released April 13, 1992) ("HDO") in this proceeding was mailed April 14, 1992. See Attachment A hereto, a "Docket File" copy of the HDO with an "FCC Mail Section" stamp of 10:14 A.M., April 14, 1992. Pursuant to Section 1.221(c) of the Commission's rules, Crystal Clear was required to "file with the Commission" its written notice of appearance "within 20 days of the mailing" of the HDO. Thus,

No. of Copies rec'd 4/6
List A B C D E

Crystal Clear's notice of appearance was required to be on file with the Commission by no later than May 4, 1992.¹

On May 7, 1992 counsel for Radio Board received the attached notice of appearance and correspondence, both executed by Crystal Clear's counsel and both dated May 4, 1992. See Attachment B hereto.² Commission records, however, reveal that as of today, May 11, 1992, no notice of appearance by Crystal Clear has been received by the Commission. See Attachment C, consisting of an FCC Document Index Report and a Dockets Summary.

Section 1.221(c) provides, inter alia, that "[W]here an applicant fails to file such a written notice of appearance within the time specified. . . the application will be dismissed with prejudice for failure to prosecute." Since Crystal Clear has not filed a notice of appearance with the Commission,³ its application must be dismissed, in accordance with that rule.⁴

¹ Radio Board filed its notice of appearance on May 4, 1992.

² It appears from the certificate of service and the text of the cover letter that the notice of appearance was not even mailed until May 4, the date it was required to be on file with the Commission.

³ Nor did Crystal Clear file any "petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days. . . ." See Section 1.221(c).

⁴ Crystal Clear is Radio Board's sole competitor for the Seelyville station. Thus, upon dismissal of Crystal Clear's application, Radio Board's application will be eligible for grant, conditioned upon meeting the air hazard and contingent environmental issues specified in the HDO.

WHEREFORE, In light of the foregoing, this motion to dismiss should be GRANTED and the application of Crystal Clear Communications, Inc. DISMISSED WITH PREJUDICE.⁵

Respectfully submitted,

THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.

By


HARRY C. MARTIN

By


CHERYL A. KENNY

Its Counsel

⁵ Since Crystal Clear's application must be dismissed, and Crystal Clear is Radio Board's sole competitor for the Seelyville station, the Radio Board has not commenced discovery by exchanging documents with Crystal Clear under Section 1.325(c)(2) of the rules. However, out of an abundance of caution, Radio Board is today filing its integration statement, in line with Section 1.325(c)(2) of the rules, since that document must be filed with the presiding judge.

Attachment A

DOCKET FILE COPY OF HDO SHOWING MAILING DATE

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-62

In re Applications of

CRYSTAL CLEAR COMMUNICATIONS, INC.
(hereafter "CCCI") File No. BPH-901214MA

THE RADIO MINISTRIES BOARD OF VICTORY CHRISTIAN CENTER ASSEMBLY OF GOD, INC.
(hereafter "VCC") File No. BPH-901217MJ

For Construction Permit
for a New FM Station on Channel 240A
in Seelyville, Indiana

HEARING DESIGNATION ORDER

Adopted: March 23, 1992; Released: April 13, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Each of the captioned applicants propose to locate their transmitting antennas on a new tower. Our engineering study indicates that both CCCI and VCC have failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that each may have failed to comply with the environmental criteria set forth in the Report and Order in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also, Public Notice entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since CCCI and VCC failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-

Specified Guidelines Exposure to Radiofrequency Radiation," at 28. Therefore, CCCI and VCC will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, the applicant must file with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to proceed until the environmental phase is completed. See Golden State Broadcasting Corp., 71 FCC 2d 229 (1979), recon. denied sub nom. Old Pueblo Broadcasting Corp., 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the applicants' proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposals. See 47 C.F.R. § 1.1308(d).

3. VCC petitioned for leave to amend its application on January 17, 1992. The accompanying amendment was filed after March 27, 1991, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Since the FAA has determined that the antenna proposed by CCCI will constitute a hazard to air navigation, and since no determination has been received from the FAA as to whether the antenna proposed by VCC would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

- 1. If a final environmental impact statement is issued with respect to CCCI and VCC in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by CCCI and VCC would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That in accordance with paragraph 2 hereinabove, CCCI and VCC shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by VCC IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally, Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Attachment B

COPY OF NOTICE OF APPEARANCE

Stanley G. Emert, Jr.

568 E. Broadway Street
Maryville, Tennessee 37801
(615) 681-4311

RECEIVED
REDDY, BEGLEY & MARTIN

May 4, 1992

MAY 07 1992

Addressed to _____
Handled by _____
File _____

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-62
Seelyville, Indiana

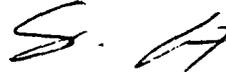
Dear Ms. Searcy:

I enclose the original and proper copies of a "Notice of Appearance" for filing in the above-captioned matter on behalf of Crystal Clear Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,



Stanley G. Emert, Jr.

SGE:
Enclosure

cc: Per Certificate of Service

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:
Applications of) MM Docket No. 92-62

CRYSTAL CLEAR COMMUNICATIONS, INC.) File No. BPH-901214MJ

THE RADIO MINISTRIES BOARD OF VICTORY)
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.) File No. BPH-901217MJ

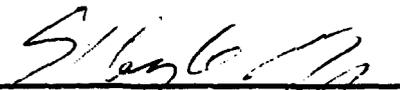
For Construction Permit
for a new FM Station in
Seelyville, Indiana

To: The Commission

NOTICE OF APPEARANCE

Crystal Clear Communications, Inc., by and through counsel, hereby states that said party will appear on the date fixed for the hearing and present evidence on the issues as required by new Commission rules. This matter was designated for a hearing by Hearing Designation Order released April 16, 1992 (FCC 92M-464). The hearing fee has been previously submitted.

Crystal Clear Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
568 E. Broadway Street
Maryville, Tennessee 37950
(615) 681-4311

May 4, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Notice of Appearance" has been sent by prepaid United States mail, first class, on the 4th day of May, 1992, to the following:

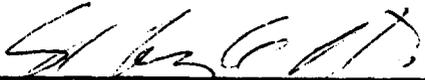
The Honorable John M. Frysiak
Federal Communications Commission
2000 L Street, N.W.
Washington D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Federal Communications Commission
2025 M Street N.W.
Room 7212
Washington D.C. 20554

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
Room 350
1919 M Street NW
Washington, D.C. 20554

Harry Martin, Esq.
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

Counsel to THE RADIO MINISTRIES BOARD OF VICTORY
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.



Stanley G. Emert, Jr.

Attachment C

FCC DOCUMENT INDEX REPORT AND DOCKETS SUMMARY

FEDERAL COMMUNICATIONS COMMISSION

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05/11/1992

DOCUMENT INDEX REPORT

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Rulemaking Number:
Date of Filed Document: 050492
Name of Applicant/Petitioner: RADIO MINISTRIES BOARD
Law Firm Name: REDDY, BEGLEY & MARTIN
Attorney/Author Name: KENNEY, CHERYL A.
File Number/City, St.: BPH-901217MJ
Document Type: NA <APPEARANCE >
FCC Number/DA Number:
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Receipt/Adopted/Issued Date: 050492
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Total Page Count: 2

Docket Number: 92-62
Rulemaking Number:
Date of Filed Document:
Name of Applicant/Petitioner: ALJ
Law Firm Name: FCC
Attorney/Author Name: STIRMER, JOSEPH
File Number/City, St.: BPH-901214MA ET AL
Document Type: OR <ORDER >
FCC Number/DA Number: 92M-464
Release Date/Denied Date: 041692
Receipt/Adopted/Issued Date: 041492
Exparte/Late Filed:
Viewing Status: 0
Total Page Count: 1

Docket Number: 92-62
Rulemaking Number:
Date of Filed Document:
Name of Applicant/Petitioner: AUDIO SERVICES DIV.
Law Firm Name: FCC
Attorney/Author Name: GAY, W. JAN
File Number/City, St.: BPH-901214MA ET AL
Document Type: HD <HDO >
FCC Number/DA Number: DA 92-361
Release Date/Denied Date: 041392
Receipt/Adopted/Issued Date: 032392
Exparte/Late Filed:
Viewing Status: 0
Total Page Count: 2

Docket Number: 92-62
Rulemaking Number:
Date of Filed Document: 121790
Name of Applicant/Petitioner: THE RADIO MINISTRIES BOAR
Law Firm Name: REDDY, BEGLEY & MARTIN
Attorney/Author Name: KENNY, CHERYL A.
File Number/City, St.: BPH-901217MJ
Document Type: AP <APPLICATION >
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Docket Number: 92-62
Rulemaking Number:
Date of Filed Document: 121490
Name of Applicant/Petitioner: CRYSTAL CLEAR COMMUNICAT
Law Firm Name:
Attorney/Author Name: EMERT, STANLEY G.
File Number/City, St.: BPH-901214MA
Document Type: AP <APPLICATION >
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Exparte/Late Filed:
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Total Page Count: 63

::::: *** DKT/RM: 92-62 *** :::::

05/04/92 DOC TYPE: APPEARANCE
APPL : RADIO MINISTRIES BOARD ATT: BPH-901217MJ
LAW FIRM: REDDY, BEGLEY & MARTIN KENNEY, CHERYL A.
RELEASE/DENIED: FCC/DA#:
RM#: VIEWING STATUS: 0 EXPARTE:

04/14/92 DOC TYPE: ORDER
APPL : ALJ ATT: BPH-901214MA ET AL
LAW FIRM: FCC STIRMER, JOSEPH
RELEASE/DENIED: 04/16/92 FCC/DA#: 92M-464
RM#: VIEWING STATUS: 0 EXPARTE:

03/23/92 DOC TYPE: HDO
APPL : AUDIO SERVICES DIV. ATT: BPH-901214MA ET AL
LAW FIRM: FCC GAY, W. JAN
RELEASE/DENIED: 04/13/92 FCC/DA#: DA 92-3
RM#: VIEWING STATUS: 0 EXPARTE:

12/17/90 DOC TYPE: APPLICATION
APPL : THE RADIO MINISTRIES BOAR ATT: BPH-901217MJ
LAW FIRM: REDDY, BEGLEY & MARTIN KENNY, CHERYL A.
RELEASE/DENIED: FCC/DA#:
RM#: VIEWING STATUS: 0 EXPARTE:

12/14/90 DOC TYPE: APPLICATION
APPL : CRYSTAL CLEAR COMMUNICAT ATT: BPH-901214MA
LAW FIRM: EMERT, STANLEY G.
RELEASE/DENIED: FCC/DA#:
RM#: VIEWING STATUS: 0 EXPARTE:

FEDERAL COMMUNICATIONS COMMISSION

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RECORD INDEX DATA

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File No: BPH-901214MA; BPH-901217MJ
Subject: FOR CONSTRUCTION PERMIT FOR A NEW FM STATION
Applicant/Petitioner: CRYSTAL CLEAR COMMUNICATIONS; THE RADIO MINISTRIES BOARD
OF VICTORY CHRISTIAN CENTER ASSEMBLY OF GOD
Filed by:
Location: SEELYVILLE, IN
Channel: 240A Call Sign: Date Closed:
Appeal No:
Designation Date: 032392 Cmsn Decn: 0 PN Date:
ID Date: Docket Created: 032492 NPRM/NOI Date:
OA Date: Eff. Date: R&O Date:
RB Decn: Rules Sec:

FEDERAL COMMUNICATIONS COMMISSION

Record Image Processing System

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JOB NUMBER: 5553
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05/08/1992 @ 11:00:18

RECORD INDEX DATA

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Rulemaking Number:
Date of Filed Document:
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Law Firm Name: FCC
Attorney/Author Name: GAY, W. JAN
File Number/City, St.: BPH-901214MA ET AL
Document Type: HD <HDO >
FCC Number/DA Number: DA 92-361
Release Date/Denied Date: 041392
Receipt/Adopted/Issued Date: 032392
Exparte/Late Filed:
Viewing Status: 0
Total Page Count: 2

CERTIFICATE OF SERVICE

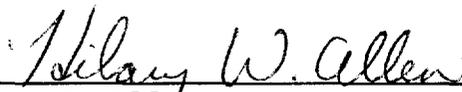
I, Hilary W. Allen, hereby certify that on this 11th day of May, 1992, copies of the foregoing **MOTION TO DISMISS APPLICATION OF CRYSTAL CLEAR COMMUNICATIONS, INC.** were hand delivered or mailed, first class, postage prepaid, to the following:

Administrative Law Judge John M. Frysiak *
Federal Communications Commission
2000 L Street, N.W., Room 223
Washington, D.C. 20554

Robert Zauner, Esquire *
Hearing Branch, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Crystal Clear Communications, Inc.
c/o Lorie M. Shauntee
1407 S. 8th Street
Terre Haute, Indiana 47802

Stanley G. Emert, Jr., Esquire
568 E. Broadway Street
Maryville, Tennessee 37950
Counsel for Crystal Clear Communications, Inc.



Hilary W. Allen

* HAND DELIVERED