

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
DONALD L. JONES) File No. BPH-900518MS
VOICES NORTH, INC.) File No. BPH-900531MC
GREAT SCOTT BROADCASTING) File No. BPH-900531MD
WARNER ROBINS COMMUNICATIONS, INC.) File No. BPH-900531MF
For a Construction Permit for a)
New FM Station on Channel 273A at)
Warner Robins, Georgia)

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Warner Robins Communications, Inc. ("WRC"), by its attorneys and pursuant to Section 1.115(d) of the Commission's Rules, hereby opposes the Application for Review filed by Voices North, Inc. ("Voices North") on May 23, 1991. As set forth herein Voices North failed to ensure that sufficient funds were available to cover its filing fee payment check submitted to the Commission and, therefore, in accordance with the Commission's rules, its application was properly dismissed.

1. Voices North is a Georgia corporation formed for the purposes of prosecuting the above-referenced application. At the time of the initial filing, John Norville was the president, sole officer and director of Voices North. Mr. Norville owned 100% of the voting stock, while Andrew J. Guest and G. Troy Mattox each owned 50% of the non-voting stock. It was anticipated that Mr.

Norville would own 20% of the equity and Mr. Guest and Mr. Mattox would each own 40% of the equity.^{1/}

2. Voices North's application was filed on May 30, 1990. On June 12, 1990 the Commission issued a Public Notice reporting that the Voices North application had been received, but not yet accepted for tender.^{2/} Subsequently, on September 18, 1990 the Commission issued another Public Notice announcing that the Voices North application had been returned by the fee section.^{3/} The Voices North application was returned because the check for the filing fee had been rejected by the bank as a result of insufficient funds. According to Voices North's Application for Review, Voices North's check for the Commission's filing fee did not clear the bank because Mr. Norville had converted corporate funds to his own use. Voices North contends that the

1/ In October of 1990, Mr. Norville was removed as the President, sole officer and director and 100% voting shareholder of Voices North and replaced by Troy Mattox. Since Mr. Norville was the sole voting shareholder of Voices North, he was the only member of Voices North with an attributable interest. See 47 C.F.R. Section 73.3555 note 2 subsection (f) (1990) (holders of non-voting stock shall not be attributed an interest in the issuing entity). Therefore, the removal of Mr. Norville and his replacement with Mr. Mattox constitutes a transfer of control of more than 50% of the attributable ownership interest in the application. Such transfer of control is considered a major change in the application, requiring a new file number. See 47 C.F.R. Section 73.3573(b) (1990). Thus, even if not dismissed for failure to pay the hearing fee, Voices North's application would have to be returned to the beginning of the processing line, and thus would be late filed after the close of the filing window.

2/ See Public Notice, Report No. 14756 (released June 12, 1990).

3/ See Public Notice, Report No. 20950 (released September 18, 1990).

corporation's remaining principals are innocent victims of an individual wrongdoer who has been discharged from the applicant. Therefore, in fairness to the corporation's remaining principals, Voices North asserts that its application should be reinstated.

3. The formerly passive investors of Voices North may be entitled to the civil remedies afforded passive investors under Georgia law, and may be entitled to our sympathy. But they are not entitled to reinstatement, nunc pro tunc, of an application that was not properly tendered at the close of the filing window. It is the obligation of every applicant to assure that sufficient funds are available to honor any payment instrument submitted to the Commission at the time the instrument is presented for payment. The Commission's Rules unequivocally provide that applications tendered to the Commission with deficient payment instruments will be dismissed and returned to the applicant without processing.^{4/}

4. It is undisputed that the bank refused to honor Voices North's filing fee payment check because sufficient funds were not available in its account due to the conversion of those funds

^{4/} See 47 C.F.R. Section 1.1107(b) (1990). Likewise, Section 1.110(a)(1) of the Commission's Rules provides that:

If, prior to a grant of an instrument of authorization, the Commission is notified that final payment [of the applicable fee] has not been made, the application or filing will be:

- (i) Dismissed and returned to the applicant;
- (ii) Shall lose its place in the processing line;
- (iii) And will not be accorded nunc pro tunc treatment if resubmitted after the relevant filing deadline.

47 C.F.R. Section 1.110(a)(1) (1990).

by Voices North's President. In such circumstances, the Commission's rules are clear. The Commission correctly dismissed the Voices North application and returned it to the applicant without processing. Voices North voluntarily chose to rely on its President to secure timely payment of its fee obligation, and has no basis upon which to claim that it was treated unfairly by the Commission. The FCC cannot be the guarantor that its applicants will be honest in their private business dealings.

In view of the foregoing, the dismissal of the application of Voices North, Inc., for a construction permit for a new FM station on Channel 273A at Warner Robins, Georgia, should be affirmed.^{5/}

Respectfully submitted,

WARNER ROBINS COMMUNICATIONS, INC.

By: 

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Its Attorneys

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Dated: June 7, 1991

^{5/} On April 17, 1991 the remaining applicants in this proceeding filed a Joint Motion for Approval of Settlement Agreements, which, if approved, would effect a universal settlement among the existing applicants. When Voices North's demand for a settlement payment was declined, it made good on its threat to oppose the settlement. Since there is no other known impediment to the immediate approval of the settlements, it is only Voices North's continuing prosecution of appeals that is delaying the initiation of new service to Warner-Robins. Therefore, it is respectfully requested that Voices North's application for review be acted upon expeditiously.

CERTIFICATE OF SERVICE

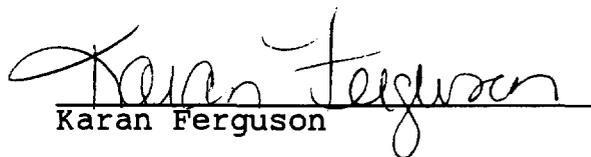
I, Karan Ferguson, a secretary in the law firm of Fisher, Wayland, Cooper & Leader, do hereby certify that on this __st day of June, 1991, I caused the foregoing OPPOSITION TO APPLICATION FOR REVIEW to be served, First Class U.S. Mail, postage prepaid, upon the following persons:

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* By hand