

FCC MAIL SECTION

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

JUN 11 2 14 PM '92
FCC 92M-697

DISPATCHED BY

In re Applications of)
CRYSTAL CLEAR COMMUNICATIONS, INC.)
THE RADIO MINISTRIES BOARD OF VICTORY)
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.)
For Construction Permit for a)
New FM Station on Channel 240A)
in Seelyville, Indiana)

MM DOCKET NO. 92-62 ✓ 03116
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File No. BPH-901214MA

File No. BPH-901217MJ

MEMORANDUM OPINION AND ORDER

Issued: June 9, 1992 ; Released: June 11, 1992

1. Under consideration are the following:

Motion to Dismiss Application of Crystal Clear Communications, Inc., filed May 11, 1992, by The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. ("Radio Board");

Report filed May 20, 1992, by Crystal Clear Communications, Inc. ("Crystal Clear");

Opposition to Motion to Dismiss Application of Crystal Clear Communications, Inc., filed May 26, 1992;

Motion to Accept Late Filed Notice of Appearance, filed May 26, 1992, by Crystal Clear;

Opposition to Motion to Accept Late Filed Notice of Appearance, filed June 4, 1992, by Radio Board; and

Reply to Opposition to Motion to Accept Late Filed Notice of Appearance, filed June 4, 1992, by Radio Board.

2. Crystal Clear has moved to have its late filed notice of appearance accepted. Radio Ministries opposes the motion and in turn moves to dismiss Crystal Clear's application for its failure to timely file its notice of appearance.

3. Crystal Clear explains that it retained the services of a courier on May 4, 1992 for timely delivery of its notice on the same date. Apparently the delivery was attempted without success after business hours. The courier then held the notice for nearly two weeks at the airport pending further instructions. The notice of appearance was finally filed on May 18, 1992.

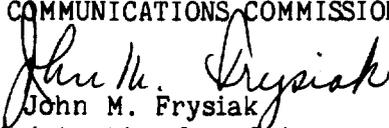
Crystal Clear argues that Section 1.221 is flexible enough to permit acceptance of the late filed notice because of the circumstances.

4. The motion to accept the late filed notice of appearance must be denied. Crystal Clear does not have adequate justification for acceptance. Crystal Clear has not identified the courier, nor has it submitted any documentation to corroborate its excuse. In its Public Notice, 58 RR 2d 1706 (1985), the Commission indicated that, in order to be considered, untimely filings must have been caused by a "calamity of a widespread nature that even the best of planning could not have avoided." No such circumstance exists here.

5. Inasmuch as Crystal Clear's notice of appearance has been untimely filed, its application must be dismissed pursuant to Section 1.221(c).

Accordingly, IT IS ORDERED that the Motion to Accept Late Filed Notice of Appearance, filed May 26, 1992, by Crystal Clear IS DENIED; the Motion to Dismiss Application of Crystal Clear Communications, Inc., filed May 11, 1992, by The Radio Ministries Board of Victory Christian Center Assembly of God, Inc. IS GRANTED; and the application of Crystal Clear Communications, Inc. IS DISMISSED WITH PREJUDICE.¹

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

¹ In view of the foregoing, IT IS ORDERED that the prehearing conference scheduled for June 12, 1992 at 9:00 a.m. IS CANCELLED.