

Before the
Federal Communications Commission
Washington, DC 20554

ORIGINAL
FILE
ORIGINAL

In re Applications of)	MM Docket No. 92-70
SABLE COMMUNITY BROADCASTING CORPORATION)	File No. BPED-851003MB
Channel 217A)	
Hobson City, Alabama)	
BOARD OF TRUSTEES SHORTER COLLEGE)	File No. BPED-860205MD
Channel 217A)	
Rome, Georgia)	
GADSDEN STATE COMMUNITY COLLEGE)	File No. BPED-860307MK
Radio Station WSGN(FM))	
Channel 217A)	
Oxford, Alabama)	
TRINITY CHRISTIAN ACADEMY)	File No. BPED-860512MB
Channel 217A)	
Oxford, Alabama)	
For Construction Permit for)	
New and Modified Noncommercial)	
FM Facilities on Channel 217)	

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

RECEIVED

JUN 29 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR LEAVE TO AMEND

Sable Community Broadcasting Corporation ("Sable"), by its attorneys, pursuant to Section 73.3522(b) of the Commission's rules, hereby petitions for leave to amend its application. The accompanying amendment responds to two directives in the Hearing Designation Order, DA 92-412, released April 15, 1992. The first, in paragraph 4 of the HDO, directed Sable to provide evidence that it had published local public notice of the filing of its application pursuant to Section 73.3580 of the Commission's rules. The second, in paragraph 10 of the HDO, directed Sable to address the potential impact of its proposal on the environment, pursuant to Section 1.1308 of the Commission's rules. The attached amendment addresses both directives.

No. of Copies rec'd OTG
List A B C D E

Because this amendment is being filed more than thirty days from the release of the HDO, Sable establishes herein that the amendment meets the good cause tests articulated in Erwin O'Connor Broadcasting Co., 22 FCC2d 140, 18 RR2d 820 (Rev. Bd. 1970).

1) The Involuntary Nature of the Amendment. Because this amendment is being filed pursuant to directives in the HDO, and pursuant to relevant FCC rules, it is not voluntary.

2) No Comparative Advantage. Sable will not garner any comparative advantage by the acceptance of this amendment.

3) Additional Issues. Acceptance of this amendment will potentially result in the elimination of issues. Paragraph 4 of the HDO stated that if Sable did not submit evidence that it complied with Section 73.3580 of the Commission's rules, an appropriate issue would be added. Sable's submission of proof that it did publish local notice eliminates the need for the specification of an additional Section 73.3580 issue.

Paragraph 10 designated a contingent environmental issue. Sable's amendment may result in the elimination of this contingent issue.

Thus, acceptance of this amendment will have the potential to eliminate, rather than necessitate the addition of new issues.

4) Disruption or Prejudice. This amendment is being filed well prior to the commencement of discovery. No other procedural deadlines have been missed or implicated to date. Since acceptance of the amendment will eliminate the need for a Section 73.3580 issue, and may result in the elimination of the contingent environmental issue, this amendment will simplify rather than

disrupt the proceeding. Nor should the amendment prejudice any parties, given the early stage of this case.

5) Due Diligence. Since this amendment will not disrupt the proceeding, prejudice any parties, or result in the need to add any issues, Sable has acted diligently in filing the amendment.¹ The fact that it did not file the amendment within thirty days of the release of the HDO does not dictate that Sable acted without due diligence. Nor does the fact that Sable earlier failed to respond to a letter dated November 26, 1991 from the Commission asking Sable for the information contained in this amendment.

Sable did in fact publish local notice on a timely basis in compliance with Section 73.3580 of the Commission's rules, so the substance of the task reported by the amendment was completed with all due speed. The environmental impact statement is a task which Sable could have, and perhaps should have submitted earlier, but as explained in the Opposition to Motion to Dismiss, being filed today, Sable did not receive the Commission's November 26, 1991 letter. It was also unrepresented by qualified communications counsel when it received the HDO. Now that it has retained counsel, and understands and is aware of its obligations, it has reacted diligently by filing the accompanying amendment.

The contingent environmental issue specified in the HDO will remain unless and until Sable meets the issue. The proceeding can

¹ This amendment is being filed roughly eight weeks following the release of the HDO, a time frame which has been deemed reasonable in similar contexts. See Mark L. Wodlinger, 63 RR2d 1083 (Rev. Bd. 1987) (interval of roughly two months to amend tower site proposal deemed acceptable); Brownfield Broadcasting Corp., 53 RR2d 1175 (Rev. Bd. 1983) (interval of three months and one week to amend tower site proposal deemed acceptable).

go forward unimpeded while that issue is addressed. If Sable fails to meet the issue, its application will not be granted. Its failure to file an environmental impact statement earlier has had no impact on the proceeding.

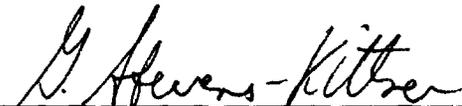
The due diligence element of the Erwin O'Connor test is one in which equitable considerations play a prominent role. See Anax Broadcasting, Inc., 87 FCC2d 483, 488-89 (1981) (the "due diligence . . . requirement . . . [should be viewed] in light of the equities of the case, especially where a proffered amendment is intended to cure a disqualifying defect"); Mark L. Wodlinger, 63 RR2d 1083, 1087 (Rev. Bd. 1987) citing Circle L, Inc., 101 FCC2d 617, 619 (Rev. Bd. 1985) (equities of the case manifestly outweigh small delay). Here, Sable's application was pending for over six years before the November 26, 1991 letter was sent, and six and a half years before the HDO was released. The applicant is a noncommercial applicant, formed to serve the needs of a low income minority population, and was without substantial resources. That it missed certain deadlines under these circumstances is understandable. The equities strongly favor accepting the amendment.

Furthermore, the alternative to accepting the amendment is that Sable will merely meet the issues in its hearing exhibits. It is better to address the issues at this early stage of the proceeding than to carry the environmental, and, supposedly, a Section 73.3580 issue, forward throughout the proceeding, thereby unnecessarily complicating the case.

WHEREFORE, for the foregoing reasons, Sable respectfully urges
the Presiding Judge to accept the attached amendment.

Respectfully submitted,

SABLE COMMUNITY BROADCASTING
CORPORATION

By: 
Gerald Stevens-Kittner
ARTER & HADDEN
1801 K Street, NW, Suite 400
Washington, DC 20006
(202) 775-7138

Its Attorneys

June 9, 1992

AMENDMENT

The application of Sable Community Broadcasting Corporation ("Sable") for authorization to construct a new noncommercial educational FM broadcast station on channel 217, Hobson City, Alabama, is hereby amended as follows:

- 1) Attached hereto is a true and correct copy of the local public notice that Sable had published when it filed its application, in accordance with Section 73.3580 of the Commission's rules.
- 2) Sable has proposed to build a new tower with its antenna as the first and only transmit antenna on the tower. The transmitter site is in a remote area 1.5 miles from the nearest residence. In order to protect workers and others from potentially harmful RF radiation, Sable intends to erect a fence around the transmitter site; post a warning sign at the access point advising inadvertent visitors of the danger that should they come too close to the site they risk being exposed to harmful RF radiation; significantly reduce, or, if necessary, shut off power whenever it becomes necessary for workers to perform maintenance on and around the tower; and coordinate with any subsequent tenants on the tower in order to have an agreement in place which will require all users of the tower to reduce or shut off power whenever maintenance of the tower needs to be performed.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

June 8, 1992


Ms. Maudine Holloway, President
Sable Community Broadcasting
Corporation

The Sable Community Broadcasting Corporation located at 211 Church Street Hobson City Alabama 36201, has filed application with the Federal Communications Commission (FCC) For the authority permission to construct and operate a 295 watt FM educational non-profit radio station in Hobson City Frequency 91.3MHz Channel 217A Hobson City, Alabama Proposed requested call letters are WSCB The Board of Directors is Maudine J. Holloway, President, Vernice F. Sanders Vice President, Billy Ross, Treasurer
Feb 7 8, 14 15 21 & 22, 1985

CERTIFICATE OF SERVICE

I, Michelle Jarrett, a secretary in the law firm of Arter & Hadden, hereby certify that on this 9th day of June, 1992, a copy of the foregoing PETITION FOR LEAVE TO AMEND was served by hand-delivery, unless otherwise indicated, to each of the following persons:

Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20554

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

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Rm. 302
Washington, D.C. 20554

Harry C. Martin
Andrew S. Kersting
Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037
Counsel for Trinity Christian Academy

* Board of Trustees
Shorter College
Shorter Hall
Rome, Georgia 30101-9989

M. Scott Johnson, Esq.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 East Tower
Washington, D.C. 20005
Counsel for Gadsen State Community College



Michelle Jarrett

* via First Class U.S. Postal Service,
Postage Prepaid