

ORIGINAL
FILE

BEFORE THE

Federal Communications Commission RECEIVED

WASHINGTON, D. C. 20554

JUN 16 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-70
)	
SABLE COMMUNITY)	
BROADCASTING CORPORATION)	File No. BPED-851003MB
)	
GADSDEN STATE COMMUNITY COLLEGE)	File No. BPED-860307MK
)	
TRINITY CHRISTIAN ACADEMY)	File No. BPED-860512MB
)	
For Construction Permit for)	
New and Modified Noncommercial FM)	
Facilities on Channel 217)	

To: Administrative Law Judge Arthur I. Steinberg

REPLY TO OPPOSITION TO MOTION TO DISMISS

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June 16, 1992

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To: Administrative Law Judge Arthur I. Steinberg

REPLY TO OPPOSITION TO MOTION TO DISMISS

Trinity Christian Academy ("Trinity"), by its counsel and pursuant to Section 1.294 of the Commission's rules, hereby submits its response to the "Opposition to Motion to Dismiss" ("Opposition") filed June 9, 1992 by Sable Community Broadcasting Corporation ("Sable"). In reply, the following is stated:

A. Preliminary Statement¹

As noted in Trinity's Motion to Dismiss ("Motion"), despite the directives in the Hearing Designation Order, DA 92-412 (released April 15, 1992) ("HDO") and Section 1.221(c) of the Commission's rules, requiring notices of appearance to be filed by May 6, 1992, Sable did not file its Notice of Appearance ("Notice") until May 19, 1992, two weeks late. It neither served its Notice

¹ This section meets the requirements of Section 1.49(c) for a concise summary.

2.

on the other parties nor offered any explanation for its late filing.² Thus, the Presiding Judge properly dismissed Sable's late-filed Notice by Order, 92M-614 (May 28, 1992). On May 29, 1992, Trinity filed its motion to dismiss Sable's application for failure to timely file its Notice, as well as for its repeated failures to timely submit on environmental assessment and documentation of its local notice.

In its Opposition, Sable defends its filing failures with such excuses as (a) it did not receive a November 1991 Commission letter requesting an environmental statement because it failed to update its application with its new address; (b) one of its principals, a professional manager, was "confused" about the HDO language, and another, an attorney, was too busy with other matters to timely review the HDO himself; (c) the attorney-principal was not a communications lawyer and, therefore, apparently could not determine that the filing deadline of 20 days from mailing of the HDO was May 6, 1992; and (d) minority and non-commercial applicants should not be held to the same procedural requirements as other applicants. As discussed below, none of those excuses (or others Sable proffers) is sufficient to meet the "high burden" for justifying waiver of the Commission's procedural deadlines; instead, they lend support to Sable's dismissal. Further, Sable's recent pleadings indicate yet another transgression: failure to

² Through a motion filed June 4, 1992, nearly a full month after the notice of appearance filing deadline, Sable sought to have its Notice accepted "nunc pro tunc." Trinity filed its opposition to that motion on June 10, 1992.

amend its application to report the appointment of attorney Marcus Reid to its governing board, in violation of Section 1.65 of the rules. That failure constitutes an additional reason for dismissing Sable's application.

B. Untimely Filings Warrant Dismissal

(1) Notice of Appearance

Citing Section 1.221(c) of the Commission's rules, Sable urges that the filing of its Motion for Acceptance of Late-Filed Notice is "contemplated" by that rule. In fact, Section 1.221(c) provides that where either a notice of appearance, petition to dismiss, or motion to accept late-filed notice is not "filed prior to the expiration of the time specified" for filing the notice of appearance, "the application will be dismissed with prejudice for failure to prosecute."³ Sable did not file, by the May 6, 1992 expiration date of the time specified for filing its Notice, a motion for acceptance of its late-filed Notice. Nor did it file such a motion when it filed its Notice late, on May 19, 1992. Rather, Sable's Motion for Acceptance was not filed until nearly a month after the notice of appearance filing deadline.

The Commission has warned applicants that an untimely filing will be considered only if the tardiness is caused by a

³ Thus, Sable's attempt to place the onus on Trinity to "meet the high standard for dismissals" (Opposition, p. 12) is misguided because Section 1.221(c) specifically addresses the issue of late-filed notices of appearance and requires dismissal unless the tardy applicant meets the high burden required to demonstrate justification of a waiver. Moreover, even under the standards of Communi-Centre Broadcasting, Inc. v. FCC, 856 F 2d 1551 [65 RR 2d 457] (D.C. Cir. 1988), Trinity has made its case, as shown herein.

"calamity of a widespread nature that even the best of planning could not have avoided." See Public Notice, 58 RR 2d 1706 (1985). Sable cannot point to any such unusual and compelling circumstances.

Sable's actions -- or inaction -- upon receiving the HDO depict an applicant which simply did not take its obligation to comply with Commission requirements seriously. While conceding it likely received the HDO before the notice of appearance filing deadline, Sable's president, Maudine Holloway, claims she was "confused about how or when I was supposed to respond." Sable Opposition, Holloway Declaration. Ms. Holloway's "confusion" is curious in light of the HDO's seemingly plain directives and the fact Ms. Holloway is a professional, employed as executive director of a social service organization. In any event, Ms. Holloway tried to get help from fellow Sable Board member, attorney Marcus Reid,⁴ but "he was busy with other things and provided no assistance." Ms. Holloway does not say when she approached Mr. Reid for assistance or why, after he initially refused to provide it, she did not then seek help from other Sable Board members such as the Mayor of Hobson City, a retired school principal, the City Clerk, or other social service professionals.⁵ Nor does she explain why

⁴ In her declaration attached to Sable's Opposition, Ms. Holloway does not identify the attorney as Mr. Reid. However, Sable did identify Mr. Reid as that attorney in its June 4, 1992 Motion for Acceptance Nunc Pro Tunc of Late-Filed Notice of Appearance, p. 2.

⁵ See Ms. Holloway's Declaration, p. 2, identifying such Board members.

5.

she did not then seek assistance from a communications attorney. Ms. Holloway states that "eventually" she prepared Sable's Notice, and had attorney Reid sign it and submit it to the Commission, but she does not reveal whether she or Reid knew, when the Notice was sent, that it was untimely.

Sable explains that it was "effectively unrepresented by counsel and simply did not understand its obligations." Opposition, p. 4. In fact, since attorney Reid did sign and submit Sable's Notice as its counsel, Sable did have the benefit of legal counsel. While Mr. Reid does not practice communications law, the HDO is clear in its directive:

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.

HDO, ¶23. It did not take any particular legal expertise, or even knowledge of the Commission's rules, to calculate the date by which the HDO required the written appearance to be filed.

Moreover, even if Sable were considered to have prosecuted its application without the assistance of counsel, it did so at its own risk. As the Commission has often times cautioned, where an applicant elects to act without counsel, it has the burden of becoming acquainted with, and conforming to, the Commission's rules and procedures. See CSJ Investments, Inc., 5

FCC Rcd 7653, 7654, 68 RR 2d 897, 899 (1990) (citations omitted). Thus, the Commission "will neither excuse nor tolerate the disruption of its processes because an applicant, which undertakes to act as its own counsel, is unfamiliar with the Commission's rules and procedures." Id. Sable's decision to attempt to prosecute its application without the benefit of communications counsel, especially after its president became "confused" about Sable's obligations, does not warrant acceptance of its late-filed Notice.

Sable cites John Spencer Robinson, 5 FCC Rcd 5542, 68 RR 2d 397 (Rev. Bd. 1990), to support its argument that "equitable considerations" require denial of Trinity's motion to dismiss. But that case does not support Sable's cause. In Robinson, individual applicant John Robinson had until May 29, 1990 to file his notice of appearance and hearing fee. The HDO was issued at the time the Commission's hearing fee was being increased. Based upon advice from an FCC official that if his notice of appearance and fee were postmarked by May 18, 1990 he could pay the lower fee, Robinson mailed his filing on that date. He also sent service copies to the other applicants on May 18. However, Robinson apparently was not told that the fee also had to be received at the Commission by May 21, 1990. Thus, on May 25, 1990, the Commission sent Robinson a letter stating that his notice and fee had been received too late to meet the old fee schedule and that he would have to re-file under the new rules with a check for a larger amount. Robinson did not receive the Commission's letter until two days after the May 29

notice of appearance filing deadline. Soon thereafter, he re-filed his notice of appearance with a new check for the increased fee.

Describing it as a "close call," the Review Board accepted Robinson's late-filed notice of appearance and hearing fee. It concluded that such a result was called for "given the particular circumstances of this proceeding," including the facts that new fees had been established one day before release of the HDO, Robinson had sent his notice of appearance two weeks before the filing deadline, and he had subsequently attempted to comply with the new fee schedule. The Board found that "Robinson essentially committed himself to participate in this proceeding several weeks before the relevant deadline . . ." Id. at 5544, 68 RR 2d at 399.

The facts here are not at all similar. First, whereas Robinson filed his notice of appearance two weeks prior to the filing deadline, Sable filed its notice of appearance two weeks after that deadline. While Robinson acted diligently to ensure no deadline was missed, Sable's "confused" president let the HDO go unheeded until well after the deadline had passed and, unlike Robinson, did not serve copies of its Notice on the other parties. Moreover, while Robinson relied on apparently erroneous advice from an FCC official, and was faced with changing rules, Sable had only to read the clear language of the HDO, which it timely received, in order to determine what was required to be filed and when. If its president found that language confusing, it was incumbent upon Sable to promptly obtain the assistance necessary to ensure it was

conforming to the Commission's rules and procedures. Sable failed to do so.

Sable emphasizes that this is a proceeding for a noncommercial station, noting the Commission does not apply the "hard look" processing standard⁶ and uses a more lenient financial qualifications standard than for commercial stations. Thus, it urges a relaxed standard for requiring noncommercial applicants to adhere to filing deadlines, citing The Denton Channel Two Foundation, 49 RR 2d 427 (1981) as an example of waiver of a cut-off rule for a non-commercial applicant. But it was not the non-commercial nature of the Denton applicant that formed the basis for the Commission's decision to waive the application filing date, it was that applicant's diligent attempts to meet and then extend the filing date. Specifically, in Denton, a group of citizens concerned about the fact the only non-commercial channel allotted to Denton had been applied for to serve a different community,⁷ negotiated with the first applicant for programming responsive to Denton. When those negotiations failed, the group decided to apply for the station itself as a Denton facility. However, when the

⁶ The "hard look" standard was not premised upon a policy of treating non-commercial applicants more leniently but was initiated primarily to facilitate processing of the large numbers of commercial FM applications being filed in response to the Docket 80-90 FM allotments. The Commission has now proposed to ease the standard to allow a curative amendment in light of the substantial decrease in the volume of applications to be processed. See Notice of Proposed Rulemaking, 6 FCC Rcd 7265 (1992). However, it still would not allow filing deadline defects to be cured through amendment. Id. at 7268.

⁷ Under the prior 15-mile rule.

deadline was fast approaching and it became apparent the group would be unable to produce a substantially complete application by the filing deadline, it filed a request for waiver of that deadline and an extension of the time to file its application. Thus, unlike Sable, the Denton applicant was mindful of the Commission's filing deadline and timely sought a waiver of it. Although the Commission failed to act on its waiver request for over two years, the Denton group filed its application within the period it had requested for the extension, and the Commission accepted it. Thus, Denton did not rest upon application of a different standard for noncommercial applicants.⁸

Sable also seeks special treatment because it is a minority-owned applicant and because its application has been on file for seven years. First, the suggestion that an applicant's obligation to comply with Commission regulatory requirements is tied to how quickly the Commission's staff processes its application is both unsupported and illogical. In fact, that the applications have been pending for so long merely emphasizes the importance of adhering to the procedural deadlines so as to attempt to initiate service to the public in the most expeditious manner possible. Moreover, the Commission's filing deadlines are, and

⁸ However, the 1981 Denton case was decided during a time when the Commission was more lenient toward waiver requests overall. In 1985, however, through its Public Notice, supra, the Commission warned applicants that, in the future, only the most compelling circumstances would warrant waiver of filing deadlines.

must remain, colorblind; to hold otherwise would create further delays and disruptions.⁹

The Commission has never said that its procedural rules are not equally applicable to all applicants, commercial and noncommercial, minority and non-minority. Regardless of the type of station sought, or the ethnic make-up of the group seeking it, the Commission has the responsibility to provide new service to the public in the most efficient, expeditious manner possible, and that effective and expeditious dispatch of the FCC's business is, in itself, an integral part of the public interest. See CSJ Investments, supra, 5 FCC Rcd at 7654, 68 RR 2d at 899. Moreover, "the process of selecting which of otherwise qualified applicants should be granted must remain fair and effective, but undue delay in that process disserves the public by delaying the institution of new service and exacting an economic toll on both the Government and the applicants. To the extent that we can eliminate unnecessary delays in that process, we will be serving the potential listening and viewing public, the American taxpayer, and the applicants." Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 164 (1990), aff'd, 6 FCC Rcd 3403 (1991). Failure to abide by the Commission's rules, including filing deadlines, eviscerates those

⁹ For example, if waivers for late filing were based upon the applicant's ethnic make-up, an applicant's entitlement to minority status would have to be litigated before a decision could even be made as to whether the application would be accepted.

rules and promotes gamesmanship, at great expense to the public interest.

Moreover, allowing Sable to ignore filing deadlines would prejudice the other applicants, who have abided by them, as well as disserve the public. The HDO designated four applications for hearing. One, Shorter College, requested dismissal of its application on May 27, 1992. Sable, of course, failed to timely file its notice of appearance, making its application ripe for dismissal. Thus, there are remaining two viable applicants, Trinity and Gadsden State Community College ("Gadsden"). On May 21, 1991, Gadsden petitioned to amend its application to substitute Channel 218 for the presently-proposed Channel 217 and to make other technical modifications which would remove the mutual exclusivity between Trinity and Gadsden. Gadsden's amendment was supported by the Mass Media Bureau in comments filed June 2, 1992. Acceptance of Gadsden's amendment would eliminate the need for a comparative hearing, leading to grant of both Trinity's application for Oxford, Alabama, and Gadsden's application for Gadsden, Alabama. This would result in prompt initiation of new services for both of those communities. If Sable were allowed to prosecute its application despite its refusal to follow the Commission's rules, the Oxford listening public would be left waiting for many more years, while a dangerous precedent would be set condoning dilatory tactics.

Applicants have a high burden to justify an exception to procedural deadlines. See CSJ Investments, supra, 5 FCC Rcd at

7654, 68 RR 2d at 899. Sable, with no legitimate excuse for refusing to meet the Commission's notice of appearance filing deadline, has failed to meet that burden.¹⁰ The Presiding Judge already has dismissed Sable's notice of appearance, thus dismissal of its application is now a ministerial act. See, e.g., Section 1.221(c) (where an applicant fails to file a timely notice of appearance "the application will be dismissed with prejudice for failure to prosecute." (Emphasis added.)).

(2) Other Filing Failures

Sable's failure to timely its notice of appearance, in itself, warrants dismissal of its application. However, that is not its only dereliction. Although Sable inexplicably denies there exists a pattern of repeated failures, that is exactly what the Commission is faced with: (a) Sable did not respond to an FCC letter dated November 26, 1991 directing it to file an environmental assessment; (b) Sable did not file, as required by Paragraph 21 of the HDO, its environmental assessment by May 15, 1992; (c) Sable did not file, as required by Paragraph 16 of the HDO, documentation of its local publication by May 15, 1992; (d) Sable did not file, as required by Paragraph 23 of the HDO, its

¹⁰ Sable tries to distinguish the cases cited by Trinity in its Motion, page 2, as turning on different factual patterns and involving only commercial applicants. As noted above, Sable points to no decision wherein the Commission has said that commercial applicants were subject to different standards in enforcing its filing deadlines. Moreover, although not identical factually, CJS, supra, and the other cases cited by Trinity all demonstrate that an applicant seeking waiver of the notice of appearance deadline faces a high burden to justify such waiver.

Notice by May 6, 1992; and (e) as discussed below, Sable has not filed an amendment reporting the appointment of Marcus Reid to its Board of Directors, as required by Section 1.65 of the rules.

Sable's excuse for its failure to respond to the Commission's November 1991 letter is that it never received that letter. Sable admits, however, that the letter probably was not received because it never bothered to notify the Commission that the mailing address set forth in its application had changed. Nor, apparently, did Sable make sufficient arrangements for forwarding of its mail from its old address.¹¹ Thus, Sable's failure to respond to the Commission's directive that it file an environmental assessment statement was due to its own lack of diligence.

With respect to the amendments required under the HDO, Ms. Holloway claims she "did not understand" that Sable was supposed to file those amendments within 30 days of the release of the HDO. Again, it is difficult to fathom how a professional manager such as Ms. Holloway could not calculate filing deadlines from the HDO's directives that "Sable shall inform the presiding Administrative Law Judge within 30 days of the release of this Order as to whether local notice of filing of its application has been published" or "within 30 days of the release of this Order,

¹¹ Ms. Holloway states that "it is possible" that "people who received [the Commission's letter] either did not know how to get the letter to me or did not bother with it." Opposition, Holloway Declaration, p. 1.

Sable and Shorter shall submit the environmental assessment . . .
..¹² HDO, ¶¶ 16, 21. Even less understandable is why, if Ms. Holloway found that language perplexing, she did not immediately obtain assistance, legal or otherwise, to clarify it. Again, Sable's lack of reasonable diligence is what led to its untimely filings.¹³

Finally, Sable's recent pleadings have brought to light what appears to be yet a further dereliction. In its June 4 Motion for Acceptance of Late-Filed Notice, p. 2, Sable identifies Marcus Reid as a member of its Board of Directors. Yet Sable's application does not list Mr. Reid as a director, nor was Trinity able to locate any amendments on file with the Commission reporting Mr. Reid's election or appointment to the Board. See Attachment A (Relevant portions of Sable's application). Since Ms. Holloway reports having approached Mr. Reid about the HDO in early May 1992,

¹² On June 9, 1992, 25 days after the deadline set by the HDO and five months after the original deadline established in the Commission's November 26, 1991 letter, Sable filed an amendment submitting its environmental assessment, as well as documentation of its local publication. Although Sable's amendment is clearly filed without due diligence, because it has no comparative implications and is not subject to the strict standards for technical amendments, Trinity is not filing an opposition to its acceptance. However, the fact Sable has finally addressed the environmental and public notice deficiencies noted by the Commission long ago, does not excuse its tardiness and failure to respond to repeated Commission orders for those materials. Thus, Sable's late-filed amendment does not cure the diligence problems that are cause for its dismissal.

¹³ Sable's notation that failing to amend its application within 30 days "merely imposed upon itself the burden of accompanying its amendment with a good cause showing" is misguided. Sable's amendment was not discretionary, it was required by the Commission. In failing to file within 30 days Sable disobeyed two specific Commission orders.

Mr. Reid obviously has been a Board member for more than 30 days. Thus, Sable has failed to timely amend its application to report the addition of Mr. Reid as a principal, as is required by Section 1.65 of the Commission's rules. Unfortunately, that failure is in keeping with Sable's pattern of failing to comply with Commission procedural and substantive requirements. Moreover, its failure to keep its "ownership" accurate and current prejudices the other applicants as they face initiation of discovery.

C. CONCLUSION

Sable maintains it will meet and comply with the deadlines established by the presiding judge in his Order Prior to Prehearing Conference.¹⁴ But promises to do better in the future do not excuse a pattern of failures.¹⁵ Sable has repeatedly refused to comply with Commission rules and directives. Its justifications -- alleged ignorance followed by inaction -- do not

¹⁴ Sable also notes it has not missed any deadline established in the presiding judge's Order Prior to Prehearing Conference, FCC 92M-493 (released April 24, 1992). Only two of those deadlines have passed. The first was June 5, 1992, the deadline by which counsel had been directed to confer on discovery and settlement. Sable did not contact the other applicants until the afternoon of June 4, 1992, after Gadsden, Trinity and the Mass Media Bureau had already met. (As of June 4, Gadsden, Trinity and the Bureau were aware Sable's Notice had been dismissed). The second deadline, June 12, 1992, was simply the date by which the results of the meeting were to be submitted.

¹⁵ That Sable's transgressions also could warrant specification of issues, including, presumably, abuse of process, is irrelevant. The same argument could be made as to the applicant in V.O.B. Incorporated, 4 FCC Rcd 6753 (Rev. Bd. 1989), cited by Sable. But the fact is, the repeated failures to comply with deadlines warranted dismissal of its application. The same fate should befall Sable.

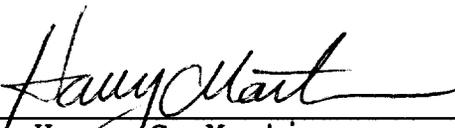
mitigate its derelictions. Thus, excusing Sable's transgressions would send a message to other applicants that they can disregard their regulatory obligations and save money on hiring legal counsel until the last minute, then avoid dismissal by pleading "confusion" and promising to clean up their act in the future.

In sum, the weakness of Sable's proffered justifications for its repeated failures, the need to stem such "casual and dilatory conduct" and disregard for the Commission's requirements, and the need to deter such future misconduct, all militate in favor of Sable's dismissal. See e.g., Communi-Centre, supra.

WHEREFORE, In light of the foregoing, Trinity's Motion to Dismiss the application of Sable Community Broadcasting Corporation should be GRANTED.

Respectfully submitted,

TRINITY CHRISTIAN ACADEMY

BY 
Harry C. Martin

BY 
Cheryl A. Kenny

Its Counsel

Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

June 16, 1992

ATTACHMENT A

RELEVANT PORTIONS OF SABEL'S APPLICATION

Section I

W. J. ...

Approved by OMB
3060-0034
Expires 9/30/85

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APPLICATION FOR AUTHORITY TO CONSTRUCT OR MAKE
CHANGES IN A NONCOMMERCIAL EDUCATIONAL
BROADCAST STATION

RECEIVED BY
OCT 2 1985

INSTRUCTIONS

A. This form is to be used only in applying for authority to construct a new noncommercial educational TV, FM, or AM broadcast station or to make changes in an existing station. This form consists of this part, Section I, and the following sections:

- Section II, Legal Qualifications of Broadcast Applicant
- Section III, Financial Qualification of Broadcast Applicant
- Section IV, Statement of Program Service of Broadcast Applicant
- Section V-A, AM Broadcast Engineering Data
- Section V-B, FM Broadcast Engineering Data
- Section V-C, TV Broadcast Engineering Data
- Section V-G, Antenna and Site Information
- Section VI, Equal Employment Opportunity Program

B. PREPARE THREE COPIES of this form and all exhibits. Sign one copy of Section I. Prepare one additional copy (a total of four) of Section V-G and associated exhibits. File all the above with the Federal Communications Commission, Washington, D.C. 20554. APPLICANTS FILING FOR FINANCIAL ASSISTANCE FROM NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) SHOULD SUBMIT THIS APPLICATION TO THE FCC AT LEAST 90 DAYS PRIOR TO FILING WITH NTIA. Applicants filing with the FCC after this time should not expect FCC approval in time to receive NTIA funding. Applicants should check with NTIA for proper NTIA filing dates. Applicants applying for funding from other government agencies should check with that agency and the FCC to determine filing deadlines for both that agency and the FCC.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Show date of preparation of each exhibit, antenna pattern, and map, and show date when each photograph was taken.

D. The name of the applicant stated herein shall be the exact corporate name, if a corporation; if an unincorporated association, the exact name of the association; if a governmental or public educational agency, the exact name of such agency. The applicant must notify the Commission of any change of address.

E. Information called for by this application which is already on file with the Commission (except that called for in Section III which is more than 90 days old and in Section V-G) need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified FULLY by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public. (See Section 73.3526 of the Commission's Rules and Regulations, "Records to be maintained locally for public inspection by commercial applicants, permittees, and licensees.")

F. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or absence from the United States. The attorney shall, in the event she/he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), she/he shall separately set forth reasons for believing that such statements are true.

G. Before filling out this application, the applicant should be familiar with the Communications Act of 1934, as amended, Parts 1, 2, 17, and 73 of the Commission's Rules and Regulations.

H. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

THIS BLOCK FOR COMMISSION USE ONLY

File No.

851003MB

1. NAME OF APPLICANT (See Instruction D)

SABLE COMMUNITY BROADCASTING CORPORATION

STREET ADDRESS

611 CHURCH STREET

CITY

HOBSON CITY

STATE

AL

ZIP CODE

36201

TELEPHONE NO. (Include area code)

(205) 237-6144

2. NAME OF PERSON TO WHOM COMMUNICATIONS SHOULD BE SENT, IF DIFFERENT FROM ITEM 1. MAUDINE J. HOLLOWAY

STREET ADDRESS

114 WEST 17TH STREET

CITY

ANNISTON

STATE

AL

ZIP CODE

36201

TELEPHONE NO. (Include area code)

(205) 237-6144

3. (a) PURPOSE OF APPLICATION (Put "X" in appropriate box)

Change in existing station facilities:

New Station

Major

Minor

(b) If this application is for a change in existing facilities, complete Section I plus any other Sections necessary to show all substantial changes in information previously filed with the Commission. (Indicate below the Sections completed and filed with this application.)

Section

II

III

IV

V-A

V-B

V-C

V-G

VI

(c) In the space below refer to information already on file with the Commission which, in accordance with Instruction E, may be incorporated in this application by proper reference.

File of Form No. and Date

Section No.

Paragraph No.

DNA

PUBLIC REF. ROOM

4. REQUESTED FACILITIES

TYPE OF STATION

AM

FM

TELEVISION

FREQUENCY

91.3 MHz

CHANNEL NO.

FM-217A

CALL SIGN

To be assigned

HOURS OF OPERATIONS

18 1/2 Hours

POWER IN KILOWATTS

NIGHT
295 Watt

DAY
295 Watts

ANTENNA HEIGHT ABOVE AVERAGE TERRAIN IN FEET (FM and TV only)

462 Feet

STATION LOCATION

CITY

STATE

8. Is this application mutually exclusive with renewal application of an existing station?

YES NO

If yes, state call letters and station location of existing station.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934)

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made to good faith.

Signed and dated this 25th day of December, 1984.

(This Section should not be dated and signed until all Sections and Exhibits have been prepared and attached.)

SABLE COMMUNITY BROADCASTING CORPORATION
(Name of Applicant)

By Maudine J. Holloway
(Signature)

Title PRESIDENT

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

National Conference of Black Lawyers Community College of Law

If applicant is represented by legal or engineering counsel, state name and post office address:

4545 South Drexel Blvd. Chicago, Illinois 60653

EXHIBITS furnished as required by this form:

Exhibit No.	Section and Para. No. of Form	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which)	Official Title
1	II 2 b	MAUDINE J. HOLLOWAY	PRESIDENT
2	II 3	MAUDINE J. HOLLOWAY	PRESIDENT
3	II 4	MAUDINE J. HOLLOWAY	PRESIDENT
4	II 12 b	MAUDINE J. HOLLOWAY	PRESIDENT
5	III 2 b	MAUDINE J. HOLLOWAY	PRESIDENT
6	IV 1	MAUDINE J. HOLLOWAY	PRESIDENT

LEGAL QUALIFICATIONS

8. Is applicant directly or indirectly controlled by another legal entity?

 Yes No

If "Yes", state below the name of such other legal entity, and state how such control, if any, exists and the extent thereof.

9. Give the following information as to applicant's officers, members of governing board, and holders of 1% or more ownership interest (if any).

Name and Residence	Office Held	Citizenship	Principal Profession or Occupation	By whom appointed or elected
Maudine J. Holloway 1924 Constantine Ave, ANNISTON, AL 36201	PRESIDENT	USA	Community Organ- izator	BOARD
Myrtle Miller 1013 West 14th St. Anniston, AL 36201	BOARD MEMBER	USA	Maintenance Worker	BOARD
VERNICE F. SANDERS 128 South Leighton Anniston, AL 36201	VICE PRESIDENT	USA	Retired Nurse	BOARD
BILLY ROSS 105 Shannon Lane Anniston, AL 36201	TREASURER	USA	General Foreman	BOARD
DENICE DERAMUS 810 Snow Circle Hobson City, AL 36201	Board Member	USA	City Clerk	BOARD
THOMAS SUDDETH 307 Lucius Drive Anniston, AL 36201	Board Member	USA	Civil Service	BOARD
ANGELA BOWERS 912 SOUTH LEIGHTON ANNISTON, AL 36201	Board Member	USA	Attorney	BOARD
MAUDE SNOW 600 PARK AVENUE HOBSON CITY, AL	Board Member	USA	Mayor of Hobson CITY	BOARD
DOROTHY SWAIN 114 WEST 17TH STREET ANNISTON, AL 36201	SECRETARY	USA	Youth Co-ordi- NATOR	BOARD

10. Television applicants which are nonprofit organizations rather than governmental bodies or educational institutions attach as Exhibit No. evidence that officers, directors, and members of the governing board are broadly representative of the educational, cultural, and civic groups in the community. This does not apply if applicant is applying for change in facilities.

DNA

<u>NAME AND RESIDENCE</u>	<u>OFFICE HELD</u>	<u>CITIZENSHIP</u>	<u>PRINCIPAL PROFESSION OR OCCUPATION</u>	<u>BY WHOM APPOINTED</u>
Bernadette Tippins 3815 West Ammon ANNISTON, AL 36201	Board Member	USA	Sec./PROG. AIDE	BOARD
Annie P. Bailey 602 Spring Street Oxford, AL 36203	Board Member	USA	Sr. Aide Coordinator	BOARD

CERTIFICATE OF SERVICE

I, Brenda T. Chapman, hereby certify that on this 16th day of June, 1992, copies of the foregoing **REPLY TO OPPOSITION TO MOTION TO DISMISS** were hand-delivered or mailed, first class, postage prepaid, to the following:

Administrative Law Judge Arthur I. Steinberg *
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

Gerald Stephens-Kittner, Esquire
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006
Counsel for Sable Community Broadcasting Corporation

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


Brenda T. Chapman

* HAND DELIVERED