

**ORIGINAL
FILE**

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July 27, 1992

HAND DELIVER

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Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

JUL 27 1992

Federal Communications Commission
Office of the Secretary

ATTN: The Honorable Edward J. Kuhlmann
Administrative Law Judge

RE: Central Florida Educational Foundation, Inc., et. al., MM
Docket No. 92-33

Dear Ms. Searcy:

Transmitted herewith, on behalf of Central Florida Educational Foundation, Inc., is an original and six copies of its "Dismissal of Petition to Enlarge" filed in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: Joseph E. Dunne III
Joseph E. Dunne III
Attorney for Central Florida
Educational Foundation, Inc.

JED:gmcA41
enclosures

xc: All Per Attached Certificate of Service
James S. Hoge

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BEFORE THE

Federal Communications Commission

Federal Communications Commission
Office of the Secretary

WASHINGTON, D.C. 20554

In re Applications of)	MM Docket No. 92-33
)	
CENTRAL FLORIDA EDUCATIONAL)	File No. BPED-881207MA
FOUNDATION, INC.)	
Channel 203C3)	
Union Park, Florida)	
)	
BIBLE BROADCASTING NETWORK, INC.)	File No. BPED-890412MJ
Channel 202C2)	
Conway, Florida)	
)	
SOUTHWEST FLORIDA COMMUNITY RADIO,)	File No. BPED-891127MC
INC.)	
Channel 202C2)	
Conway, Florida)	
)	
MIMS COMMUNITY RADIO, INC.)	File No. BPED-891127MD
Channel 202C1)	
Oak Hill, Florida)	
)	
HISPANIC BROADCAST SYSTEM, INC.)	File No. BPED-891128ME
Channel 202C3)	
Lake Mary, Florida)	
)	
For Construction Permit for a)	
New Noncommercial Educational FM)	
Station)	

TO: The Honorable Edward J. Kuhlmann
Administrative Law Judge

DISMISSAL OF PETITION TO ENLARGE

Central Florida Educational Foundation, Inc. (CFEF), by its undersigned attorney, hereby dismisses the Petition To Enlarge (Petition) which it filed against the application of Mims Community Radio, Inc. (Mims) on July 9, 1992. The reasons for its dismissal are set forth below.

1. CFEF's Petition included a Verified Statement from Ms. Marie Doherty, the owner of WPGS(AM), which was the site first

specified in Mims' application, stating that no one from Mims had ever sought her permission to use the site specified in Mims' application. Prior to submitting the Petition, CFEF had also shown Ms. Doherty an exhibit in the WPGS assignment application, "Exhibit D," in which Ms. Doherty purportedly assumed the obligation to make the WPGS site available for Mims' application. Ms. Doherty emphatically claimed, however, that she had never seen the Exhibit and that it was not attached to the contract she signed. Ms. Doherty signed a Verified Statement stating that she had never seen the Exhibit, that it wasn't attached to any copy of the application that she reviewed, and that she didn't feel bound by it (see Attachment A).

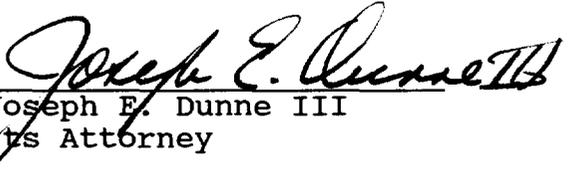
2. Subsequent research by CFEF has shown, however, that Ms. Doherty was mistaken in her sworn statements. Enclosed in Attachment B is a letter from the attorney who advised Ms. Doherty with respect to the WPGS contract, Richard Van Coevering. Mr. Coevering, upon review of his files and notes, states that Exhibit D was attached to the contract that Ms. Doherty signed (see Attachment B). Ms. Doherty, therefore, must have overlooked the exhibit.

3. Whether the Exhibit is legally effective, or whether the tower can technically support an FM antenna, is not relevant to the issues raised by CFEF. CFEF believes that Mr. Van Coevering's letter removes the legal and factual basis for its Petition, which it hereby dismisses.

WHEREFORE, the foregoing premises considered, Central Florida Educational Foundation, Inc. hereby dismisses the Petition to Enlarge Issues it filed against the application of Mims Community Radio, Inc. on July 9, 1992.

Respectfully submitted,

**CENTRAL FLORIDA EDUCATIONAL
FOUNDATION, INC.**

By: 
Joseph E. Dunne III
Its Attorney

MAY & DUNNE, CHARTERED
Suite 520
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
(202) 298-6345

July 27, 1992

ATTACHMENT A

VERIFIED STATEMENT OF MS. MARIE DOHERTY

VERIFIED STATEMENT

I, Marie M. Doherty, make this Verified Statement under penalty of perjury of the laws of the United States and the State of Florida, with the knowledge that it will likely be submitted to the Federal Communications Commission in connection with the MM Docket No. 92-33.

1. I am the owner of WPGS(AM), licensed to Mims, Florida. I acquired the station from Florida Public Radio, Inc. in a sale approved by the Federal Communications Commission.

2. Randy Henry was the president of Florida Public Radio, Inc. He was the principal of the licensee with whom I negotiated concerning the sale. At no time, before the sale or since, has Randy Henry, or any other person, spoke to me to obtain my permission or consent for Mims Community Radio, Inc., or any other FM radio station, to use the WPGS tower for their transmission site.

3. I have seen a copy of the "Exhibit D" which was supposedly attached to the contract for the sale of the station which was filed with the FCC. In that exhibit I supposedly give Mims Community Radio the right to use the WPGS tower. However, I never saw that Exhibit before it was shown to me today, July 6, 1992. No contract I ever reviewed or signed ever contained such an exhibit. No copy of the application that I reviewed included a copy of the contract with such an Exhibit. I don't know how such an exhibit was attached to the contract filed with the FCC. All I know is

that I never saw it, or consented to such an arrangement with Mims Community Radio.

4. Because I had never seen "Exhibit D", nor consented to it, I am not bound by it.

5. I am informed that Larry Perry filed the assignment application at the FCC and represented that he was the attorney for "WPGS, Inc." That is not true. My attorney who advised me on these matters is located in Buffalo.

Marie M. Doherty
Marie M. Doherty

Executed this 7/6/92 day of July, 1992.

ATTACHMENT B

LETTER OF MR. VAN COEVERING

RICHARD J. VAN COEVERING
Attorney at Law
867 Abbott Road
Buffalo, New York 14220
(716) 823-6663

July 27, 1992

Mr. Joseph Dunne, Esq.
May & Dunne
1000 Thomas Jefferson Street NW
Suite 520
Washington, DC 20007

In re.: Marie Doherty, WPGS & Mims Community Radio

Dear Mr. Dunne,

I acted as Mrs. Doherty's local legal counsel in her purchase of WPGS Radio from Mr. Randy Henry in 1991. While I advised Mrs. Doherty on the purchase it was Mr. Larry Perry who acted as her representative before the FCC.

I have seen Mrs. Doherty's statements made on June 2, 1992 and July 6, 1992 and a third which was without her signature on a unspecified day in July 1992.

With assurances given to me by Mrs. Doherty I can state that the representations made in her affidavit of June 2, 1992 are true.

I can also confirm the first two paragraphs of the affidavit given by Mrs. Doherty on July 6, 1992. I, however, cannot confirm the statements contained in paragraphs three through five.

In order to clarify matters, I am providing the following narrative of the events in question.

Sometime in the late Spring of 1991 Mrs. Doherty approached Mr. Peter Carr, Esq. and myself regarding the purchase of media properties (a radio station). In seeking an appropriate property Mr. Doyle Hadden, a media broker, was contacted. Mr. Hadden suggested that Mrs. Doherty might be interested in Mr. Henry's property WPGS. From that point negotiations were commenced which were both protracted and complicated. During the course of negotiations there was very little contact with Mr. Henry. After much haggling about site location and other details a letter of intent was signed in June 1991 (by my client). This letter of intent made no mention of Mims Community Radio or its plan to obtain a license.

During the ensuing period leading up to the signing of the agreement representations were made by Mr. Hadden that Mr. Henry wished to obtain assurances that the contract with the Adams would be performed. While exhibit D was attached to the assignment application, it was one of the buried details of the contract. When Mr. Hadden was questioned regarding the second paragraph, he stated that it was just a contingency, and that while Mr. Henry had no present plans to exercise this option. He also stated that in the event there was

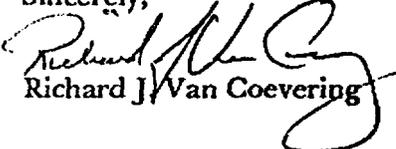
to be an application to the FCC and the option would be used Mrs. Doherty would be informed prior to any action. With the express understanding that the option would only come into existence upon a successful application before the FCC and that it did not constitute a contractual obligation for failure of parties (Mr. Henry's agent represented that Mims Community Radio was not an active entity), term (no period was specified) and consideration (not over \$100.00 does not constitute a sum), the paragraph was let stand as a memorialization of an agreement regarding the sharing of revenue in case that an additional tenant would be found for the tower.

I understand that Mr. Henry has used Exhibit D in his application before the Commission as evidence that he has a location. It is my understanding of contract law that:

- 1) the option does not exist unless the FCC grants Mr. Henry's application;
- 2) the contract is unenforceable for lack of terms; and
- 3) even if there were an enforceable contract WPGS has a valid legal excuse from performance based upon technical problems.

If it is essential for Mr. Henry to specify a location in his application, I believe that his "contract," is so ephemeral in nature that it fails in this regard.

Sincerely,


Richard J. Van Coevering

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a secretary in the law offices of May & Dunne, Chartered, hereby certify that I have caused a true and correct copy of the foregoing "Dismissal of Petition to Enlarge" to be hand delivered, this 27th day of July 1992, to the following:

The Honorable Edward J. Kuhlmann
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 220
Washington, D.C. 20554

James Shook, Esq.
Hearing Division, Mass Media Bureau
Federal Communications Commission
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Gary S. Smithwick, Esq.
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(Attorney for Bible Broadcasting Network, Inc.)

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Gammon & Grange
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(Attorney for Southwest Florida Community Radio, Inc.)

Stephen C. Simpson, Esq.
1090 Vermont Avenue, N.W., Suite 800
Washington, D.C. 20005
(Attorney for Mims Community Radio, Inc.)

*James L. Oyster, Esq.
Route 1, Box 203A
Castleton, Virginia 22716
(Attorney for Hispanic Broadcast System, Inc.)

By: Glinda M. Corbin
Glinda M. Corbin

*via telecopier