

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

AUG 19 3 53 PM '92

MM Docket No. 92-184

DISPATCH

In re Applications of

Alexander Snipe, Jr. d/b/a      File No. BPH-910228MC  
GLORY COMMUNICATIONS  
(hereafter "Glory")

VALENTINE                      File No. BPH-910228MD  
COMMUNICATIONS, INC.  
(hereafter "Valentine")

William K.                      File No. BPH-910228MB  
Durst and William L.      (DISMISSED HEREIN)  
Faircloth d/b/a LEXCO RADIO  
(hereafter "Lexco")

For Construction Permit  
for a New FM Station on Channel 237A  
in South Congaree, South Carolina

## HEARING DESIGNATION ORDER

Adopted: August 5, 1992;

Released: August 19, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.<sup>1</sup>

2. *Joint Settlement Agreement.* On February 4, 1992, Glory and Lexco filed a joint request for approval of settlement agreement, which they supplemented on February 25 and May 5, 1992. Under the terms of the agreement Lexco has agreed to dismiss its application. Separate and apart from Lexco's promise to dismiss is Glory's promise to reimburse Lexco for its legitimate and prudent expenses if Glory is ultimately awarded the construction permit. We have examined the agreement, including the accompanying declarations. Based upon this examination, we find that approval of the agreement would serve the public interest by eliminating a comparative applicant and thus simplifying the hearing, conserving the resources of the Commission and the applicants, and assisting the expeditious inauguration of a new FM broadcast service at South Congaree, South Carolina. We further find that none of the applications was filed for the purpose of reaching or carrying out the agreement, and that no consideration other than that detailed in the agreement has

been directly or indirectly paid or promised. In addition, Lexco has certified and submitted documentation establishing that the consideration to be received (\$9,734.63) will not exceed its legitimate and prudent expenses incurred in preparing, filing, and prosecuting its application. Accordingly, the applicants have complied with the provisions of 47 U.S.C. § 311(c)(3) and 47 C.F.R. § 73.3525. Since all the applicants propose to serve the same community, no § 307(b) questions have been presented and no publication is required. Therefore, we shall grant the joint request and approve the settlement agreement.

3. *Petition to Deny.* On November 19, 1991, Glory filed a petition to deny the Valentine application. A portion of Glory's petition is, in essence, a request for reconsideration of our October 2, 1991 action granting Valentine's petition for reconsideration and reinstating its application *nunc pro tunc*. In this regard, the reinstatement of the Valentine application was an interlocutory staff action and is thus not subject to reconsideration. See 47 C.F.R. § 1.106(a)(1). Accordingly, this portion of the petition will be dismissed. The remainder of the petition is essentially a petition to specify issues, which does not properly lie at the pre-designation stage and will therefore be dismissed. Nevertheless, Glory may raise this matter anew post-designation. See *Revised Processing of Broadcast Applications*, 72 FCC 2d 202, 213-15 (1979).<sup>2</sup>

4. *Divestiture.* Alexander Snipe, Jr., the sole principal of Glory, is also the General Sales Manager of WWDM(FM), Sumter, South Carolina. However, he has indicated his intent to terminate his relationship with WWDM(FM) in the event of grant of Glory's application. Accordingly, in the event of grant of Glory's application, Alexander Snipe, Jr. will be required to sever all connection with WWDM(FM) prior to the commencement of program test authority.

5. *Environmental.* Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that Glory and Valentine did not address the matter of how it would protect workers on their respective towers from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Glory and Valentine may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Glory and Valentine failed to indicate

<sup>1</sup> On October 2, 1991, the Chief, Audio Services Division granted the petition for reconsideration filed May 6, 1991 by Valentine Communications, Inc. and reinstated its application *nunc pro tunc*.

<sup>2</sup> Also, we note that Glory's petition alleges that page 24,

Section VII of Valentine's application, which contains both the public notice and tower site certifications, was missing. However, staff review reveals that page 24 was contained in the original application when filed.

how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, the applicants will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Accordingly, Glory and Valentine will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

6. *Amendment.* On October 24, 1991, Valentine filed a petition for leave to amend. We will grant the petition and accept the amendment pursuant to 47 C.F.R. § 1.65. Nevertheless, since the petition was filed after the expiration of the amendment-of-right period, no comparative upgrading will be permitted as a result of the amendment.

7. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. *Conclusion.* Except as may be indicated by any issues specified below, Glory and Valentine are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Glory or Valentine in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1.1319.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the joint request for approval of settlement agreement filed on February 4 (and supplemented on February 25 and May 5), 1992 by Glory and Lexco IS GRANTED; the settlement agreement IS APPROVED; and the application of Lexco IS DISMISSED.

11. IT IS FURTHER ORDERED, That the Glory "Petition to Deny or Dismiss" the Valentine application IS HEREBY DISMISSED, as indicated in paragraph 3.

12. IT IS FURTHER ORDERED, That in the event of the grant of Glory's application, Alexander Snipe, Jr. will be required to divest himself of all interests in and sever all connections with Station WWDM(FM) prior to the commencement of program test authority.

13. IT IS FURTHER ORDERED, That in accordance with paragraph 5 hereinabove, Glory and Valentine shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

14. IT IS FURTHER ORDERED, That the petition for leave to amend filed on October 24, 1991 by Glory IS GRANTED, and the amendment ACCEPTED, to the extent indicated in paragraph 6.

15. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

16. 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. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

17. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau