

FCC MAIL SECTION

FCC 92M-914  
03949

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

Aug 25 9 22 PM '92

In re Applications of	)	MM DOCKET NO. 92-184
	)	
ALEXANDER SNIPE, JR. d/b/a	)	File No. BPH-910228MC
GLORY COMMUNICATIONS	)	
	)	
VALENTINE COMMUNICATIONS, INC.	)	File No. BPH-910228MD
	)	
For Construction Permit for a New	)	
FM Station on Channel 237A	)	
in South Congaree, South Carolina	)	

PREHEARING ORDER

Issued: August 24, 1992; Released: August 25, 1992

1. We will hold the prehearing Conference in this case on December 17, 1992, and the hearing will begin on January 11, 1993.<sup>1</sup> Both will begin at 8:30 a.m. in the Commission's offices in Washington, D.C. The applicants will exchange their direct case exhibits at the December 17th prehearing.

2. Appearances and Publication. On or before September 8, 1992, each applicant must show that they have complied with 47 CFR 1.221(c). See DA 92-1077 released August 19, 1992 at para.16. On or before September 18, 1992, each applicant must also show that they have complied with 47 CFR 73.3594(g)'s publication requirement. See DA 92-1077 supra at para.17.

3. Clarification of Issues. The Chief, Audio Services Division has designated a standard comparative issue for hearing. Thus he has called for the filing of a 47 CFR 1.325(c)(2) Standardized Integration Statement on or before September 14, 1992. See DA 92-1077 supra. at para.16.

4. He also wants comparative coverage evidence adduced. See DA 92-1077 supra. at para.7. The applicants should consider a joint areas and populations showing if only for reasons of economy. If you can't agree on a joint coverage exhibit, each applicant must not only portray their own areas and population, but their opponent's as well. That will not only be a substantial

---

1 The Trial Judge has reserved a courtroom for January 11-12, 1993 for the hearing.

additional expense, but could also give rise to evidentiary conflicts. But both applicants are alerted now. If you take the joint exhibit route you will be bound by the agreed-upon showing. So get your approach to comparative coverage ironed out early on.

5. The applicants will exchange their preliminary engineering on October 28, 1992. The final engineering will be exchanged at the Prehearing Conference.

6. The Chief has set down a contingent environmental impact issue against each applicant. See DA 92-1077 supra. at paras.5, 9(Issue 1) and 13. So they must file their environmental assessment amendment on or before September 18, 1992. The parties are reminded to serve their amendments pursuant to para. 15 of the HDO. Moreover, if they haven't satisfied the Mass Media Bureau by the time of the December 17, 1992 Prehearing Conference, they must exchange their environmental impact evidence on that day.

7. All counsel should be prepared to discuss any questions about clarification of existing issues.

8. Perfecting Amendments. As previously noted (Para.6 supra.), both applicants must file perfecting amendments on or before September 18, 1992. Those amendments must be accompanied by a Petition for Leave to Amend. See The New Continental Broadcasting Company, FCC 80M-102 released January 3, 1980 at Footnote 1.

9. This post-designation period (Para.8) will be the last chance each applicant will have to firm up their application for hearing. This perfecting time period is designed to implement the Commission's post-designation amendment philosophy; i.e., to afford all applicants a fair post-designation opportunity to firm up their applications, and at the same time secure a stable hearing environment as soon as possible, so we can proceed with the hearing on the necessary and remaining issues.

10. Discovery. All discovery must be completed by November 20, 1992; 47 CFR 1.325(c)(2) Automatic Document Production (ADP) will take place on September 14, 1992; any In Camera inspection requests must also be filed on September 14, 1992, and comply with the five-step procedure outlined in Patterson Communication Associates, 41 RR 2d 640 (1977), and 41 RR 2d 1027 (1977).<sup>2</sup>

---

2 Before he files an In Camera motion, each applicant should realize that he is voluntarily seeking a construction permit in a contested proceeding. Privilege claims hinder and even prevent the search for the truth. So you are alerted now. If the Trial Judge cannot make a public interest finding because of a privilege claim he will have to draw adverse inferences against the applicant making the claim.

11. No 47 CFR 1.315 and 1.323 written interrogatories will be employed. Any depositions of opposing principals will be taken in South Congaree, South Carolina (unless otherwise agreed upon). Please don't notice a witness for any other place unless your opponent agrees in advance to the location change.

12. Any additional discovery (other than ADP) must be initiated on or before September 21, 1992. In order to properly implement additional discovery, the applicants will hold a discovery conference on September 14, 1992, at 2:00 p.m. at an agreed-upon location. There they will coordinate a deposition schedule if one is needed, and iron out the need for any additional documents not covered by ADP. The agreed-upon deposition schedule shouldn't interfere with our other procedural dates.<sup>3</sup>

13. Settlement. This case could prove long and costly. Because of lawyers and engineering fees both applicants will lose. At best one of you will have spent a considerable amount of money prosecuting this case. Moreover, it may take a long time to recoup those expenses. The Columbia, South Carolina market area already has 11 FMs, 6AMs, 6TVs and an active cable TV company. So even before we count the print media, you can see the competition for the advertising dollar is substantial. So even the winner could end up a loser. So from your client's viewpoint this prospective litigation is a mistake. Being merely another form of warfare it should be avoided.

14. So engage in settlement dialogue now. Don't wait to argue before the Commission three years from today. Keep your settlement channels open and use them.

15. To this end, a negotiating principal (and his attorney, if he's not pro se) are directed to attend a disposition conference on November 23, 1992 at 2:00 p.m.<sup>4</sup> This face-to-face conference will be held at a pre-arranged location. There the applicants should determine whether this case can be settled.

---

3 It's no defense to an otherwise legitimate discovery request for the objecting party to claim that it intends to either file a Petition for Leave to Amend or a Motion for Summary Decision that will moot the discovery requests. Nor should the objecting party seek to deter a response to discovery on that ground.

4 The parties needn't wait until November 23, 1992 to talk settlement. Nor should the mandatory face-to-face conference be the only effort at settlement. In brief, don't be afraid to initiate settlement efforts.

16. On or before November 30, 1992, the settlement conferees should submit a Joint Memorandum to the Trial Judge outlining the results of the November 23rd conference. This Memorandum should include, but not necessarily be limited to, answers to the following questions:

- (a) Has the case been settled? If so, do the settlement's terms pose any public interest questions.
- (b) If the case hasn't been settled, were any offers made at the conference? If so, are they still open? For how long?
- (c) If the case has been settled, how soon can the settlement package; i.e., the joint request for approval and the accompanying papers be submitted for approval?

17. Marshalling and Exchanging Exhibits. It will contribute significantly to the disposition of this proceeding for the parties to prepare and exchange their direct cases in writing. This will include the sworn written testimony and the supporting exhibits. The exhibit exchange will take place at the December 17, 1992 Prehearing Conference.<sup>5</sup>

18. If any party intends to request that official notice be taken of any materials in the Commission's files, that material should be assembled in written form, properly identified by source, given a tentative exhibit number, and exchanged on the date set.

19. Each applicant will assemble its exhibits in a binder. Each exhibit will bear a number, preferably by means of a tab on each document. Please number the exhibits serially starting with the number 1. Each exhibit will also contain the sponsoring witnesses' affidavit - if such an affidavit is required (See para. 18 supra.) Use a prefix to indicate who is sponsoring the exhibits; e.g. Glory Ex.1; and Valentine Ex.1.

20. Evidentiary Admission Session. Any Evidentiary Admission Session will be held on January 4, 1993 in the Commission's office starting at 8:30 a.m. There each applicant (in docket order) will identify and offer the direct case exhibits he exchanged at the Prehearing Conference. The Trial Judge will rule on any objections to those exhibits. Immediately at the conclusion of the evidentiary admission session, each party will notify

---

5 Before counsel exchange their written exhibits, they would be wise to go over them - especially their comparative exhibits - and delete all the unnecessary adjectives and comparative puffing. Let's save everybody time and money.

his opponents of those witnesses they need to cross-examine and the exhibits or areas to be covered by that cross-examination.

21. Extensions of Time. The case has been placed on the Trial Judge's docket and courtroom space has been reserved. SO we can't afford the luxury of procedural slippage. Otherwise, other dockets could suffer. SO any requests for extensions of time must be inn writing and must be consent extensions. In addition, any request for an extension of more than four working days must also be signed by the client.<sup>6</sup>

22. The January 11-12 1993 hearing dates are firm dates. A thorough but speedy trial is contemplated. The hearing dates will not be extended merely because counsel have agreed to recommend a settlement.<sup>7</sup>

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller  
Administrative Law Judge

---

6 Captive extension requests (last-minute requests) will not be entertained.

7 Daily hearing sessions will begin at 8:30 a.m. and end at 5:30 p.m. with an hour for lunch.