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

In re Applications of	)	MM DOCKET NO. 92-114
	)	
Robert B. Taylor **Jupiter, Florida**	)	File No. BRH-880926UJ
	)	
For Renewal of License of Station WTRU(FM)	)	
	)	
Jupiter Broadcasting, Corp. **Jupiter, Florida**	)	File No. BPH-890103MD
	)	
For A Construction Permit for a New FM Station in Jupiter, Florida	)	

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S OPPOSITION TO
THIRD PETITION TO ENLARGE ISSUES AGAINST ROBERT B. TAYLOR

1. On August 13, 1992, Jupiter Broadcasting, Corp. (Jupiter) filed its third petition to enlarge issues against Robert B. Taylor (Taylor). The Mass Media Bureau submits the following opposition to Jupiter's petition.

2. Jupiter seeks a Section 73.3613 issue against Taylor.[1] In support of its request, Jupiter furnishes copies of a January 3, 1991, "Air Time Lease" and an April 17, 1991, "Management

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[1] Section 73.3613 Filing of Contracts provides in part (c) Personnel: (1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

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Contract" between Taylor and Dr. Hernandez and a June 26, 1991, "Management Contract" between Taylor and Jaime Garza. Jupiter furnishes an affidavit wherein the affiant states that the WTRU(FM) ownership file did not contain these contracts when he inspected it at the Commission in July 1992. Jupiter also provides a certified copy of the contents of the ownership file which does not contain the documents. Jupiter alleges that there was a motive not to file the contracts because they are evidence of an abdication of control by Taylor over the day to day operations of the station. Jupiter also claims they affect the credibility of Taylor's claimed integration into management at the station.

3. Initially, with respect to timeliness, the Bureau notes that Jupiter does not state when it learned of the existence of the various agreements. However, it is apparent that Jupiter possessed the Hernandez documents at the time it filed its first petition to enlarge on May 27, 1992, since they were included in Exhibit 19.[2] Jupiter has provided no explanation as to why it delayed checking the WTRU(FM) ownership file until July 1992. Accordingly, absent a good cause showing, the motion should be considered only if it raises a question of probable decisional significance and substantial public interest importance, pursuant to Section 1.229(c) of the Commission's Rules. The petition

[2] It appears that the Garza agreement was provided to Jupiter on August 3, 1992, pursuant to a request made at Taylor's deposition.

fails to meet these standards and should be dismissed.

4. We submit further that, considered on its merits, the petition should be denied. In this regard, it is not clear that these agreements had to be filed because they appear to be in the nature of time brokerage agreements. Section 73.3615(d) of the Commission's Rules requires only that licensees maintain copies of time brokerage agreements. In this context the decisions over staff, programming and sales, which rested with Hernandez and Garza, were characteristic of all time brokerage agreements and permissible because the ultimate decision making authority in those areas is retained by the licensee. In this context, see Roy R. Russo, 5 FCC Rcd 7586, 7587 (M. Med. Bur. 1990) citing United Broadcasting of New York, Inc., 4 RR 2d 167, 173 (1965). In each of the instant agreements, Taylor retains responsibility for fulfilling all FCC rules and regulations, including periodic written FCC reports and FCC license renewals. The operation and programming of the station also remained under his control at all times. See paragraph 8 of each agreement. Even assuming, arguendo, that the agreements should have been filed pursuant to Section 73.3613(c), addition of the requested issue is still unwarranted. The failure to file is not so egregious as to warrant addition of a disqualifying issue. See Character Qualifications, 102 FCC 2d at 1232 (1986). At worst, the failure to report may be considered under Taylor's renewal expectancy. See Metroplex Communications, Inc., 4 FCC Rcd 8149. 8163 n. 11

(Rev. Bd. 1989), aff'd 5 FCC Rcd 5610 (1990); Character Qualifications at 1232 n. 125; see also Memorandum Opinion and Order, FCC 92M-765, released July 10, 1992, at para. 6.

5. In summary, the Bureau opposes addition of the requested issue.

Respectfully submitted,
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August 26, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 26th day of August, 1992, sent by regular United States mail, U.S. Government frank copies of the foregoing **"Mass Media Bureau's Opposition to Third Petition to Enlarge Issues Against Robert B. Taylor"** to:

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