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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
Robert B. Taylor)
Jupiter, Florida)
)
For Renewal of License of)
Station WTRU(FM))
)
Jupiter Broadcasting, Corp.)
Jupiter, Florida)
)
For A Construction Permit for a)
New FM Station in Jupiter, Florida)

MM DOCKET NO. 92-114
File No. BRH-880926UJ
File No. BPH-890103MD

ORIGINAL
FILE

To: Administrative Law Judge
Walter C. Miller

**MASS MEDIA BUREAU'S OPPOSITION TO FIRST
MOTION TO ENLARGE ISSUES AGAINST
JUPITER BROADCASTING CORPORATION**

1. On August 13, 1992, Robert B. Taylor (Taylor) filed his first motion to enlarge issues against Jupiter Broadcasting Corporation (Jupiter). The Mass Media Bureau submits the following comments in opposition to Taylor's motion.

2. Taylor alleges that non-voting Jupiter shareholder Paul Levine's active involvement in Jupiter, as compared to the role of Charles Reid, Jupiter's original sole officer, director and 100% voting shareholder, raises real-party-in-interest, lack of candor and misrepresentation issues. In support, Taylor cites Levine's early interest in acquiring a silent broadcast station in Jupiter, Florida, on behalf of himself and an investor Phillip Greenberg, his early role in the instant application, and his role in obtaining a funding source for the instant application to

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replace Greenberg. In juxtaposition to Levine's role, Taylor contends that although Reid was the 100% voting shareholder, he was not familiar with or involved in the various transactions concerning the financing of the station and relied on the applicant's lawyers. Taylor also alleges that the facts that current funds for prosecuting the application and the guarantee for the funds to construct and operate are coming from Alan Potamkin, who holds an option to acquire non-voting stock, raise additional real-party-in-interest concerns.

3. Taylor's motion is untimely. Section 1.229(b)(3) of the Commission's Rules requires a good cause showing in the case of a motion to enlarge the issues filed more 30 days after publication of the hearing designation order. Taylor failed to address this good cause showing requirement. Accordingly, absent a good cause showing, Taylor's 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. Taylor's motion fails to meet these standards and should be dismissed.

4. Moreover, considered on its merits, the motion should be denied. Reid initially contacted Jupiter counsel Joseph Belisle about acquiring the same silent station that Levine was seeking in Jupiter, Florida. Belisle explained to Reid that he (Reid) could not afford to acquire that facility but indicated that he

knew another individual, namely Levine, who was also interested in acquiring that facility for another group. Through Belisle, or Matthew Leibowitz of the same firm, Reid learned of Levine's similar interest and contacted him. Eventually, when Levine's plan to acquire the silent Jupiter station did not materialize, Levine invited Reid to join his group in a competing application for the Jupiter facility. It was agreed that Reid would hold all the voting stock and be the sole officer of Jupiter. In large part this was because Reid was a local Black American with broadcast experience, qualities which would be of benefit to Jupiter in a comparative proceeding. It was clear that Reid intended to run the station. (Ex. B., p. 48). A two-tier structure was designed and the application was filed on December 30, 1988, signed by Reid. It appears from the application and correspondence that Reid was involved in obtaining the site and in working on the financing for the station. See Jupiter application (Form 301, Section VI) and Ex. G. The application form did not require the reporting of any nonvoting shareholders such as Levine.

5. Subsequent to the filing of the application Reid was responsible for the paperwork relating thereto and apparently spent more time than he originally anticipated. (Ex. B, p. 31.) However, he was not effective. For example, Reid failed to file the proper papers with the state and the corporation was involuntarily dissolved. (Ex. B., p. 45). Eventually by April

1991, it was agreed that various of his duties would be taken over by other previously passive participants in the application. (Ex. B. pp. 40-41, 45-46). This diminution of Reid's authority was noted in paragraph 13 of the Second Revised Shareholders Agreement, which was adopted by Jupiter shareholders, Reid, Levine and William Washington in April 1991. (Ex. P, Att. A). The fact that previously passive nonvoting stockholders Levine and Washington acquired voting interests was reported to the Commission in a post cut-off amendment filed on May 1, 1991. Thus, to the extent that other Jupiter stockholders assumed some of Reid's responsibilities and took more active roles in prosecuting the application, no real-party-in-interest issues arise because their change in status was reported. There is no showing that anyone but Reid performed duties on behalf of Jupiter prior to the change in status which was timely reported to the Commission. Accordingly, there was no deception or misrepresentation. Additionally, Jupiter did not seek integration credit for Reid.

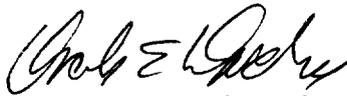
6. Further, Levine's demonstrated interest in acquiring a Jupiter station prior to the filing of the instant application, does not support the requested issues because he was seeking to acquire that facility on behalf of himself and another client. Moreover, the fact that during the pendency of the instant application, Levine facilitated Greenberg's removal from the application and brought in Potamkin as the source of funds is not

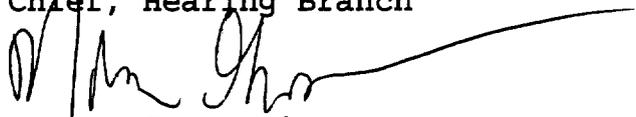
relevant to the requested issues, since in so doing, Levine was acting as Greenberg's lawyer and not on behalf of the applicant. (Ex. B. Tr. 17-19). Finally, as to Potamkin, there is no showing that he has exercised any influence or done anything other than provide financing with respect to the prosecution of the instant application. The existence of that option was reported to the Commission. Taylor's allegations about Potamkin's potential control are speculative. It is well established that issues will not be added based on speculation and surmise. Folkways Broadcasting Co., Inc., 33 FCC 2d 806, 811 (Rev. Bd. 1972).

7. Based on the foregoing, addition of the requested issues is unwarranted. Implicit in a real-party-in-interest issue is an attempt by an applicant to "conceal or misrepresent the nature of the relationship" in question. Creek County Broadcasting Co., 31 FCC 2d 462, 467-68 (Rev. Bd. 1971). Here, there has been no concealment of the various relationships and no

demonstration of any exercise of control by undisclosed parties.
Accordingly, the Bureau opposes Taylor's motion.

Respectfully submitted,
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September 2, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 2nd day of September, 1992, sent by regular United States mail, U.S. Government frank copies of the foregoing "Mass Media Bureau's Opposition to First Motion to Enlarge Issues Against Jupiter Broadcasting Corporation" to:

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