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MAUPIN TAYLOR ELLIS & ADAMS, P.C.

ATTORNEYS AT LAW

1130 CONNECTICUT AVENUE, N.W., SUITE 750

WASHINGTON, D.C. 20036-3904

TELEFAX (202) 457-8588

TELEPHONE (202) 429-8910

RALEIGH ADDRESS
3200 BEECHLEAF COURT, SUITE 500
RALEIGH, NORTH CAROLINA 27604-1064
TELEFAX (919) 981-4300
TELEPHONE (919) 981-4000

ROCK HILL OFFICE
448 LAKESHORE PARKWAY, SUITE 200
ROCK HILL, SOUTH CAROLINA 29730-4264
TELEFAX (803) 324-2093
TELEPHONE (803) 324-8118

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November 19, 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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FM EXAMINED

Re: FM Channel 237A
South Congaree, South Carolina

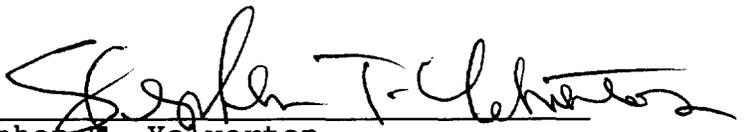
Dear Ms. Searcy:

Enclosed for filing on behalf of Alexander Snipe, Jr., d/b/a
Glory Communications is an original and four (4) copies of its
"Petition to Deny or Dismiss" the application of Valentine
Communications, Inc.

Please contact the undersigned in our Washington, D.C.
office.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
Stephen T. Yelverton
Attorneys for Alexander N. Snipe, Jr.
d/b/a Glory Communications

cc: Audio Services Division

Enclosures

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of:)
) File No. BPH-910228MD
VALENTINE COMMUNICATIONS, INC.)
)
For Construction Permit)
for a New FM Station,)
Channel 237A,)
South Congaree, South Carolina)

To: Chief, Audio Services
Division

40 PETITION TO DENY OR DISMISS 6

Alexander Snipe, Jr., d/b/a Glory Communications
 ("Glory"), by its attorneys, pursuant to Section 73.3584(a) of
 the Commission's Rules, hereby submits this "Petition to Deny or
 Dismiss" the application of Valentine Communications, Inc.
 ("Valentine"). This petition is timely filed pursuant to Public
 Notice, Report NA-152, released October 15, 1991, which
 established a date of November 19, 1991, to file petitions to
 deny against the application of Valentine. In support of its
 petition, Glory submits the following comments.

A review of a copy of the Valentine application in
 Commission files indicates that p. 24, Section VII, of FCC
 Form 301 is missing. The page includes blocks to check for both
 public notice and tower site certifications. An application
 where either of these boxes is not checked, or which fails to
 include this page is insufficient for tender and must be
 dismissed. Northland Broadcasters, Limited Partnership, 4 FCC
 Rcd. 6508, 6509, para. 5 (MMB 1989); The Taber Broadcasting Co.
 of New Mexico, 4 FCC Rcd. 7892, para. 2 (1989); Fred R.

Morton, Jr., 5 FCC Rcd. 606, para. 5 (1990); Clover Communications, 6 FCC Rcd. 324, para. 3 (MMB 1991).

The lack of a tower site certification has previously been raised by the Commission, but many substantial and material questions were left unanswered. In a form letter, dated April 5, 1991, the Chief, FM Branch, notified Valentine that its application lacked Item 2 of Section VII (no site availability certification). The application was accordingly dismissed.

In a petition for reconsideration, filed May 6, 1991, Valentine admitted that it did not have an original or a copy of p. 24, Section VII, and that the application when returned from the Commission did not contain p. 24, Section VII.¹ In a letter, dated October 2, 1991, from the Chief, Audio Services Division, the Valentine application was reinstated. The letter made no reference to p. 24, Section VII, as having been previously missing and subsequently discovered. Rather, the letter only stated that while Item 2 of Section VII had not been checked, Item 3 had been. This was found to be "substantial" compliance with the tenderability requirements. No mention was made as to whether or not the public notice certification of Section VII had been checked.

¹Here, as in Lauderdale-McKeehan Christian Broadcasting Corp., 4 FCC Rcd. 8095, para. 4 (1989), the applicant did not claim that the missing page was actually submitted to the Commission.

In view of the fact that the Commission files apparently do not contain p. 24, Section VII, the Valentine application must be denied or dismissed unless this page is provided. The competing applicants have been denied the right to fully examine Valentine's application to determine who is the tower site owner and whether "reasonable assurance" was actually obtained. Moreover, it is not certain whether Valentine certified as to compliance with the public notice requirements.

The apparent fact that p. 24, Section VII, is not in Commission files is consistent with Valentine's representations that it has no original or copy of this page and that the application as returned from the Commission did not contain this page. Thus, a significant question is raised as to how the page was misplaced and where was it located when discovered? Was the original page timely filed? Did Valentine discover a missing copy and send it to the Commission, or did the Commission staff discover the missing page in an overlooked file? How did the page become separated from the application? Where is the page now?²

If the Valentine application is not denied or dismissed, a "sham" ownership issue must be specified. Substantial and material questions of fact are raised as to the

²Neither the April 5, 1991, dismissal letter, the May 6, 1991, petition for reconsideration, nor the October 2, 1991, reinstatement letter was served on Glory. Thus, this is the first opportunity for it to address the matter.

bona fides of the application. Although the purported controlling principal is Terry Hicks, he was not involved in organizing the applicant in such key matters as locating the proposed tower site or in selecting the FCC counsel or engineer. He is nothing more than a "figurehead" who was a total stranger to the purported non-voting stockholder and who was selected on the eve of the filing deadline merely because of his minority status.

Andre Carson, an Afro-American, states in an attached affidavit that he (Carson) was approached on February 18, 1991, by Charles Thompson. He asked if Carson was willing to be involved in an application for South Congaree which was to be financed by a doctor in Walterboro, South Carolina. Thompson said that Carson would not be required to invest any money and that he should contact Stanley Emert at 615-690-5566. On February 21, 1991, Thompson called back and set up a meeting with Carson on February 26, 1991. The meeting was cancelled by Thompson on February 26, 1991. The filing deadline for the South Congaree application was February 28, 1991.

A review of the Valentine application shows that the purported non-voting stockholder is from Walterboro, South Carolina, and that the attorney is Stanley Emert. Thus, it is evident that Thompson was soliciting for the Valentine application.

A review of the Valentine application shows that the engineering was completed and certified on February 21, 1991.

Thus, at the same time that Carson was being solicited as a minority "front" for Valentine, one of the most essential elements of the application had already been completed. It further appears that Hicks was not even selected to be in the application until two days before the filing deadline.

This dominance of the application preparation by persons other than Hicks, the purported sole controlling principal, per se calls into question the bona fides of the Valentine application. Metroplex Communications, Inc., 5 FCC Rcd. 5610, 5612, paras. 14-21 (1990). It is simply not credible that the purported non-voting stockholder who organized the application would give away legal control and substantial equity to a stranger who was discovered on the filing deadline.

Carson's affidavit also raises a substantial and material question of fact as to the accuracy and truthfulness of the financial certification in the Valentine application. It states, at p. 6, Section III, that Hicks will personally guarantee a loan to be issued by a bank in Walterboro, South Carolina. However, Carson was told that if he decided to be the minority principal for Valentine, that he would have no financial obligation. On the other hand, Hicks represents that he (Hicks) will be liable on a \$500,000 loan for Valentine.

It is not credible that Hicks would personally obligate himself for such a large amount if he was really not required to do so by the purported non-voting stockholder. It is also not credible that a bank would issue a \$500,000 loan based on the

personal guarantees of a total stranger. Moreover, it would not have been possible for the bank to have conducted a credit check, review the personal balance sheet, and review a loan application from Hicks in less than two days. Scioto Broadcasters, 5 FCC Rcd. 5158, 5160, para. 12 (1990). Accordingly, financial qualifications and misrepresentation issues must be specified against Valentine.

If the Valentine application is not denied or dismissed, a Section 1.65 failure to timely report issue must also be specified. On October 24, 1991, Valentine filed a "Petition for Leave to Amend" and related amendment. The petition cryptically states that new information is being provided without referring to or identifying the information. A review of the amendment indicates that the information is a new address for Hicks. However, the amendment fails to state when Hicks moved or whether the new address is within the proposed service contour for the station. This information is very critical. Assuming that Valentine is not discredited or disqualified as a classic "sham" applicant, the comparative qualifications of Hicks and Snipe could be very close. If Hicks has moved outside the proposed service area, this could be of decisional significance. Accordingly, the failure to provide this information requires specification of a Section 1.65 failure to timely report issue.

WHEREFORE, in view of the foregoing, Glory requests that the Commission deny or dismiss the application of Valentine.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 

Stephen T. Yelverton

Attorneys for Alexander Snipe, Jr.,

d/b/a Glory Communications

1130 Connecticut Avenue, N.W.

Suite 750

Washington, D.C. 20036-3904

Telephone: (202) 429-8910

November 19, 1991
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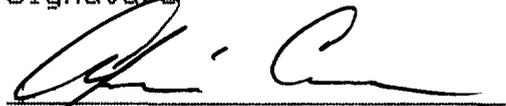
I, Andre Carson, under penalty of perjury, state the following; on February 18, 1991, I received a call from Mr. Charles Thompson, who left a message that I call him at 615-691-5608.

Upon returning Mr. Thompson's call, he asked me if I had aspirations of owning or being part owner of a radio station in the Columbia, South Carolina market. He went on to say that he was representing a doctor from Walterboro, SC, who was interested in acquiring a radio station in Columbia, SC. Mr. Thompson asked me how long I had been living and working in the area. I told him nearly four years. He further went on to say that, the doctor wanted a local experienced person to run the operation, and if I became involved I would receive a percentage or a part of the station. He said that I would not need to invest any money to become involved in this venture.

Mr. Thompson told me that he had been talking with other candidates for the same opportunity with the doctor regarding the radio station in the Columbia market. He said that through these conversations my name was referred to him. He asked me what civic organizations I belonged to. Mr. Thompson said that if I was interested to call Stanley Emert at 615-690-5566. He said if I got involved in the radio station project that it could jeopardize my present employment, because it would be public information and my employer would find out. I told Mr. Thompson that I would think about the offer and get back with Mr. Emert.

On Thursday, February 21, 1991, Mr. Thompson called me back to see if I had come to a decision since I had not contacted Mr. Emert. I told him that I had reservations about the venture and had misplaced Mr. Emert's number. Mr. Thompson went on to say that he would be in Columbia on Tuesday, February 26, and wanted to meet with me to discuss my involvement in the radio station project. Mr. Thompson said that they needed to beat a filing deadline by Friday. We set up a 4pm appointment at the Marriott Hotel on Main Street. At 2:55pm on Tuesday, February 26, 1991, Mr. Thompson called my job and left a message cancelling the meeting. That was the last time he ever called.

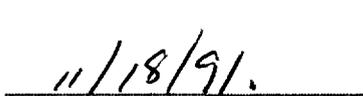
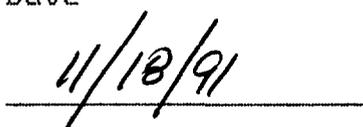
Signature



Notary



Date



My Commission Expires February 24, 1997

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 19th day of November, 1991, I have caused to be mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Petition to Deny or Dismiss" to the following:

Larry D. Eads, Chief *
Audio Services Division
Mass Media Bureau
Room 302
Federal Communications Commission
Washington, D.C. 20554

Stanley G. Emert, Jr.
Bryce & Emert
Post Office Box 52225
Knoxville, Tennessee 37950-2225
Counsel for Valentine Communications, Inc.

Roy F. Perkins, Jr.
1724 Whitewood Lane
Herndon, Virginia 22070
Counsel for Lexco Radio



Kate D. Shawcross

*Hand delivery

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