

ORIGINAL
RECEIVED

POSTED
1-22-92
J.H.

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

JAN - 7 1992

Federal Communications Commission
Office of the Secretary

In re Application of)
VALENTINE COMMUNICATIONS, INC.)
For Construction Permit)
for a New FM Station,)
Channel 237A,)
South Congaree, South Carolina)
To: Chief, Audio Services Division

File No. BPH-910228MD

OPPOSITION TO PETITION TO DENY

Valentine Communications, Inc. ("Valentine"), by its attorneys and pursuant to Commission Rule Section 73.3584 opposes the Petition to Deny or Dismiss filed November 19, 1991 by Alexander Snipe, Jr. d/b/a Glory Communications. In support, the following is shown.

1. Glory's petition is deficient and should be stricken or denied for two reasons. First, it is in reality a prohibited petition for reconsideration of the interlocutory order of the Division reinstating Valentine's application. See Rule Section 1.106(a). Second, it is a prohibited predesignation issue pleading directed to Valentine. For both reasons, therefore, Glory's petition must be denied.

2. Valentine's application was previously dismissed for failure to certify reasonable assurance of site availability in Section VII, Item 2 of FCC Form 301. However, the Division reinstated the application nunc pro tunc, after concluding that since Item 3 of Section VII had been completed, showing from whom reasonable assurance of site availability had been obtained,

the application was substantially complete and acceptable for filing. See Letter from Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau to Valentine Communications, Inc. (October 2, 1991).

3. Despite the Division's decision that Valentine's application sufficiently evidenced reasonable availability of its proposed transmitter site, Glory nevertheless asserts that the page containing the certification is missing from the Commission's files, and claims the application should be dismissed on that basis. The genesis of Glory's argument springs from an acknowledgement by Valentine in its petition for reconsideration of the Division's dismissal of its application that while the duplicate copies of its application lacked the certification page, the original of the application on file with the Commission contained that page. Amazingly, Glory fails to discuss this point at all, or even to state whether it bothered to review the original application on file with the Commission. In light of its omission to discuss the point, it must be presumed that it did not. The failure to show that the original copy of the application omits the certification page is a critical flaw in its argument and requires denial of its petition.^{1/}

^{1/} Glory makes the related argument that Valentine's application fails to indicate compliance with the local notice provisions of Rule Section 73.3580. However, that argument is entirely derivative of Glory's argument that Valentine's application lacked the certification page.

4. Had Glory bothered to review Valentine's original application prior to filing its petition, it would have discovered that the certification page was included with that application. Indeed, attached herewith is a copy of the certification page obtained from the original application on file with the Commission. Thus, the entire basis for Glory's assertion that the application should be dismissed is specious.

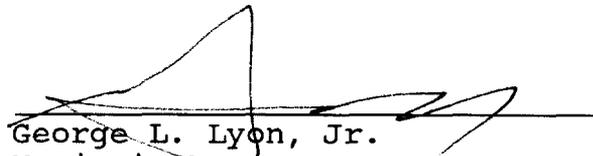
5. Glory's petition also requests the Commission to specify sham application, financial, Rule Section 1.65 and candor issues concerning Valentine's application if the Commission fails to dismiss it. Valentine will not dwell on this request because it clearly violates the Commission's long standing prohibition of predesignation issue pleadings. If Glory wishes to pursue this matter -- and Valentine submits there is no basis to do so -- it should do so at hearing via a petition to enlarge issues. A petition to deny is not the appropriate vehicle to do so. See Pensacola Radio Partners, 5 FCC Rcd 5645, 5647, n.2 (Aud. Ser. Div. 1990); S. Kent Lankford, 5 FCC Rcd 4522 (Aud. Ser. Div. 1990); Saltaire Communications, Inc., 5 FCC Rcd 3260, 3262, n. 1 (Aud. Ser. Div. 1990); Linda Ware d/b/a Lindsay Broadcasting, 5

FCC Rcd 3188, 3189; and George S. Flinn, Jr., 5 FCC Rcd 3015 (Aud. Ser. Div. 1990). See also Revised Procedures for the Processing of Contested Broadcasting Applications 72 F.C.C.2d 202 (1979).

Respectfully submitted,

VALENTINE COMMUNICATIONS, INC.

By:


George L. Lyon, Jr.
Marjorie K. Conner

Its attorneys

Lukas, McGowan, Nace
& Gutierrez
1819 H Street, N.W.
Suite 700
Washington, D.C. 20006

(202) 857-3500

January 7, 1992

DECLARATION OF KELLIE BISE

I, Kellie Bise, am a legal assistant in the offices of Lukas, McGowan, Nace and Gutierrez, Chartered. On January 2, 1992, I went to the Commission's public reference file to find page 24 of Valentine Communications, Inc.'s original application for a new FM at South Congaree, South Carolina. That application was not available in the reference room, however, I contacted James Crutchfield of the Audio Services Division of the Mass Media Bureau, and was advised by him that the original application did contain a page 24. I asked Mr. Crutchfield to supply a copy of that page. The attached page 24 is the document he provided to me.

The above statement, given under penalty of perjury, is true and correct to the best of my knowledge and belief.



Kellie Bise

Dated: 1/7/92

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees?

Yes No

If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 898-A).

See Exhibit 4

SECTION VII - CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of 47 C.F.R. Section 73.3580?

Yes No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose?

Yes No

If No, attach as an Exhibit, a full explanation.

Exhibit No.

3. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

Name of Person Contacted

John Moyd

Telephone No. *(include area code)*

(803)779-8600

Person contacted: *(check one box below)*

Owner

Owner's Agent

Other *(specify)*

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. *(See Section 304 of the Communications Act of 1934, as amended.)*

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. Section 1.66, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

CERTIFICATE OF SERVICE

I, Lydia H. Redfearn, Secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that true copies of the foregoing document were sent this 7th day of January 1992, via first class mail, postage prepaid, to the following:

Stephen T. Yelverton, Esquire
Maupin, Taylor, Ellis & Adams, P.C.
1130 Connecticut Avenue, NW, Suite 750
Washington, DC 20036-3904
(Counsel for Alexander Snipe, Jr.
d/b/a Glory Communications)

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


Lydia H. Redfearn