

FCC MAIL SECTION

FCC 92M-965
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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)	File No. BRH-880926UJ
For Renewal of License for Station)	
WTRU(FM), Jupiter, Florida)	
JUPITER BROADCASTING CORPORATION)	File No. BPH-890103MD
For Construction Permit for New FM)	
Station in Jupiter, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: September 16, 1992; Released: September 18, 1992

1. Jupiter Broadcasting Corp. (JBC) seeks a ruling on a "Third Petition to Enlarge Issues Against Robert B. Taylor." They filed their Third Petition on August 12, 1992 and want a 47 CFR 73.3613 failure-to-file issue added against Taylor.

2. Taylor opposed JBC's Third Petition on August 25, 1992, and the Mass Media Bureau opposed the following day. Although JBC was entitled to reply to those oppositions They did not do so.¹

Preliminary Ruling

3. JBC's Third petition is untimely.² Petitions to Enlarge were due on June 11, 1992. See 57 F.R. 22239 published May 27, 1992 and 47 CFR 1.229 (b).³ JBC's request relies, among other, on allegations dating back to January 3, 1991, April 17, 1991, and June 11, 1991. So their is no Apparent reason why JBC couldn't have pleaded those allegations in a timely fashion. So it is ruled that JBC's third petition is tardy in the extreme.

1 Any such Reply was due on or before September 8, 1992.

2 Third and Fourth petitions are invariably untimely.

3 JBC certainly can file timely Petitions to Enlarge. Their "First Petition to Enlarge..." was filed on May 22, 1992. See FCC 92M-765 released July 10, 1992.

4. This being so, JBC must meet the Commission's reassessed Edgefield-Saluda doctrine. See Adjudicatory Re-regulations Proposals, 58 FCC 2d 865 (1976).⁴ There at 873-874, the Commission said this:

"...An untimely motion to enlarge will be considered fully on its merits if it raises a question of probable decisional significance and of such public interest importance as to warrant consideration in spite of its untimely filing. It is expected that this standard will be strictly construed."

5. When JBC's third set of allegations are given the strict construction they deserve they fail to pass muster. Those allegations do not raise a question of probable decisional significance. Nor are they of such public importance as to warrant consideration in spite of their untimely filing.

6. Stated another way, assuming that the January 3, 1991, the April 17, 1991, and the June 26, 1991 contracts, that JBC relies on, should have been filed pursuant to 47 CFR 73.3613 (c), the failure to file is not so egregious as to warrant addition of a disqualifying issue. See Character Qualifications, 102 FCC 2d 1179 released January 14, 1986 at 1232. However, as noted previously, those failures can be considered under Taylor's renewal expectancy. See FCC 92M-765 released July 10, 1992, para. 6; Character Qualifications Inc., 4 FCC Rcd 8149, 8163, Fn.11 (Rev. Bd. 1989) affirmed 5 FCC Rcd 5610 (1990).

7. In view of the foregoing, JBC's Third Petition will be denied.

SO the "Third Petition to Enlarge Issues Against Robert B. Taylor" that Jupiter Broadcasting Corp. filed on August 12, 1992 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

⁴ This reassessment, sans the strict construction admonition, has been codified as 47 CFR 1.229 (c).