

FCC MAIL SECTION

FCC 92M-963

Before the

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FEDERAL COMMUNICATIONS COMMISSION

SEP 18 3 46 PM '92

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 92-114
DISPATCHED BY	)	
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. Robert B. Taylor (Taylor) seeks a ruling on a "First Motion to Enlarge Issues Against Jupiter Broadcasting Corp." He filed his first motion on August 13, 1992, and wants two issues added against JBC: (1) a real party-in-interest issue; and (2) a misrepresentation - lack of candor issue.

2. The Mass Media opposed Taylor's first motion on September 2, 1992, and JBC opposed it the following day. Taylor replied on September 14, 1992.

Preliminary Ruling

3. Taylor's enlargement request is untimely. Motions to Enlarge were due on June 11, 1992. See 57 F.R. 22239 published May 27, 1992, and 47 CFR 1.229 (b). Taylor's requests center around events that occurred between December 16, 1988, and April 12, 1991. So Taylor has had some fourteen months to gather, prepare and firm up their allegations against JBC. Thus there was no reason for Taylor to miss the June 11, 1992 enlargement deadline.

4. Taylor says his motion is timely since he first discovered the information he relies at the depositions of Charles Reed and Paul Levine taken on July 29, 1992, and Alan Potamkin on July 31, 1992. That may well be. But it doesn't make the allegations timely. A party has no right to wait until after depositions are taken before moving to enlarge the issues against an opponent. In fact the Commission has expressly admonished applicants not to do so. See Discovery Procedures, 12 FCC 2d 185 (1968) at para. 7. This business of waiting around until after discovery has been completed before filing motions to enlarge is a trial tactic that should be discouraged. It prolongs the hearing process, and frequently leads to two-phase and three-phase hearings.

5. Since Taylor's first motion is tardy, he must meet the Commission's reassessed Edgefield-Saluda doctrine. See Adjudicatory Re-

regulations Proposals, 58 FCC 2d 865 (1976).<sup>1</sup> 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."

Ruling

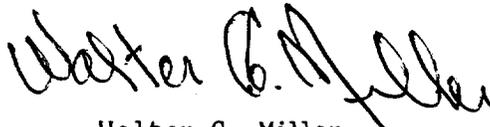
6. Giving Taylor's allegations the strict construction they deserve, they fail to pass muster. While the issues he seeks are serious issues, the supporting allegations do not raise any question of probable decisional significance. Nor are his allegations of such public importance as to warrant consideration in spite of their untimeliness.

7. There is absolutely no factual basis for Taylor's requests. JBC has always accurately reflected all the ownership information that the FCC requires. JBC is a Commission permittee. Their ownership report and all contracts affecting stock ownership are on file at the FCC and in JBC's public file at the Jupiter Public Library. JBC seeks no advantage based on its ownership structure and has no logical motive to misrepresent or conceal its true ownership.

8. Based on the foregoing (paras. 6-7 supra;) Taylor's enlargement request will be denied.

SO the "First Motion to Enlarge Issues Against Jupiter Broadcasting Corp." that Robert B. Taylor filed on August 13, 1992, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller  
Administrative Law Judge

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<sup>1</sup> This reassessment, sans the strict construction language, has been codified as 47 CFR 1.229 (c).