

FGC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-316 ✓

In re Applications of

RIVERTOWN
COMMUNICATIONS
COMPANY, INC.
(hereafter "Rivertown")

File No. BPH-911008ME

SAMPLE
BROADCASTING
COMPANY, L.P.
(hereafter "Sample")

File No. BPH-911010MA

For Construction Permit
for a New FM Station on Channel 282C3
in Eldon, Iowa

HEARING DESIGNATION ORDER

Adopted: December 30, 1992; Released: January 21, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹
2. *Preliminary Matter.* On July 7, 1992, Rivertown filed a Petition for Leave To Amend its application. The petition states:

The instant amendment notes that [principal David W.] Brown is now employed as general manager of Stations WAIK and WGBQ(FM), Galesburg, Illinois, and that, in the event of a grant of Rivertown's application, he will resign this position in order to devote full time to the management of Rivertown's Eldon station.

3. On July 10, 1992, Sample filed a "Partial Opposition to Petition for Leave To Amend." In the opposition, Sample maintains that "because [Rivertown] has failed to identify when Mr. Brown commenced his employment with the Galesburg radio stations" the amendment is "incomplete" insofar as it is impossible to gauge whether Rivertown's divestiture pledge is "contemporaneous." Sample

concludes that Rivertown should disclose when Brown commenced employment at the Galesburg stations. In a reply filed on July 22, 1992, Rivertown indicated that Brown's Galesburg employment began on May 26, 1992, pursuant to an employment contract dated May 8, 1992. In the event of grant of Rivertown's instant application, that contract permits Brown to terminate his employment upon 30 days notice. On October 1, 1992, Rivertown filed a Petition for Leave To Amend indicating that "Mr. Brown resigned his employment as general manager of Stations WAIK and WGBQ(FM), Galesburg, Illinois, on September 11, 1992." The amendment also reported that on September 14, 1992 Brown recommenced employment as general manager of Station KKMI-FM, Burlington, Iowa and reaffirmed that, in event of grant of Rivertown's application, he would resign that position. In sum, Sample has obtained the disclosure it sought,² and we will grant the Rivertown petitions for leave to amend in accordance with paragraph 4, below.

4. *Late-Filed Amendments.* The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Rivertown	5/11, 7/7, 10/1/92
Sample	4/8, 4/29, 7/20, 11/24/92

5. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. **ACCORDINGLY, IT IS ORDERED.** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

¹ On April 14, 1992 Rivertown filed a petition to deny the Sample application. The petition to deny is essentially a petition to specify issues. Since the Commission's *Report and Order in re Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 214-215 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an

opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229.
² In the alternative, Sample requested that a reporting issue be specified against Rivertown. This request is misdirected. See *supra* note 1. Moreover, based on our review of the Rivertown application, its amendments, and the various pleadings, we do not find any substantial and material question of fact warranting specification of such an issue.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Rivertown (5/11, 7/7, 10/1/92) and Sample (4/8, 4/29, 7/20, 11/24/92) ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), recon. granted in part, 6 FCC Rcd 3403 (1991).

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau