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

FCC 93M-155
31259

APR 12 3 00 PM '93

In re Applications of)	MM DOCKET NO. 93-53 ✓
DISTRICT OF COLUMBIA)	
KR PARTNERS)	File No. BPH-911001MB
)	
KES COMMUNICATIONS, INC.)	File No. BPH-911903MH
)	
LORI LYNNE FORBES)	File No. BPH-911004MH
)	
For Construction Permit for a)	
New FM Station On Channel 256C)	
In Waimea, Hawaii)	

O R D E R

Issued: April 8, 1993; Released: April 12, 1993

Under consideration is the Petition for Leave to Amend and Re-Submission of Amendment, filed by KES Communications, Inc. (KES) on March 22, 1993; the Opposition to Petition for Leave to Amend, filed by Lori Lynne Forbes (Forbes) on March 31, 1993; the Motion to Strike, filed by KES on April 2, 1993; and the Opposition to Motion to Strike, filed by Ms. Forbes on April 6, 1993.

Motion to Strike

For failure to show good cause, KES' motion to strike will be denied.

Petition for Leave to Amend

KES seeks leave to amend its application to reflect a new source of financing for its proposed facility in Waimea, Hawaii. The amendment in question was originally filed on March 10, 1993, pursuant to the requirements of Section 1.65 of the Commission's rules. Six days after KES filed its petition, the Hearing Designation Order was released in this proceeding. No action was taken by the Commission on KES' pending petition prior to the release of the above referenced Order. KES hereby resubmits its original petition for leave to amend and amendment for consideration. Receipt of the amendment is opposed by Ms. Forbes.

Since the amendment in question was filed with this Commission prior to the issuance of the Hearing Designation Order in this proceeding, KES is required, simply, to meet the good cause requirements of Section 1.65 of the Commission's rules, which, the Presiding Judge finds, it has done. Accordingly, the petition will be granted and the amendment accepted. Even if we were to find that KES must meet the more stringent requirements for a good cause showing for a post-designation amendment, KES has properly shown that it acted with due diligence in tendering the amendment, that the need for such an amendment

occurred through no action on its part, and that receipt of the amendment will not require the modification of or addition of issues or parties, disrupt the proceeding, or unfairly prejudice any involved party. Accordingly, the petition will be granted and the amendment accepted.

Rulings

IT IS ORDERED, that the Petition for Leave to Amend and Re-Submission of Amendment, filed by KES Communications, Inc., on March 22, 1993, IS GRANTED, and the amendment IS ACCEPTED; and that the Motion to Strike, filed by KES Communications, Inc., on April 2, 1993, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph P. Gonzalez
Administrative Law Judge