

DOCKET NO. 92-307
ORIGINAL
FCC 93M-281
31567

FCC MAIL SECTION

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

May 20 9 30 AM '93

In re Applications of)	MM DOCKET NO. 92-307
)	
SUNKISSED BROADCASTING, INC.)	File No. BPCT-910617KE
DISPATCHED BY)	
BEACH TV PROPERTIES, INC.)	File No. BPCT-910825KE
)	
For Construction Permit for a New)	
Commercial Television Station on)	
Channel 46 in Panama City Beach,)	
Florida)	

MEMORANDUM OPINION AND ORDER

Issued: May 18, 1993; Released: May 20, 1993

Under consideration is the Motion to Enlarge Issues filed by Sunkissed Broadcasting, Inc. (Sunkissed), on February 25, 1993; the Contingent Discovery Request Regarding Beach TV Properties, Inc., filed by Sunkissed, on February 25, 1993; the Opposition to Motion to Enlarge Issues and the Opposition to Contingent Discovery Request Regarding Beach TV Properties, Inc., filed by Beach TV Properties, Inc. (Beach), on March 10, 1993; the Joint Petition for Approval of Settlement Agreement, Grant of the Application of Beach TV Properties, Inc., and Dismissal of the Application of Sunkissed Broadcasting, Inc., filed by Beach and Sunkissed on May 3, 1993, as supplemented on May 6, 1993; and the Mass Media Bureau's Comments in Support of Joint Petition for Approval of Settlement Agreement, filed on May 13, 1993.

Motion to Enlarge Issues

Sunkissed seeks the designation of a financial qualifications issue against the application of Beach. In support thereof, it argues that Beach's so-called "bank letter" from the Bay Bank & Trust Company of Panama City, Florida is nothing more than a mere accommodation letter, and on its face demonstrates that no preliminary review by the bank of the borrower's qualifications or demonstration of adequate collateral had been made prior to the issuance of the letter; and that any loan to Beach would have to be approved by the bank's loan committee, upon the filing of a loan application with the requisite financial information.

In response, Beach submits a March 9, 1993 letter from an officer of the bank in question who confirms the bank's familiarity with the financial condition of Beach and its principals, and restates its intention to make the loan.

Beach's loan letter and the March 9, 1993 letter clearly demonstrate that it has and had a reasonable assurance of the necessary financing to construct its proposed facility and operate it for three months without revenues. Accordingly, the motion to enlarge issues and the contingent discovery request will be denied.

Petition for Approval of Settlement Agreement

Sunkissed and Beach seek approval of a settlement agreement which provides, in pertinent part, for the dismissal of the Sunkissed application and a grant of the Beach application, and for the payment of \$36,500 by Beach to Sunkissed as reimbursement for Sunkissed's reasonable and prudent application preparation and prosecution costs. Beach further agrees to provide Sunkissed with the first opportunity to acquire the permit for Channel 46, in Panama City Beach, Florida, in the event that it decides to offer its unbuilt Channel 46 permit for sale.

Beach also seeks a waiver of the reporting requirements of Section 73.1620(g) of the Commission's rules. The Mass Media Bureau, in its comments, indicates its support for a grant of the requested waiver as well as approval of the pending settlement agreement.

The Presiding Judge finds that the parties to the agreement are in substantial compliance with the requirements of Section 73.3525 of the Commission's rules. In addition the parties have shown that their applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the settlement agreement would be in the public interest. Furthermore, Beach has demonstrated good cause for granting the requested waiver of the requirements of Section 73.1620(g) of the Commission's rules. Accordingly, the Joint Petition will be granted and the settlement agreement approved; the requested waiver granted; and the application of Sunkissed dismissed with prejudice and that of Beach granted.

Rulings

IT IS ORDERED, that the Motion to Enlarge Issues, filed by Sunkissed Broadcasting, Inc., on February 25, 1993, IS DENIED.

IT IS FURTHER ORDERED, that the Contingent Discovery Request Regarding Beach TV Properties, Inc., filed by Sunkissed Broadcasting, Inc., on February 25, 1993, IS DENIED.

AND IT IS FURTHER ORDERED, that the Joint Petition for Approval of Settlement Agreement, Grant of the Application of Beach TV Properties, Inc., and Dismissal of the Application of Sunkissed Broadcasting, Inc., filed on May 3, 1993, IS GRANTED, and the settlement agreement IS APPROVED; that the application of Sunkissed Broadcasting, Inc. (File No. BPCT-910617KE) IS DISMISSED WITH PREJUDICE, and the application of Beach TV Properties, Inc., for a construction permit for a new commercial television station on Channel 46 in Panama City Beach, Florida (File No. BPCT-910825KE) IS GRANTED; that the requested waiver of the requirements of Section 73.1620(g) IS GRANTED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph P. Gonzalez
Administrative Law Judge