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

FCC 93M-460
31963

Jul 14 4 29 PM '93

In re Applications of)
)
TRIAD FAMILY NETWORK, INC.)
Channel 207C3)
Winston-Salem, North Carolina)
)
POSITIVE ALTERNATIVE RADIO, INC.)
Channel 207A)
Asheboro, North Carolina)
)
For Construction Permit for a New)
Noncommercial Educational FM Station)

MM DOCKET NO. 93-41 ✓

DISPATCHED BY
File No. BPED-910227MD

File No. BPED-911119MC

MEMORANDUM OPINION AND ORDER

Issued: July 12, 1993; Released: July 13, 1993

Under consideration is the Request for Permission to File Motion for Summary Decision, filed by Positive Alternative Radio, Inc. (Radio) on June 9, 1993; the Motion for Summary Decision filed by Radio on June 9, 1993; the Mass Media Bureau's Comments in Support of Motion for Summary Decision, filed on June 23, 1993; and the Comments on Motion for Summary Decision, filed by Triad Family Network, Inc. (Triad) on June 24, 1993.

Radio requests leave to file a motion for summary decision of the financial qualifications/false financial certification issues designated against its application by a ruling from the bench at the Prehearing Conference held in this matter on May 11, 1993, as memorialized by Order FCC 93M-267, released in this proceeding on May 17, 1993. The Presiding Judge finds good cause for considering the motion, and the request will be granted.

As noted above, Movant seeks summary decision in its favor of the financial qualifications and false certification issues designated against its application at the request of the mutually exclusive applicant, Triad. In its petition to enlarge the issues, Triad noted that Radio had a number of recently granted permits for non-commercial radio stations and several pending applications for non-commercial radio stations. In addition, Radio advised the Presiding Judge that Vernon H. Baker and his wife, Virginia, are also directors of two corporations which hold construction permits from this Commission and of a corporation that has an application pending for a broadcast facility; and that the Bakers are also in the process of completing the construction of two commercial facilities at Point Pleasant, West Virginia, a facility in Union City, Ohio and in Fairlawn, Virginia, and another in Fieldale, Virginia. The Presiding Judge concluded, on the basis of this showing, that Radio's requirement to simultaneously provide funding for the multiple applications currently pending, as well as continue to meet its current construction expenses and the costs of operations constituted a prima facie basis for the enlargement of the issues designated against Radio to include financial qualifications/false certification issues.

In support of its motion for summary decision, Radio submits evidence of its ability to meet its current financial commitments to its various construction permits and applications for broadcast authority. It submits estimates of the total cost to complete construction for each of its facilities presently under construction as well as all proposed stations that the Bakers will build and operate, and a statement of the funds expended by the Bakers subsequent to the date of filing of the Asheboro, North Carolina application. Also included, as part of its presentation, is a list of three months operating expenses for all of the stations, and, finally, a total figure for all costs associated with the construction and operation of its proposed stations as well as those presently under construction.

The total amount of funding required to meet these various commitments, as of the date of the filing of the Asheboro, North Carolina application, according to Radio's estimates, was \$792,845. Total expenditures to date have amounted to \$99,788.44 and were met from the Bakers' cash flow from investment property. Vernon H. Baker, his wife, Virginia A. Baker, and their son, Edward A. Baker, are Radio's sole principals and directors. As of May 1, 1991, the Bakers reported net liquid assets of \$625,986.04, and a total of liquid and non-liquid assets of more than \$14,500,000.00, with a net worth of more than \$12,000,000.00. The most recent balance sheet for the Bakers, dated February 1, 1993, shows net liquid assets of \$469,411.25, with total assets in excess of \$15,000,000, liabilities of \$2,790,471.38, with a net worth of \$12,454,789.20. The Bakers, as of May 29, 1993, had net liquid assets of almost \$800,000 which includes \$588,259.95 remaining to be taken down from a \$1,000,000 line of credit at a lending institution, with the institution's assurance that an additional \$100,000 could be available to Radio, if and when applied for. It submits, therefore, that it has net liquid assets available of at least \$100,000 more than the total expenses to be incurred in building and operating all the of the educational and commercial stations for which it has received or seeks authority. It requests, therefore, that these issues be resolved in its favor, based on this showing. The Bureau, along with Triad, supports favorable action on the motion.

The Presiding Judge notes that the Bakers are experienced broadcasters, who can be assumed to have the ability to properly estimate the total cost of building and operating all of Radio's proposed facilities. Radio has also shown that it has sufficient funds currently available to it to meet all of its financial commitments to its broadcast facilities presently awaiting construction, under construction or applied for, and that it is, therefore, presently financially qualified. In addition, Radio has demonstrated that it was financially qualified as of the date that it filed the Asheboro, North Carolina application. The balance sheets for the Bakers' clearly show that as of the date of the filing of Radio's Asheboro, North Carolina application, their liquid and non-liquid assets greatly exceeded the amount required to meet Radio's construction and operating commitments. The Presiding Judge finds, therefore, that the Bakers were financially qualified as of the date of the filing of their Asheboro, North Carolina application; that there being no genuine issue of material fact remaining for determination at a hearing with respect to these issues, summary decision in Radio's favor of the financial qualifications issue and the false financial certification issue is warranted, and it will be so ordered.

IT IS ORDERED, that the Request for Permission to File Motion for Summary Decision, filed by Positive Alternative Radio, Inc., on June 9, 1993, IS GRANTED, and the Motion will be considered.

AND IT IS FURTHER ORDERED, that the financial qualifications issue and the false financial certification issue designated against the application of Positive Alternative Radio, Inc., at the Prehearing Conference held in this matter on May 11, 1993, ARE RESOLVED in Positive Alternative Radio, Inc.'s favor.

FEDERAL COMMUNICATIONS COMMISSION



Joseph P. Gonzalez
Administrative Law Judge