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

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FCC 93M-449  
DOCKET NO. 93-42 31944

In re Application of )  
MOONBEAM, INC. )  
GARY E. WILLSON )  
For Construction Permit for a New )  
FM Station on Channel 265A )  
in Calistoga, California )

File No. BPH-911115MG  
DISPATCHED BY  
File No. BPH-911225MO

MEMORANDUM OPINION AND ORDER

Issued: July 7, 1993; Released: July 9, 1993

1. Under consideration are 1) Second Petition to Enlarge Issues, filed May 14, 1993 by Gary E. Willson; 2) Opposition to Second Petition to Enlarge, filed June 1, 1993 by Moonbeam, Inc.; and 3) Reply to Opposition to Second Petition to Enlarge Issues, filed June 15, 1993 by Willson. The issues Willson seeks are the following:

1. To determine whether Moonbeam, Inc. is financially qualified to construct and operate the proposed new FM station in Calistoga and, if not, the effect thereof on Moonbeam's basic qualifications to be a Commission permittee/licensee.
2. To determine whether Moonbeam, Inc.'s Presidnet, Mary Constant falsely certified that Moonbeam, Inc. was financially qualified in the initial application filed November 15, 1991, and/or again in an amendment filed March 2, 1992 and, if so, the effect thereof on Moonbeam's basic qualifications to be a Commission permittee/licensee.

2. Moonbeam filed its application on November 15, 1991. Moonbeam certified in Section 3-Financial Qualifications, that it was financially qualified, estimating the total funds necessary to construct and operate the facility for three months without revenue at \$95,000. On that form, in the column requesting "Source of Funds (Name and Address)," Moonbeam listed the following:

Mr. A. Langworth Manion  
Alex Brown & Sons  
345 California Street  
San Francisco, Ca. 94104

The "Relationship" of that listing to the applicant is stated as "Banker."

3. Moonbeam amended its application on March 2, 1993. On the amended Section 3-Financial Qualifications, in the column requesting "Source of Funds (Name and Address)," Moonbeam listed the following:

Mary F. Constant  
Shoot the Moon  
Nicasio, CA. 94946

The "Relationship" of that listing to the applicant is stated as "Self."

4. Despite appearances to the contrary, Moonbeam's Mary F. Constant now states that Moonbeam's "Source of Funds" was never intended to be Mr. A. Langworth Manion. In her declaration submitted in opposition to Willson's petition, Ms. Constant says that she:

"... will provide all necessary funds for the station's construction and the first three months of operations. I have the necessary funds and had the funds at the time I filed my original application. The listing of Alex, Brown & Sons and J. Langworth Manion on my original application was solely intended to identify the location of the funds, not their owner...."

Constant goes on to say that when she noticed what she calls this "ambiguity" in her original application, she filed her March 2, 1993 amendment to reflect that she is the owner of the funds.

5. Moonbeam's position is difficult to credit. Moonbeam claims that its original application merely was intended to provide the Commission with the location of the funds she has earmarked for construction and operation, along with the name of her financial advisor at that location. That intention, however, is much at variance from the information expressly sought by the form, i.e., Source of Funds. Moonbeam does not indicate the value that it believed a statement of the mere location of the funds could possibly have to the Commission. If Ms. Constant herself was in fact the contemplated "source" of the necessary funds, it is not understood why that useful information (useful to the Commission) was not listed as the source of funds, instead of a showing of the purported location of the funds (essentially useless information). And, the inclusion of the name of Constant's financial advisor as the applicant's "Banker" certainly conveys the impression that the funds were to be supplied by Mr. Manion.

6. Moonbeam calls its March 2, 1991 amendment only a "clarification." It seems more than that. In the amendment, the "Source of Funds" is identified as Ms. Constant, and the source's relationship to the applicant is stated to be Ms. Constant herself -- all information that is relevant to the application and useful to the Commission. Moonbeam claims that it has not changed its source of funds. The matter needs to be explored at hearing.

7. Earlier, in response to Willson's request for documents, Moonbeam claimed that Ms. Constant has no financial statement. Now, in response to Willson's petition, Moonbeam states that there has been a financial statement all along, but it had been lost or mislaid; the statement has now been found but, apparently, not produced to Willson. Without the financial statement, it cannot be determined whether Ms. Constant had available net liquid assets in excess of current liabilities sufficient to fund Moonbeam's proposed construction and operation.

8. Finally, Willson shows that there was a four-month period (December 14, 1992 to April 14, 1993) where a tax lien filed by the State of California against Ms. Constant remained outstanding. This was during a time when Ms. Constant was the sole source of funding for Moonbeam.

Willson has shown enough to warrant addition of the requested issues.

9. Accordingly, IT IS ORDERED that the Second Petition to Enlarge Issues IS GRANTED, and the Requested Issues are specified against the Application of Moonbeam, Inc. IT IS ALSO ORDERED that Moonbeam SHALL PRODUCE the documents requested by Exhibit 8 of Willson's petition, and shall make Mary F. Constant available for deposition on the added issues if requested by Willson to do so.

FEDERAL COMMUNICATIONS COMMISSION

  
Edward Luton  
Administrative Law Judge