DOCKET FILE COPY ORIGINAL

LAW OFFICES
HALEY, BADER & POTTS
4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345

POST OFFICE BOX 19006
WASHINGTON, D.C. 20036-9006
TELEPHONE
(202) 331-0606

SUSAN H. ROSENAU

RECEIVED
JUL 27 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 27, 1993

By Hand Delivery
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

OUR FILE NO.
0992-102-60

RE: MM Docket No. 93-42, Calistoga, California

Dear Mr. Caton:

On behalf of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a New FM Station on Channel 265A in Calistoga, California, please find the original and six copies of its Request for Permission to File Interlocutory Appeal in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,

Susan H. Rosenau

Enclosures (6)

cc: Moonbeam, Inc.
Robert Zauner, Esquire
A. Wray Fitch, Esquire
Administrative Law Judge Edward Luton

No. of Copies rec'd 0+6
List A B C D E

Before The

Federal Communications Commission

Washington, D.C. 20554

RECEIVED

JUL 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DISCUSSION

At the hearing on July 22, 1993, counsel for Moonbeam established that Willson's counsel, and not Willson, had signed Willson's April 5, 1993, Integration and Diversification Statement and the April 7, 1993, and April 15, 1993, errata thereto. The Integration and Diversification Statement was therefore not legally cognizable. Accordingly, Willson's direct case was at variance with his nonexistant integration proposal, and must be stricken.

The Presiding Officer ruled from the bench that because Willson had "adopted" the integration statements signed by his counsel and was bound by them, Willson's direct case would not be stricken and the cross examination would proceed.

Moonbeam respectfully submits that the foregoing ruling was an error of law which has been never directly been ruled upon by the Commission, and which has not been ruled upon in any way since the 1990 Report and Order on the Proposals to Reform the Comparative Hearing Process, 6 FCC Rcd 157 (1990), *recon. denied*, 6 FCC Rcd 3403 (1991) ("Report and Order").

In *Warren Price Communications, Inc.*, 2 FCC Rcd 7409 (Rev. Bd. 1987), *aff'd*, 4 FCC Rcd 1992 (1989), the Review Board (and later, the Commission) affirmed the ALJ's dismissal of an applicant whose Integration and Diversification Statement was not signed by a principal of the applicant as required by Section 73.3513 of the Commission's Rules.

Section 73.3513 is still in force, and requires the applicant to sign "Applications, amendments thereto, and related statements of fact required by the FCC . . ." The only substantive change in the Rules since *Warren Price* is that *all* applicants must now provide Integration and Diversification Statements pursuant to Section 1.325(c)(2).

The foregoing rule change, in fact, supports Moonbeam's position, since it is part of the section of the rule dealing with discovery -- i.e., *factual* matters as described in 73.3513 -- and sets forth the *facts* which must be described therein. The Report and Order calls for "*applicants* to file and exchange" the statement, *see* Report and Order, 6 FCC Rcd at 161; the rule itself calls for the integration statement "to be provided by all *applicants,*" *see* 47 C.F.R. §325(c)(2) (emphasis supplied); the language in both contexts treats the requirement like discovery matter or an application, both of which must be signed by a principal.

A clear violation of Section 73.3513 has occurred, which the Presiding Officer has neither acknowledged nor adjudicated. The Commission takes such violations very seriously, and has repeatedly emphasized that applications or other factual documents without authentic original signatures by principals are insufficient. Indeed, the Commission routinely dismisses applications where such signatures are missing or insufficient, for example, facsimile signatures. *See, e.g.,* SBM Communications, Inc., 6 FCC Rcd 6484 (Rev. Bd. 1991). Because the rule violation requires the dismissal of the application of the only other applicant in this case, Moonbeam requests that it be permitted to immediately appeal this novel issue and forestall the unnecessary continuation of discovery, hearings and motion practice which will deplete the resources of all concerned.

WHEREFORE, Moonbeam respectfully requests leave to file an interlocutory appeal of the Presiding Officer's ruling declining to strike Willson's direct written case.

Respectfully submitted,

MOONBEAM, INC.

By _____
Lee W. Shubert
Susan H. Rosenau

Its Attorneys

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

July 27, 1993

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing Request for Permission to File Interlocutory Appeal was hand-delivered, to the following:

A. Wray Fitch, III, Esquire
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton
2000 L Street N.W.
Washington, D.C. 20036

Robert Zauner, Esquire*
Federal Communications Commission
Mass Media Bureau, Hearing Branch
Suite 7212
2025 M Street N.W.
Washington, D.C. 20554

Lucy G. Santiago

July 27, 1993