

AUG 25 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>92-316</u>
)	
RIVERTOWN COMMUNICATIONS COMPANY, INC.)	File No. BPH-911008ME
)	
SAMPLE BROADCASTING COMPANY, L.P.)	File No. BPH-911010ME
)	
For Construction Permits For a)	
New FM Station on Channel 282C3)	
at Eldon, Iowa)	

TO: Administrative Law Judge
John M. Frysiak

MOTION TO ACCEPT LATE-FILED "PROPOSED FINDINGS"

Rivertown Communications Company, Inc, by its attorney, respectfully moves that its Proposed Findings of Fact and Conclusions of Law filed August 18, 1993 be accepted, notwithstanding that such filing was untimely by two days. In support thereof, it states as follows:

At the completion of the hearing herein on June 23, dates for the filing of proposed findings and replies were established. According to the undersigned counsel's contemporaneous notes, August 18 was established as the date for the filing of proposed findings; based on those notes counsel so calendared their due date, and Rivertown's proposed findings were filed on August 18.

At approximately 5 p.m. on August 24, the undersigned picked up from the offices of Sample's counsel a copy of Sample's

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

046

proposed findings and conclusions, the mailed service copy thereof not having been received. Upon review thereof last evening, the undersigned noted that Sample's filing had been made on August 16 -- not August 18. This morning, undersigned counsel reviewed that portion of the transcript wherein the filing dates were established (TR. 344-45, copies of which are attached), which confirmed both that the Judge had established August 16 as the filing date, and that the undersigned had understood him to state that August 18 was the date. (The transcript reveals no response by the Judge to the undersigned's question [Tr. 345]: "August 18 and September 8th? Is that it, Judge?")

The undersigned also noted this morning (for the first time) that the Judge's Order released June 30 had reconfirmed the August 16 date: Upon receipt of that Order in early July, counsel had assumed that the Order merely confirmed counsel's own understanding of the filing date.

Thus, it is clear that Rivertown's Proposed Findings were filed two days late, due to counsel's misunderstanding of the due date. Counsel regrets his error, and hereby consents to any extension which Sample might require to compensate for the two day delay in its receipt of Rivertown's filing.¹

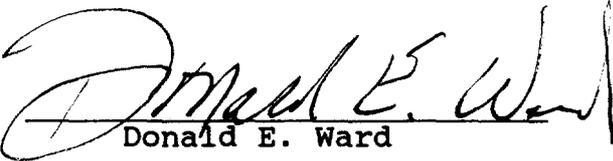
¹ Due to the failure of the mails to deliver Sample's August 16 filing, Sample has in fact had Rivertown's filing several more days than Rivertown has had Sample's filing.

The undersigned has today advised Sample's counsel of the instant Motion.

Accordingly, it is respectfully requested that the instant motion be granted, and that Rivertown's Proposed Findings of Fact and Conclusions of Law be accepted.

Respectfully submitted,

RIVERTOWN COMMUNICATIONS COMPANY, INC.

By: 
Donald E. Ward

Law Offices of Donald E. Ward
1201 Pennsylvania Avenue, N.W.
Fourth Floor
Washington, D. C. 20004
(202) 626-6290

Its Attorney

August 25, 1993

1 market they switched formats and their sales went up 19
2 percent.

3 Q When you say us and we, what are you referring to?

4 A I'm referring to Eddyville, KKSI.

5 Q Olde Towne Communications?

6 A Olde Towne Communications.

7 MR. NEELY: I have no further questions of this
8 witness.

9 MR. WARD: Nor do I, Your Honor.

10 JUDGE FRYSIAK: Okay. Thank you very much, Mr.
11 Linder. You are excused.

12 (Whereupon, the witness was excused at 3:10 p.m.)

13 MR. MILLER: That concludes Sample's case, Your
14 Honor.

15 JUDGE FRYSIAK: Okay. Thank you very much. There
16 is nothing further for our consideration except to set
17 procedural dates for the filing of -- findings and replies, 45
18 days, August 16th. Is that all right for findings?

19 MR. WARD: That's fine with me, Your Honor. During
20 our last recess Mr. Miller was -- we were discussing this, I
21 think, and he was indicating some problems, but I'll let him
22 speak to that.

23 MR. MILLER: Well, I have plans to be out of the
24 country from the 10th to about the 19th or 20th, but we could
25 have them done before and Mr. Neely can finish polishing it

1 up, so we can go with the 16th.

2 JUDGE FRYSIAK: It's all right?

3 MR. MILLER: Yes, sir.

4 JUDGE FRYSIAK: And September 3rd for replies?

5 MR. NEELY: Is that the Labor Day weekend, Your
6 Honor?

7 JUDGE FRYSIAK: That's the weekend before Labor Day.
8 You want it before or after the weekend?

9 MR. NEELY: I would suggest after.

10 JUDGE FRYSIAK: All right.

11 MR. NEELY: Can you do it September 7th?

12 JUDGE FRYSIAK: Huh?

13 MR. NEELY: September 7th.

14 JUDGE FRYSIAK: You want it the day after? Make it
15 the 8th.

16 MR. NEELY: Okay.

17 MR. WARD: August 18 and September 8th? Is that it,
18 Judge?

19 MR. MILLER: Your Honor, what is your preference in
20 terms of the summaries and tables of contents and so? What
21 the Commission rules call for is summary and table of
22 contents. Documents in excess of ten pages, which these
23 certainly will be --

24 JUDGE FRYSIAK: Summaries are very useful. I have
25 none other than that.

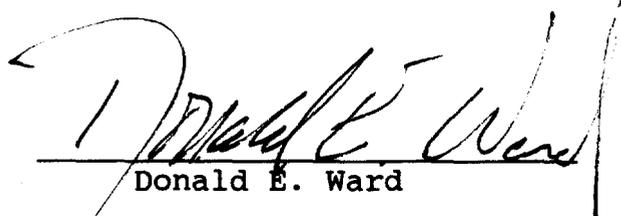
CERTIFICATE OF SERVICE

I, Donald E. Ward, do hereby certify that I have this 25th day of August, 1993, caused to be served by first class United States Mail, postage prepaid, a copy of the foregoing "MOTION TO ACCEPT LATE-FILED 'PROPOSED FINDINGS . . .'" to the following:

Hon. John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street N.W.
Washington, D.C. 20554

John S. Neely, Esq.*
Miller & Miller
1990 M Street N.W.
Suite 760
Washington, D. C. 20036
Counsel for Sample Broadcasting Co., L.P.

Norman Goldstein, Esq.
Hearing Branch,
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street N.W., Room 7212
Washington, D.C. 20554


Donald E. Ward

* By Hand