DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of	)	MM Docket No. 92-316
RIVERTOWN COMMUNICATIONS CO. INC.	)	File No. BPH-911008ME
SAMPLE BROADCASTING COMPANY, L.P.	)	File No. BPH-911010MA
For Construction Permit for a new FM Station on Channel 282C3 in Eldon, Iowa	)	

To: Administrative Law Judge
John M. Frysiak

COMMENTS ON MOTION TO ACCEPT LATE-FILED
PROPOSED FINDINGS AND CONCLUSIONS OF LAW

Sample Broadcasting Company, L.P. ("Sample"), by its attorney, respectfully comments on the "Motion to Accept Late-filed Proposed Findings ....", filed by Rivertown Communications Company, Inc. ("Rivertown") on August 25, 1993.

In a June 23, 1993, oral ruling at the hearing in this proceeding, the Presiding Judge directed that proposed findings and conclusions should be filed by August 16, 1993. A confirmatory written Order was released June 30, 1993, (FCC 93M-429), reiterating the August 16, 1993, filing date. Section 1.263(c) of the Commission's rules provides that in the absence of good cause, failure to file proposed findings of fact and conclusions "when directed to do so, may be deemed a waiver of the right to participate further in the proceeding." In addition, the Commission has recently revised its rules to expedite FM comparative hearings. In so doing, it thoroughly reviewed the public interest benefits and

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

imperative need for parties to adhere to established procedural schedules. Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 157 (1990).

Rivertown filed its proposed findings and conclusions on August 18, two days late. Its motion to accept the late-filed pleading was submitted nine days late.[1] Rivertown's "good cause" for the late filing is that counsel misapprehended the Presiding Judge's oral ruling setting the filing date and did not carefully read the written Order released seven days later.[2] These are not exceptional circumstances or factors beyond the applicant's control which merit a good cause waiver.

This is not the first time Rivertown has failed to meet a filing deadline. For example, it did not timely file its Section 1.65 amendment reporting David Brown's managerial employment at station's WAIK/WGBQ Galesburg, Illinois. (Sample Proposed Findings ¶ 139). It did not report all of its claims for qualitative enhancements prior to the amendment-as-of-right date in this proceeding. (Sample Proposed Findings ¶ 23, 26, 37). Its motion to enlarge basic hearing issues against Sample was also late-filed. (See, Rivertown's February 24, 1993, Motion to Accept Late-filed "Motion to Enlarge Issues").

---

[1] In addition to being late, both of Rivertown's pleadings fail to conform to Section 1.49 of the rules: "[t]he left hand margin shall not be less than 1.5 inches wide."

[2] In addition, counsel did not apparently review the relevant pages of the hearing transcript until after the filing deadline elapsed.

Acceptance or rejection of Rivertown's proposed findings and conclusions is a matter within the Presiding Judge's discretion. Salzer v FCC 778 F 2d 869 (1985). However, should the Presiding Judge accept the dilatory proposed findings, he should consider the lateness in his ultimate evaluation of Rivertown. In James E. Reese 45 FCC 2d 315, 321 (Rev. Bd. 1974) an applicant failed to show special circumstances for the late filing of its proposed findings, however, the Presiding Judge accepted the pleading and instead used the tardiness as a "final basis" for denying the application in the Initial Decision. *cited with approval in* Horizon Community Broadcasters, Ltd. 102 FCC 2d 1269, 59 RR 2d 548, ¶ 8 (Rev. Bd. 1985).

Accordingly, based on the foregoing Rivertown's motion to accept late filed proposed findings should be either denied or the late filing should be considered in the final evaluation of Rivertown.

Respectfully submitted,

SAMPLE BROADCASTING CO., L.P.

By _____
John S. Neely
Its Attorney

August 30, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of August, 1993 a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Norman Goldstein, Esq.
Mass Media Bureau, Hearing Branch
Federal Communications Commission
Washington, DC 20554

Donald E. Ward, Esq.
Law Offices of Donald E. Ward, P.C.
1201 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Robin Queen