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

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In re Applications of	)	MM Docket No. 93-178
	)	
HOWARD B. DOLGOFF	)	File No. BPH-911223ME
	)	
MARK AND RENEE CARTER	)	File No. BPH-911224MD
	)	
For Construction Permit for a New	)	
FM Station on Channel 292A in	)	
Miramar Beach, Florida	)	

MEMORANDUM OPINION AND ORDER

Issued: September 8, 1993 ; Released: September 10, 1993

1. Under consideration are the following:

Petition to Enlarge Issues, filed August 10, 1993, by Howard B. Dolgoff ("Dolgoff");

Erratum to Petition to Enlarge Issues, filed August 11, 1993, by Dolgoff;

Opposition to Petition to Enlarge Issues As Clarified by Erratum, filed August 25, 1993, by Mark and Renee Carter ("the Carters"); and

Reply to Opposition to Petition to Enlarge Issues, filed September 1, 1993, by Dolgoff.

2. Dolgoff seeks site availability, financial qualification, abuse of process issue and related character qualification issues.

3. Site availability. Dolgoff asserts that in the documents exchanged by the Carters the only document produced regarding its proposed site was an option agreement dated May 1, 1992. Dolgoff argues that since the Carters certified that they had reasonable assurance of site availability in their application dated December 24, 1991, the inference arises that there was no meeting of the minds between the site owners and the Carters with respect to particular terms under which the property would be made available for use as a transmitter site until May 1, 1992.

4. The issue will not be specified. Dolgoff's allegations are speculative. Section 1.229(d) requires that petitions to enlarge must contain facts supported by affidavits of a person or persons having personal knowledge thereof.

5. Financial qualification. Dolgoff argues that the Carters falsely certified their financial qualification because the bank letter of December 12, 1991 merely expresses the bank's interest in discussing further with the Carters the financing needs. Dolgoff argues that this is not a bank commitment and the lack thereof was not cured by the bank letter of July 23, 1993.

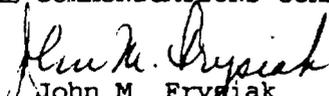
6. The issue is not warranted. The July 23, 1993 bank letter is signed by a bank officer who was present to the discussions with the Carters on December 12, 1991. It indicates that the terms of the proposed loan were based on the bank's review of the Carter application, their budget, their financial statements and the bank's past experience with them. A fair reading of the bank letter indicates that the bank's assessment was made and assurance of availability given on December 12, 1991. Dolgoff's protest that the Carter application was not filed until December 24, 1991 and that the option on the real estate was not acquired until May 1, 1992 is a quibble. As indicated above, the Commission's rules require that a petition to enlarge must support facts with affidavits of a person(s) in the know.

7. Abuse of process. Dolgoff asserts that the Carters have repeatedly filed frivolous and vexatious pleadings and charges against Dolgoff which did not have any basis in law or in fact. However, this charge has not been demonstrated. Dolgoff believes that the Carters' oppositions to Dolgoff's motion to enlarge and motion for partial summary decision also misuse the Commission's process.

8. The issue will not be specified. As indicated by Dolgoff's counsel in the August 27, 1993 prehearing conference, the oppositions were rendered on the basis of misreading of site coordinates and were withdrawn when the coordinates were rechecked. No harm was done.

Accordingly, IT IS ORDERED that the Petition to Enlarge Issues, filed August 10, 1993, by Howard B. Dolgoff IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

  
John M. Frysiak  
Administrative Law Judge