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

FCC MAIL SECTION

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FCC 93M-594
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In re Application of)	MM DOCKET NO. 93-42
)	
MOONBEAM, INC.)	File No. BPH-91111583
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For Construction Permit for a New)	
FM Station on Channel 265A)	
in Calistoga, California)	

MEMORANDUM OPINION AND ORDER

Issued: September 13, 1993 ; Released: September 17, 1993

1. Under consideration are 1) Third Petition to Enlarge Issues, filed July 8, 1993 by Gary E. Willson; 2) Supplement to Third Petition to Enlarge Issues, filed July 20, 1993 by Willson; 3) Opposition to Third Petition to Enlarge, filed July 30, 1993 by Moonbeam, Inc.; and 4) Reply to Oppositon to Third Petition to Enlarge, filed August 11, 1993 by Willson.

2. Willson seeks misrepresentation/candor and carelessness/ineptness issues against Moonbeam. Willson's petition will be denied.

3. Mr. Fred Constant, the husband of Moonbeam's one-hundred percent shareholder Mary F. Constant, is himself the one-hundred percent owner of Idaho Broadcasting Consortium, Inc. (IBC). IBC is the permittee of FM broadcast station KRMR-FM, Ketchum, Idaho. The assignment application through which IBC acquired KRMR-FM was filed August 7, 1992, subsequently approved by the Commission, and became effective on November 30, 1992. In the assignment application, Mr. Constant reported that his wife Mary F. Constant "is President, Secretary, sole director and 100% shareholder of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a construction permit for a new commercial FM station on Channel 265 at Calistoga, California."

4. It was not until after Willson filed the present petition raising the issue that Moonbeam reported by amendment Fred Constant's acquisition of the Idaho station. In its petition for leave to amend, Moonbeam stated:

"Due to an unintentional administrative oversight, this change was not formally reported to the Commission by Moonbeam. Moonbeam's oversight became apparent from Gary Willson's July 8, 1993 Third Petition to Enlarge Issues."

5. Implicit in Willson's request for a misrepresentation/candor issue is the charge that Moonbeam's delay in reporting the matter was motivated by an intention to conceal. Mr. Constant's assignment application reported his wife's pending application. Additionally, Willson refers to no conduct by Moonbeam which indicates some effort by Moonbeam to conceal the matter. The presiding officer is persuaded that, as Moonbeam claims, the late reporting was due to mere inadvertence.

6. Next, Willson offers a segment of Mrs. Constant's deposition testimony in an effort to show that Mrs. Constant was untruthful in denying that her husband had involvement in Moonbeam's application. The testimony that Willson cites does not support the charge of untruthfulness. That testimony shows Mrs. Constant responding to counsel's question about whether Mrs. Constant "discussed with your husband filing this application for Calistoga." Mrs. Constant's response may fairly be read as affirming that she and her husband had discussed filing the application. Willson, however, attempts to turn discussions with her husband about the application into involvement of Mrs. constant's husband in the application. The effort will not succeed.

7. According to Willson, Mrs. Constant testified at her deposition that "she had no involvement with MegaMedia, a company owned by her husband, and that she has no information concerning any financial difficulties involving her husband's stations." A fair reading of the deposition testimony relied on by Willson fails to reveal any misrepresentation. Moonbeam's opposition effectively demonstrates that, as claimed by her, Mrs. Constant has had no involvement in the conduct of her husband's business, and that she did not testify falsely about the alleged "financial trouble" concerning her husband's stations.

8. By an amendment dated March 2, 1992, Moonbeam proposed a new transmitter site -- the KFTY-TV tower on Mount St. Helena. In that amendment, Moonbeam certified that its main studio would be within the protected 3.16mV contour of its proposed station. At her deposition, however, Mrs. Constant stated that Moonbeam's main studio would "probably be at KFTY in Santa Rosa," and that the engineering was amended to the KFTY site because of the availability of KFTY's offices. KFTY's offices in Santa Rosa are at a considerable distance beyond the proposed station's 3.16 mV contour. On this, Willson makes another charge of "misrepresentation," claiming that Moonbeam's intention all along has been to locate its main studio at KFTY's offices, notwithstanding the contrary representation in Moonbeam's application.

9. As Willson sees it, Moonbeam's motive to misrepresent was this: Moonbeam wanted to avoid the need to seek a waiver of the Commission's main studio rule during the course of this comparative hearing. No facts, however, support this wholly speculative formulation. It appears instead that, as claimed by Moonbeam, Mrs. Constant merely testified incorrectly at her deposition. She has since corrected her deposition testimony on this point and has given conforming testimony at the hearing. No misrepresentation issue is warranted.

10. On its April 5, 1993 Integration and Diversification Statement, Moonbeam listed among Mrs. Constant's civic activities her membership in the Calistoga Performing Arts Association. At her deposition on June 4, 1993, Mrs. Constant forthrightly disclosed that the organization ceased to exist in the summer of 1992. Moonbeam's direct case exhibits also reflected the demise of the Calistoga Performing Arts Association. Willson claims that Moonbeam misrepresented Mrs. Constant's membership in the Performing Arts Association; no misrepresentation is apparent to the presiding officer.

11. Willson earlier sought misrepresentation and candor issues against Moonbeam relating to Mrs. Constant's employment as a realtor and her claim of residence in Santa Rosa, California, many years ago. That earlier request for such issues was denied (Order, FCC 93M-437, released July 2, 1993); Willson's present petition adds nothing which would justify the addition of such issues now.

12. Finally, Willson requests an ineptness/carelessness issue against Moonbeam. The request is based principally on the string of alleged misrepresentations considered herein. The request is summarily denied.

IT IS ORDERED that the Third Petition to Enlarge Issues filed by Gary E. Willson IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Edward Luton
Administrative Law Judge