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

FCC/ 93M-669
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| In re Applications of |) | MM DOCKET NO. 93-263 |
| |) | |
| DESOTO BROADCASTING CORP. |) | File No. BPH-920324ME |
| |) | |
| CARY D. CAMP |) | File No. BPH-920402MI |
| |) | |
| MITCHELL TYNER |) | File No. BPH-920403MA |
| |) | |
| For Construction Permit for a |) | |
| New FM Station on Channel 284C3 |) | |
| in Mansfield, Louisiana |) | |

Oct 22 5 27 PM '93
FCC MAIL SECTION

PREHEARING ORDER

Issued: October 20, 1993 ; Released: October 22, 1993

1. We will hold the prehearing conference on February 15, 1994. The hearing will begin on March 2, 1994.¹ Both will start at 8:30 a.m. and will be held in the Commission's offices in Washington, D.C. The applicants will exchange their direct case exhibits at the February 15th prehearing.

2. Appearances and Publication. On or before November 8, 1993, each applicant must show that they have complied with 47 CFR 1.221(c). See DA 93-1210 released October 18, 1993 at para. 11. On or before November 22, 1993, each must demonstrate that they have complied with 47 CFR 73.3594(g)'s publication requirements. See DA-1210 supra., para. 12.

3. Clarification of Issues. The Chief, Audio Services Division has designated a standard comparative issue for hearing. See DA 93-1210 supra. at para. 6. So on November 15, 1993, each applicant will serve a standardized integration/diversification statement on each opponent and on the Trial Judge. See DA 93-1210 supra. at para. 11.

4. The Chief has also called for comparative coverage. See DA 93-1210 supra. at para. 4. The parties should consider a joint areas and population exhibit if only for reasons of economy. For if you can't agree on a joint coverage exhibit, each applicant must not only portray their own proposed areas and populations but each of their opponent's as well. This will not only amount to a substantial added expense, but could also give rise to evidentiary conflicts. But you are alerted now. If you take the joint exhibit route, you will be bound by the agreed-upon showing. At any rate get your approach to comparative coverage ironed out early on.

¹ The Trial Judge has blocked off three days for hearing: March 2-4, 1994. A courtroom has been reserved for those days.

5. All preliminary engineering will be exchanged on or before December 28, 1993. The final engineering will be exchanged at the prehearing conference.

6. All counsel should be prepared to discuss any questions about clarification of existing issues.

7. Perfecting Amendments. The Chief has called on both DBC and Camp to submit perfecting amendments. See DA 93-1210 supra. at paras. 2, 3, 7, 8, and 9. Such amendments are due on or before November 22, 1993. Any amendments as a matter of right must comply with 47 CFR 73.3522(b)(2). All amendments, even those that are a matter of right, must be accompanied by a Petition for Leave to Amend.²

8. The post-designation amendment period (from October 19, 1993 through November 22, 1993) will be the last chance each applicant will have to firm up for hearing. This perfecting time is designed to implement the Commission's post-designation amendment policy; i.e., to give all applicants a fair post-designation chance to firm up their applications, and at the same time secure a stable hearing environment as soon as possible, so we can proceed with the hearing on the remaining issues.

9. Interlocutory Pleadings. In the interest of uniform processing, each applicant should direct their interlocutory requests toward one and only one of their opponents. For example, if DBC decides to seek enlargement of issues against both Camp and Tyner, they should file separate enlargement requests. The same thing holds true for oppositions, replies, and other interlocutory responses, including discovery notices and motions.

10. Supplements will not be accepted unless requested and authorized. You can supplement an original signature affidavit for a faxed one. But let's keep substantive supplements to a minimum. They cause timing problems. We'll generate more than enough paper without delaying the proceeding via "Supplements". See In re Filing of Supplemental Pleadings Before the Review Board, 40 FCC 2d 1026 (1972).

11. Discovery. All discovery must be completed on or before January 18, 1994; automatic document production will take place on November 15, 1993; and any In Camera inspection requests must also be filed

² The applicants are reminded to serve their amendments pursuant to para. 10 of the HDO. Moreover, DBC and Camp are reminded that they cannot obtain any comparative advantage from their post-cutoff amendments.

on or before November 15, 1993.³ It's no defense to an otherwise legitimate discovery motion for the objecting party to assert that they intend to file either a Petition for Leave to Amend or a Motion for Summary Decision that will moot the discovery requests. Nor should the objecting party seek to defer a response to discovery on that ground. Any additional discovery should be initiated on November 22, 1993, not before, and not after.

12. No 47 CFR 1.315 or 1.323 written interrogatories will be employed, and any depositions of opposing principals will be taken in Mansfield, Louisiana (unless otherwise agreed upon). Please don't notice a witness for any other location unless your opponent agrees to the change.

13. Since this is a three-party proceeding, there will probably be more than one notice to depose certain principals. So on November 17, 1993, at an agreed-upon location, a discovery conference will be held. There those applicants who intend to take depositions will get together and set up an agreed upon deposition schedule. They will so coordinate that schedule that each principal scheduled to be deposed will be deposed only once. The agreed-upon schedule shouldn't interfere with other procedural dates we've established.

14. Settlement. This case could prove long and costly. Because of lawyer's and engineering fees, all three applicants will lose. At best two of you will have spent substantial amount of money prosecuting this case. So from your client's perspective this upcoming litigation is a mistake, another form of warfare. So avoid it if you can. Engage in settlement dialogue now. Don't wait to argue before the Commission three and a half years from today.

15. To this end a negotiating principal from each applicant along with their attorney (if they're not pro se) are directed to attend a settlement disposition conference on January 27, 1994 at 2:00 p.m.⁴ This conference will be held at an agreed upon location. There the parties should determine whether this case can be settled.

³ Before filing an in camera request, an applicant should consider that he is voluntarily seeking a construction permit in a contested proceeding. Privilege claims hinder and even prevent the search for the whole truth. So you are forewarned. If the Trial Judge cannot make a critical public interest finding because of claimed privilege documents, he will be forced to draw adverse inferences against the applicant who has claimed the privilege. Any privilege request must meet the five-step procedure outlined in Patterson Communications Associates, 41 RR 2d 640 (1977) and 41 RR 2d 1027 (1977).

⁴ The parties needn't wait until January 27, 1994, to initiate settlement efforts. Nor should the January 27th mandatory conference be the only effort to settle. The Trial Judge chose the January 27th date because of its proximity to the February 15, 1994 Prehearing Conference. So don't be afraid to initiate settlement efforts.

16. On or before February 3, 1994, the parties should submit a Joint Memorandum to the Trial Judge outlining the results of the January 27th conference. This memorandum should include, but not necessarily be limited to, answers to the following questions:

- (a) Has this case been settled? If so, do the settlement's terms pose any public interest question?
- (b) If the case hasn't been settled, were any offers made at the conference? If so, are they still open? For how long?
- (c) If the case has been settled, how soon can the settlement package; i.e., the joint request for approval and related papers, be submitted for approval?

17. Marshalling and Exchanging Exhibits. It will contribute significantly to the disposition of this proceeding for the parties to prepare and exchange their direct affirmative cases in writing. See 47 CFR 1.249(d)(2). This will include the sworn written testimony and the exhibits to be offered in support of their direct cases. That exhibit exchange will take place at the February 15, 1994 prehearing conference.⁵

18. If a party intends to request that official notice be taken of any materials in the Commission's files, that material should be assembled in written form, given a tentative exhibit number, and exchanged on the date set.

19. Each party will assemble their exhibits in a binder. Each exhibit will bear a number via a tab on each document. Please number the exhibits serially starting with the number 1, and paginate them. Each exhibit will also contain the sponsoring witnesses' affidavit -- if such an affidavit is required (see para. 18 supra.). Use a prefix to indicate who is sponsoring the exhibits; e.g. DBC Exhibit 1, Camp Exhibit 1, and Tyner Exhibit 1.

20. Evidentiary Admission Session. We will hold an evidentiary admission session on February 25, 1994, starting at 8:30 a.m. There each applicant (in docket order) will formally identify and offer the direct case exhibits they exchanged on February 15, 1994. The Trial Judge will rule on any objections to those proffers. Immediately after the admission session is concluded, each party will notify his opponents of those witnesses they need to cross-examine.

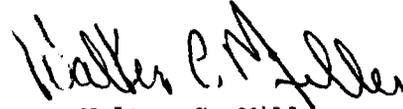
21. Extension of Time. This case has been placed on the Trial Judge's docket and courtroom space has been reserved. So we cannot afford the luxury of procedural slippage. Otherwise, other dockets could suffer. So any requests for extension of time must be in writing and must be consent

⁵ Before they exchange their written exhibits, counsel would be wise to go over them and delete all unnecessary commenting adjectives and comparative puffing. Let's save everybody time and money.

extensions. In addition, any request for an extension of more than four working days must be signed by the client. Captive extension requests will be rejected.

22. The March 2-4, 1994 hearing dates (see footnote 1, supra.) are firm dates. A thorough but speedy trial is contemplated. The procedural dates will not be extended merely because counsel have agreed to recommend a settlement. Daily hearing sessions will begin at 8:30 a.m. and end at 5:30 p.m. with an hour for lunch.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Walter C. Miller". The signature is written in a cursive, somewhat stylized font.

Walter C. Miller
Administrative Law Judge