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

FCC 93M-673
40134

In re Applications of)	MM DOCKET NO. 93-89 ✓
)	
AURIO A. MATOS)	File No. BPH-911114MS
)	
LLOYD SANTIAGO-SANTOS AND LOURDES RODRIGUEZ BONET)	File No. BPH-911115MP
)	
For Construction Permit for a New FM Station on Channel 293A in Culebra, Puerto Rico)	

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MEMORANDUM OPINION AND ORDER

Issued: October 25, 1993; Released: October 26, 1993

1. Under consideration is the Petition to Enlarge Issues, filed by Aurio A. Matos (Matos) on August 9, 1993; the Opposition to Petition to Enlarge Issues, filed by Lloyd Santiago-Santos and Lourdes Rodriguez Bonet (Santos and Bonet) on August 31, 1993; and the Reply to Opposition to Petition to Enlarge Issues, filed by Mr. Matos on September 16, 1993.

2. Mr. Matos requests that the issues in this proceeding be enlarged to include the following:

To determine whether Santiago and Rodriguez (Santos and Bonet) have maintained their public file in accordance with Section 73.3526(d) of the Commission's rules.

To determine whether Santiago and Rodriguez (Santos and Bonet) have complied with Section 1.65 of the Commission's rules which requires applicants to promptly report substantial and significant changes in information contained in their applications.

To determine whether or not Santiago and Rodriguez (Santos and Bonet) have complied with Section 73.3580 of the Commission's rules concerning local public notice of the location of an applicant's public files.

To determine whether Santiago and Rodriguez (Santos and Bonet) abused Commission processes by misrepresenting certain facts concerning the establishment and maintenance of their public file during depositions taken during the course of this proceeding, and the effect such misrepresentations have on their basic qualifications to be Commission licensees.

To determine whether, in light of their pattern of violation and disregard for the Commission's rules, Santiago and Rodriguez (Santos and Bonet) possess the qualifications to be Commission licensees.

3. In responding to the most recent petition to enlarge filed by Mr. Matos, Santos and Bonet argue, initially, that the petition is untimely. Specifically, they contend that Mr. Matos should have become aware of the location of their public file, at the very latest, as of the date of the Santos and Bonet depositions which were taken on June 24, 1993, and, possibly, as early as the date of the filing of their application in November 1991. It was incumbent, therefore, that Mr. Matos file his request for the designation of a Section 73.3526(d) issue within fifteen days of June 22, 1993. As to the merits of Mr. Matos' request for the designation of a Section 73.3526(d), Santos and Bonet argue that the file is now on location in Culebra, Puerto Rico; that there has been no showing of injury or prejudice to any member of the public or opposing party; and that no basis has been shown for designating such an issue. They also oppose the designation of a Section 1.65 issue on the grounds that the application form, Form FCC 301, does not require that the applicant indicate the location of its public file, and that there can, accordingly, be no requirement that the application be amended under Section 1.65 of the Commission's rules to reflect its actual location. Finally, with respect to the requested misrepresentation issue, they argue that the statements made by Mr. Santiago-Santos and Ms. Bonet at their respective depositions were not false and were not made with an attempt to mislead the Commission. They submit statements from Mr. Santiago-Santos and a Mr. Fournier which state that Mr. Fournier picked up their public file on June 23, 1993 and delivered it to the city hall in Culebra, Puerto Rico. It apparently was not properly filed there, but it is now on file. It is their position that there has been no showing that Santos and Bonet deliberately misrepresented a material fact to this Commission, and that the request for the designation of a misrepresentation issue should be denied as well.

4. The Presiding Judge is in agreement with Santos and Bonet that the petition to enlarge the issues is either untimely or without sufficient basis to warrant the designation of the requested issues. The request for the designation of a Section 73.3526(d) issues is clearly untimely, and on that basis alone will be denied. The Presiding Judge continues to believe that insufficient grounds have been shown to warrant the designation of a Section 1.65 issue, since it is unlikely, even if it were shown that Santos and Bonet were derelict in failing to report this matter to the Commission, that it, along with the other omissions brought to the Commission's attention in earlier pleadings, would result in their disqualification. Finally, there has been no showing in the manner required by Section 1.229 of the Commission's rules that Santos and Bonet made a deliberate misrepresentation to this Commission as to the location of their public file, and the request for the designation of a misrepresentation issue against their application will also be denied.

Accordingly, IT IS ORDERED, that the Petition to Enlarge Issues, filed by Aurio A. Matos, on August 6, 1993, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Joseph P. Gonzalez
Administrative Law Judge