

DOCKET FILE COPY  
ORIGINAL

FCC MAIL SECTION

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

Nov 1 3 05 PM '93

FCC 93M-887

DISPATCHED BY

MM Docket No. 92-316 40195

In re Application of )

RIVERTOWN COMMUNICATIONS COMPANY, 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 )

MEMORANDUM OPINION AND ORDER

Issued: October 28, 1993 ; Released: November 1, 1993

1. Under consideration is the Rivertown Communications Company, Inc. Motion To Enlarge Issues, filed October 4, 1993; the Opposition To Motion To Enlarge Issues, filed October 18, 1993, by Sample Broadcasting Company, L.P.; and the Reply To Opposition To Motion To Enlarge Issues, filed October 27, 1993, by Rivertown Communications Company, Inc.

2. Rivertown Communications Company, Inc. ("Rivertown") seeks a misrepresentation issue against Sample Broadcasting Company, L.P. ("Sample"). Rivertown alleges that in its Amendment filed September 17, 1993, Sample reported that its sole general partner, Carmela Sample-Day, was laid-off from her employment as News Director at KKSI-FM, Eddyville, Iowa, due to the elimination of the full-time news department. According to Rivertown the reason given for Sample-Day's lay-off is untrue. In support of its charge Rivertown has supplied the affidavit of David W. Brown wherein Brown states that his son on August 18, 1993, told him that he learned from his grandmother that she learned from his uncle that Sample-Day was laid-off and that Mark Denny was hired as the KKSI News Director. Brown adds that he subsequently talked with Mark Denny on September 5, 1993, and was informed by him that he would be joining KKSI as a News Director and that Sample-Day was being replaced because she mishandled a news assignment.

3. Rivertown has also supplied the affidavit of Michael Wilson Crumb, the News Director at KKMI and KDMG, Burlington, Iowa, wherein he states that on September 23, 1993, he called KKSI to inquire whether KKSI had a full-time news department and was informed by an unidentified female that it did. Crumb then talked with Mark Denny who confirmed that he was the full-time News Director at KKSI.

4. Rivertown argues that Sample had reason to misrepresent the facts of Sample-Day's lay-off because the true facts would detract from Sample's comparative case.

5. The motion must be denied. Section 1.229 requires that motions to enlarge be supported by affidavits of persons who have personal knowledge of the facts. No weight may be given to the Brown affidavit because his information is based on hearsay. The Crumb affidavit does not undermine, much less contradict, Sample's assertion made in its September 17, 1993 Amendment. Denny may well have taken on other duties in addition to news.

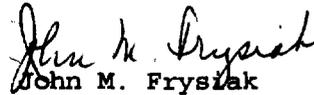
6. Rivertown merely speculates that Sample lied. Its pleadings abound in speculation. Allegations of conclusory facts or based on mere information and belief are inadequate to support alleged misrepresentation issues. Bilingual Bicultural Coalition v. FCC, 595 F 2d 621 (DC Cir. 1978). To sustain a misrepresentation issue, Rivertown must show that Sample-Day knew the statement to be false and had motive to make a false statement. Fox River Broadcasting, Inc., 93 FCC 2d 127 (1983). Rivertown has failed to address this prerequisite.

7. In its Opposition Sample has supplied the document Sample-Day had relied upon in filing the September 17, 1993 Amendment. It is the August 18, 1993 letter from Bruce Linder (Vice President of O-Town Communications) to Carmela Sample wherein he states that the position of full-time newsperson at KISS FM was being phased out as a cost saving measure.

8. In light of the foregoing, the requested issue is not warranted.

Accordingly, IT IS ORDERED that Rivertown's Motion To Enlarge Issues, filed October 4, 1993 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak  
Administrative Law Judge