

Judge within 5 days after the designation order is released." As noted above, the HDO in this case was released on November 30, 1993. Thus, Cavan should have filed its Motion no later than the close of business on December 7, 1993. Cavan did not even prepare its Motion until December 8, 1993, and the date stamp from the FCC's Mail Room indicates that the pleading was filed with the Commission on December 9, 1993. Consequently, Cavan's Motion is late and subject to dismissal.¹

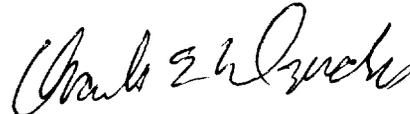
4. Assuming, *arguendo*, that Cavan's Motion was not late filed and subject to dismissal, it clearly does not satisfy the substantive requirements of Section 1.115(e)(3). Section 1.115(e)(3) states that a matter shall be certified to the Commission "only if the presiding Administrative Law Judge determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation." In the instant case, Cavan does not argue that there exists a controlling question of law as to which there is substantial ground for difference of opinion. Rather, Cavan's request for certification is based solely on a factual dispute. Therefore, Cavan cannot avail itself of 1.115(e)(3) in this instance.

5. Based on the foregoing, certification is not justified, and Cavan's Motion should be dismissed or denied. The Bureau notes that Cavan will have every opportunity at the

¹ The Bureau notes that Cavan does not explain why it failed to timely file its Motion. Nor does Cavan request a waiver of the filing deadline contained in Section 1.115(e)(3).

hearing to demonstrate why it should prevail on the merits of this case.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dzedzic
Chief, Hearing Branch



for Gary P. Schonman
Attorney
Mass Media Bureau

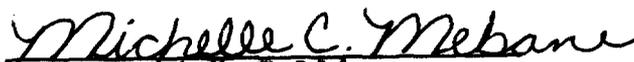
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

December 17, 1993

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 17th day of December 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing, "Mass Media Bureau's Opposition to Motion for Certification" to:

J. Dominic Monahan, Esq.
777 High Street
Suite 290
Eugene, Oregon 97401


Michelle C. Mebane
Michelle C. Mebane