

DOCKET FILE COPY
ORIGINAL

FCC MAIL SECTION

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

FCC 94N-04
40583

JAN 6 3 16 PM '94

In re Applications of) MM DOCKET NO. 93-264 ✓
DISPATCHED BY)
FRANK B. DUROSS) File No. BPH-920512MC
)
KENNETH F. ROSER, JR.) File No. BPH-920513MI
)
KEVIN O'KANE) File No. BPH-920514MK
)
For Construction Permit for a)
New FM Station on Channel 250A)
in Whitesboro, New York)

MEMORANDUM OPINION AND ORDER

Issued: January 5, 1994; Released: January 6, 1994

1. Under consideration is the Motion to Enlarge Issues Against Kevin O'Kane, filed by Frank B. DuRoss (DuRoss) on November 29, 1993; the Motion to Dismiss Motion to Enlarge Issues Against O'Kane, filed by Mr. DuRoss on December 8, 1993; the Supplement to Motion to Dismiss Motion to Enlarge Issues Against O'Kane, filed by Mr. DuRoss on December 16, 1993; the Partial Response, filed by Kevin O'Kane (O'Kane) on December 28, 1993; the Joint Request for Approval of Settlement Agreement, filed by Mr. DuRoss and O'Kane on December 8, 1993; the Supplement to Joint Request for Approval of Settlement Agreement, filed by DuRoss on December 9, 1993; and the Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement, filed on December 22, 1993.

Motion to Dismiss

2. Mr. DuRoss sought the designation of a financial qualifications issue against the O'Kane application, as well as a related false financial certification issue. He now seeks to have this motion to enlarge the issues dismissed based on newly acquired information which he contends clearly demonstrates that neither a misrepresentation issue nor the requested forfeiture under Section 1.229(f) of the Commission's rules are appropriate in this case. The general financial qualifications issue would be rendered moot upon approval of the settlement agreement tendered by Mr. DuRoss and Mr. O'Kane.

3. The newly acquired information, referenced above, consists of a declaration of Kevin O'Kane in which he details the steps taken to verify his financial qualifications. He submits that he was familiar with his father's ability to make the loan upon which his financial certification is based since he was provided, prior to completing his application for the Whitesboro, New York facility, with his father's financial statement which listed liquid assets of \$600,000.00, with no liabilities. He declares that there was no question in his mind at the time he filed his application that his father could and would lend him up to \$100,000 to build the radio station.

4. The declaration submitted by Mr. O'Kane summarizes in detail the steps that he took in determining that he was financially qualified to build and operate his station as proposed. The Presiding Judge finds that the questions raised by Mr. DuRoss in his motion have been properly responded to, and he finds that good cause has not been shown for designating a misrepresentation issue. Accordingly, the Motion, to the extent that it sought the designation of a misrepresentation issue and a requested forfeiture, will be denied. The Motion will in all other respects be dismissed as moot.

Settlement Agreement

5. Mr. DuRoss and Mr. O'Kane seek approval of a joint settlement agreement which provides, in pertinent part, for the dismissal of the O'Kane application in return for the payment by Mr. DuRoss to Mr. O'Kane of the sum of \$15,000. Payment is conditioned upon a grant of the DuRoss application or an application in which he has an interest. The Parties to the agreement declare that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the tendered agreement would be in the public interest since it would reduce the number of applicants for the frequency in question and simplify the proceeding.

6. The Presiding Judge finds that the Parties are in substantial compliance with the requirements of Section 73.3525 of the Commission's rules. In addition, they have demonstrated that the public interest would be served by approving the tendered agreement. Accordingly, the Motion will be granted and the settlement agreement approved, and the application of Mr. O'Kane dismissed with prejudice.

Rulings

IT IS ORDERED, that the Motion to Strike, filed by Frank B. DuRoss on November 18, 1993 and the Motion to Compel, filed by Frank B. DuRoss on November 19, 1993, are DISMISSED AS MOOT; that the Motion to Enlarge Issues Against Kevin O'Kane filed by Frank B. DuRoss on November 29, 1993, to the extent that it sought the designation of a misrepresentation issue and a forfeiture, IS DENIED, and that the Motion in all other respects IS DISMISSED AS MOOT; and that the Motion to Dismiss Motion to Enlarge Issues Against O'Kane, filed by Frank B. Duross on December 8, 1993, as supplemented on December 16, 1993, IS DISMISSED AS MOOT.

AND IT IS FURTHER ORDERED, that the Joint Request for Approval of Settlement Agreement, filed by Frank B. DuRoss and Kevin O'Kane on December 8, 1993, as supplemented on December 9, 1993, IS GRANTED, and the Settlement Agreement IS APPROVED; and that the application of Kevin O'Kane (File No. BPH-920514MK) IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION



Joseph P. Gonzalez
Administrative Law Judge