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FCC MAIL SECTION

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

APR 26 4 06 PM '94

FCC 94M-295

In re Applications of)

MM DOCKET NO. 93-300 ✓

STEPHEN O. MEREDITH)
DISCOVERED BY

File No. BPH-920430MD 41617

AL HAZELTON)

File No. BPH-920430ME

For Construction Permit for a)
New FM Station on Channel 243C1)
in Audubon, Iowa)

MEMORANDUM OPINION AND ORDER

Issued: April 21, 1994 ; Released: April 25, 1994

1. Under consideration are the following:

Petition for Leave to File Appeal, filed March 18, 1994, by Al Hazelton ("Hazelton"); and

Motion to Stay Discovery Pending Consideration of Petition for Leave to File Appeal, filed March 21, 1994, by Hazelton.

2. Hazelton seeks permission to appeal the Memorandum Opinion and Order "MO&O", FCC 94M-148, released March 11, 1994, or in the alternative to reconsider the ruling in said MO&O.

3. The above stated MO&O enlarged issues against Hazelton to determine whether the application of Hazelton was properly certified and executed in accordance with FCC requirements.

4. Hazelton filed his application on April 30, 1992. He signed it on April 28, 1992. However the engineering portion of his application was not signed until April 29, 1992.

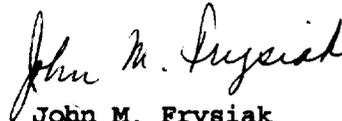
5. Hazelton admits that, after he signed his Audubon application, changes were made to the engineering portion of the application. Hazelton contends that he reviewed a previous version of the engineering prior to signing and that an error was discovered only after he had signed the application and forwarded it to his FCC attorney for filing. Hazelton contends that he was fully and completely aware of all elements of his application. In fact Hazelton has a background as a station engineer. Hazelton argues that his situation is analogous to the facts in the Commission's decision in Edward W. St. John, 67 RR 2d 774 (1990). St. John distinguishes the situation where application materials were not in existence from that where the material was in existence. Hazelton states that his engineering statement was in existence at the time it was certified and that while the engineering material was corrected, it was a minor change that did not involve the material provisions of the engineering portion such as location, height of tower, and power. St. John clearly indicates that

materiality is an important consideration and the application that Hazelton filed, with corrected and accurate engineering, was not materially different from that which he reviewed on April 28, 1992. Hazelton also submits that since the consulting engineer is required to certify Section V-B on Page 18, the Commission has recognized that the certification requirement belongs to the engineer and not the applicant. Thus the engineering information was considered and reconsidered by the applicant and his engineer and the engineer was committed to complying with the terms of the Page 18 certification that provides that the work being submitted is "accurate and true to the best of my knowledge and belief." Mr. Markley, knowing of an error in his work, had to correct Section V-B and the accompanying exhibits in order to be accurate and to meet the "hard look" tests.

6. It appears that there is neither a false certification nor any intent to deceive the Commission in this matter. The dating of documents involves the dates when events actually occurred. As for certification, it was not false in any regard. There was a full and complete application before the applicant. The only matter at issue is whether technical elements of the Section V-B, that the consulting engineer certifies to, can be subject to minor corrections, with the knowledge of the applicant. St. John indicates that it is permissible to correct minor errors.

In light of the above, IT IS ORDERED that the Motion for Leave to File Appeal, filed March 18, 1994 by Hazelton IS GRANTED; the Memorandum Opinion and Order, FCC 94M-148, released March 11, 1994 IS RESCINDED; the Motion to Stay Discovery Pending Consideration of Petition for Leave to File Appeal, filed March 21, 1994, by Hazelton IS MOOT; and the Motion to Enlarge Issues Against Al Hazelton, filed January 13, 1994, by Stephen O. Meredith IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak
Administrative Law Judge