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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. 94-47
)	
Benchmark Communications Corporation)	File No. BPH-891228MT
)	
For Construction Permit for a New)	
FM Station on Channel 291C3 in)	
Chatom, Alabama)	

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To: Administrative Law Judge
Edward Luton

**MASS MEDIA BUREAU'S COMMENTS ON
PETITION FOR LEAVE TO AMEND**

1. On July 1, 1994, Benchmark Communications Corporation ("Benchmark") filed a petition for leave to amend. On July 7, 1994, Benchmark filed a correction to its petition for leave to amend. The Chief, Mass Media Bureau ("Bureau"), by his attorneys, submits the following comments.

2. Benchmark seeks to amend its application in two respects. Benchmark's first amendment seeks to update its application by reporting information "concerning the broadcast interests of the corporation since the initial filing."¹ Petition at p. 1. The information reported includes: (1) the May 1989 filing of Benchmark's application for a new FM station in Highlands, North Carolina, and that application's subsequent designation for hearing and

¹ In an Amendment Exhibit, Exhibit 1B, entitled "Broadcast Interests," Benchmark reports the filings and dismissals of applications in which Benchmark or its principals had an interest as well as the broadcast interests of Benchmark's principals. However, Benchmark's petition does not state the purpose of this exhibit.

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dismissal in 1991; and (2) the May 28, 1993, filing and June 11, 1993, dismissal of an application seeking consent for the assignment of the license of Station WBCA, Bay Minette, Alabama, from Gordon Earls Radio, Inc. to Benchmark. Benchmark's second amendment addresses the Commission's directive that, in the event of a grant of Benchmark's application, a condition be imposed to ensure compliance with PST Bulletin No. 65, October 1985, entitled "Evaluating Compliance with FCC-specified Guidelines for Human Exposure to Radiofrequency Radiation." Hearing Designation Order, DA 94-471, released May 23, 1994, at ¶14 ("HDO"). Benchmark urges the acceptance of both its amendments pursuant to §§1.65 and 73.3522(b) of the Commission's Rules.

3. Section 1.65(a) of the Commission's Rules imposes upon each applicant a responsibility to maintain the continuing accuracy and completeness of its application. Among other things, the rule requires applicants to report information concerning a substantial change of potential decisional significance to the Commission within 30 days, unless good cause is shown to justify a later submission. Section 73.3522(b) prescribes that an applicant seeking to amend an application after designation file a petition which establishes good cause. To show good cause in a single application proceeding, the applicant must demonstrate that it has acted with due diligence, that the amendment was not required by its voluntary act, that no additional issues or parties would be required and that the hearing process will not be disrupted. California Broadcasting Corp., 90 FCC 2d 800, 808 (1982), citing Erwin O'Conner Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970).

4. Clearly, Benchmark has submitted its first amendment in a belated attempt to comply with §1.65 of the Commission's Rules. In this regard, Benchmark is now seeking to report information concerning applications that have long since been dismissed. Indeed, the information pertaining to Benchmark's Highlands, North Carolina, application is already the subject of Issue 2 in this proceeding. See HDO at ¶15. Thus, reporting about its Highlands, North Carolina, application is unnecessary. Likewise, reporting about the Bay Minette application is unnecessary. That application was pending approximately two weeks. Thus, even assuming *arguendo* that Benchmark might have had to amend its Chatom application to report the filing of the Bay Minette application, the Bay Minette application had already been dismissed before expiration of the 30 day period for reporting established by §1.65. Hence, reporting about the Bay Minette application would have been a useless gesture. See Telemundo Group, Inc. (David A. Davila, Nicasio O. Flores and Maria Norma Flores), 6 FCC Rcd 2897, 2899 at ¶8 (1990). Accordingly, Benchmark's first amendment should be rejected.

5. With respect to Benchmark's second amendment, the Bureau's engineering staff has reviewed it and determined that its acceptance will eliminate the need for the condition proposed in ¶14 of the HDO. Further, Benchmark submitted its amendment less than 45 days after release of the HDO; the amendment was not required by Benchmark's voluntary act; and the hearing process will not be disrupted. Under the circumstances, the Bureau submits that Benchmark has shown good cause for acceptance of its second amendment. Accordingly, the Bureau has no objection to Benchmark's second amendment.

6. In view of the foregoing, the Bureau supports in part and opposes in part Benchmark's leave to amend. With respect to the first amendment, the Bureau urges that the Presiding Judge reject it. Rejection should include the information appearing in the Amendment Exhibit, Exhibit 1B, denominated "Broadcast Interests." However, the Presiding Judge should accept Benchmark's second amendment. Further, in the event Benchmark's application is granted, it is no longer necessary to impose the condition appearing in ¶14 of the HDO.

Respectfully submitted,
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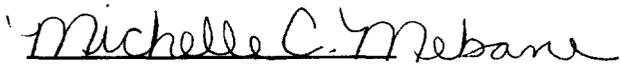
July 13, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 13th day of July, 1994, sent by regular United States mail, U.S.

Government frank, copies of the foregoing "**Mass Media Bureau's Comments on Petition for Leave to Amend**" to:

John Raymond Meyers, President
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Michelle C. Mebane