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FCC MAIL SECTION

DEC 5 2 47 PM '94

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

FCC 94M-638

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In re Applications of	)	MM DOCKET NO. 94-88
	)	
COMMUNITY EDUCATIONAL ASSOCIATION	)	File No. BPED-930316MF
Holly Hill, Florida	)	
	)	
For a Construction Permit for a New	)	
Noncommercial Educational FM	)	
Station on Channel 212A	)	

MEMORANDUM OPINION AND ORDER

Issued: December 2, 1994 ; Released: December 5, 1994

1. Under consideration are "Motion For Summary Decision" filed November 22, 1994 by Community Educational Association (CEA), and Mass Media Bureau's Comments In Support Of Motion For Summary Decision filed November 28, 1994. [1]

2. The Hearing Designation Order, DA 94-789, released August 2, 1994 specified an issue to determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with Section 73.503(a) of the Rules. CEA now seeks summary resolution of the issue.

3. Summary decision movants must show "that there is no genuine issue of material fact for determination at the hearing." 47 C.F.R. §1.251(a)(1). CEA has failed to satisfy this requirement. As reflected below, genuine issues of material fact remain for determination at the hearing.

4. As discussed in Palm Bay Public Radio, Inc., 68 RR 2d 1566 (1991), the processing standards used in analyzing applicants for the educationally reserved FM channels require that organizational applicants, such as CEA, must demonstrate that they have an educational goal and are committed to the advancement of an educational program. In evaluating compliance with these standards, emphasis is given to those programs that are instructional (for credit) and general educational (no formal credit). Based on CEA's showing, it is not possible to determine which, if any programming, falls into the categories of "instructional" and "general educational". CEA recites it proposes to develop a "Radio School" with local educators assisting in the development of course material. However, CEA provides no details as to the length of such programs and how many times offered per week or month. Also, since CEA is not an educational institution, such "instructional" programs would have to be for the benefit of some school, which is not identified. See Way of the Cross of Utah, Inc., 58 RR 2d 455 (1985). Likewise, CEA has not identified which of its programming it considers falls into the category of "general educational". In this connection, the ability to determine CEA's eligibility for an educational reserved FM channel is clouded by CEA's failure to submit a proposed weekly schedule of programs. In sum, the general information provided by CEA is insufficient to summarily resolve the Section 73.503(a) issue and its motion for summary decision will be denied.

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[1] The Bureau asserts that it has analyzed the material filed by CEA and has concluded that "CEA has shown that it is a qualified educational organization proposing an acceptable educational format." Unfortunately, the Bureau has declined to enlighten the Presiding Judge with any of the reasons for its conclusion or cited any supporting precedent. Under the circumstances, the Bureau's pleading is of no assistance in resolving this matter.

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Accordingly, IT IS ORDERED, That the "Motion For Summary Decision" filed November 22, 1994 by Community Educational Association IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin

Joseph Chachkin
Administrative Law Judge