

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

In re Application of) MM Docket 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 at)
Holly Hill, Florida)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Honorable Joseph Chachkin
Administrative Law Judge

MOTION TO BIFURCATE HEARING

Community Educational Association ("CEA"), by its counsel, respectfully requests that the Presiding Judge bifurcate the above-referenced proceeding and states as follows:

1. In addition to the non-commercial standard comparative issues, the Hearing Designation Order, DA 94-789, released August 2, 1994 (the "HDO") in this proceeding specified the following two issues against CEA:

To determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with 47 C.F.R. § 73.503(a) of the Commission's Rules.

To determine whether there is a reasonable possibility that the tower height and location proposed by CEA in this proceeding would constitute a hazard to air navigation.¹

Written direct case exhibits are due to be exchanged today and the hearing on these two issues is scheduled to commence on December 15,

¹ The application of Cornerstone Community Radio, Inc. ("CCR") was mutually exclusive with CEA's application at the time the HDO was issued. On August 30, 1994, CEA filed an post-designation engineering exhibit which resolved the mutual exclusivity between the two applicants and allowed the Presiding Judge to grant CCR's application. See Memorandum Opinion and Order, FCC 94M-521, released September 13, 1994.

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1994. See Order Prior to Prehearing Conference, FCC 94M-476, released August 16, 1994.² CEA is prepared to go forward on the § 73.503(a) issue, but due to unforeseeable circumstances beyond the control of the applicant, CEA seeks bifurcation of this proceeding and postponement of the hearing on the air hazard issue until such time as the FAA issues a determination with respect to CEA's site.

2. CEA filed a post-designation engineering amendment to its application on August 30, 1994, which resolved the mutual exclusivity between its application and the application of Cornerstone Community Radio, Inc. ("CCR"). Simultaneously, CEA filed notification of its intent to construct a tower at its new proposed site with the FAA.

3. On October 24, 1994, the FAA issued an Acknowledgement of Notice of Proposed Construction or Alteration advising CEA that a further study would be necessary before a determination could be issued with respect to its proposed site. CEA reported that development to the Commission in an Amendment to its application filed on October 27, 1994.

4. The FAA issued a Notice of Aeronautical Study of Proposed

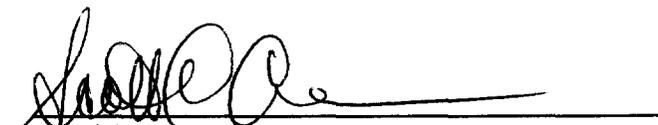
² Direct written case exhibit exchange was originally scheduled to take place on November 22, 1994. On that date, CEA filed a Motion for Summary Decision with respect to the § 73.503(a) issue and requested a suspension of procedural dates with respect to the FAA issue pending an FAA determination on the matter. The Presiding Judge denied the Motion for Summary Decision. See Memorandum Opinion and Order 94M-638, released December 5, 1994. CEA filed a Motion for Extension of Time to File Direct Case Exhibits requesting an exchange date of December 5, 1994, which the Presiding Judge granted. See Memorandum Opinion and Order FCC 94M-637, released December 5, 1994. CEA informally requested an extension until December 7, 1994, which the Hearing Branch consented to and the Presiding Judge granted telephonically on December 5, 1994.

Construction or Alteration with respect to CEA's proposed site on October 31, 1994. CEA filed an Amendment reporting receipt of the Notice with the FCC on November 17, 1994. The Notice stated that comments on CEA's proposed tower construction would be due at the FAA no later than November 30, 1994.

5. To date, the FAA has issued nothing further. Absent an FAA determination, there can be no meaningful testimony on the FAA issue. The FAA will either issue a determination of no hazard, which will allow CEA to move for summary decision on the FAA issue or issue a determination of hazard, which will require CEA to modify its technical proposal. In either circumstance, absent a determination from the FAA, a hearing on the FAA issue at this time would not adduce conclusive testimony.

WHEREFORE, CEA respectfully requests that the Presiding Judge bifurcate the above-referenced proceeding and postpone a hearing on the FAA issue until after the FAA issues a determination with respect to CEA's proposed site.

Respectfully submitted,
COMMUNITY EDUCATIONAL ASSOCIATION



Scott C. Cinnamon
Its Counsel

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December 7, 1994

CERTIFICATE OF SERVICE

I, Scott C. Cinnamon, do certify that on this 7th day of December, 1994, a copy of the foregoing **MOTION TO BIFURCATE HEARING** was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

Honorable Joseph Chackin
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- * - Hand Delivery
- ** - via FCC Mailroom