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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In re Applications of)
)
TRINITY BROADCASTING OF)
FLORIDA, INC.)
)
For Renewal of License of Television)
Station WHFT(TV) in Miami, Florida)
)
GLENDALE BROADCASTING)
COMPANY)
)
For Construction Permit for a New)
Television Station in Miami, Florida)

MM Docket No. 93-75

BRCT-911001LY

DOCKET FILE COPY ORIGINAL

BPCT-911227KE

To: The Commission

**PETITION OF COLBY MAY FOR LEAVE TO INTERVENE, TO FILE
COMMENTS, AND TO PARTICIPATE IN ORAL ARGUMENT**

Pursuant to §§ 1.224(c) and 1.277(c) of the Commission's Rules, Colby May petitions for leave to intervene in the above-captioned proceeding, to file the attached comments, and to participate in oral argument.

As explained below, Mr. May meets the standards for intervention because the Mass Media Bureau has accused Mr. May of giving "incredible advice" to his clients—Trinity Broadcasting of Florida, Inc. ("TBF"); Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("Trinity"); and National Minority TV, Inc. ("NMTV")—and thereby to have exhibited a "lack of candor" with the Commission. The Bureau, which made these allegations only after the initial decision in this matter, is now fastening on Mr. May's advice as a reason to find Trinity unqualified. Thus, Mr. May has a vital interest in

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the proceeding, his participation will assist the Commission in the determination of the issues in question, and he had no reason to file a petition within thirty days after the publication of the hearing designation order. The grounds for this petition are as follows:

In this proceeding, TBF seeks renewal of its license to operate a full-power commercial television station in Miami, Florida. Glendale Broadcasting Company seeks a construction permit to operate a station on the same channel. The Commission designated these mutually exclusive applications for hearings in a comparative proceeding. *See* Hearing Designation Order, 8 FCC Rcd 2745 (1993) (“HDO”). A central issue in the proceeding was whether Trinity reasonably concluded, in accordance with Mr. May’s advice, that former § 73.3555(d) of the Commission’s Rules allowed Trinity to have an interest in a thirteenth full-power station so long as the station was “more than 50 percent owned by one or more members of a minority group.” (In the case of a non-profit non-stock corporation such as NMTV, ownership was defined as more than 50 percent minority group membership on the board of directors.)

The ALJ concluded that “[Trinity] and Crouch are guilty of willful misrepresentations in falsely representing in application[s] that [NMTV] was under minority control” and are “also guilty of lack of candor in concealing facts concerning the true identity of [NMTV].” Initial Decision ¶ 331, 10 FCC Rcd 12020, 12062 (1995) (“ID”). Based in part on these conclusions, and on the close relationship between Trinity and TBF, the ALJ determined that “TBF’s disqualification and the loss of its license is mandated.” ID ¶ 333, 10 FCC Rcd at 12062.

Although Mr. May had served as communications counsel to NMTV and Trinity and had advised them regarding the applications at issue (and testified about these matters at the hearing), the ALJ did *not* conclude that Mr. May engaged in misrepresentation or lacked

candor in advising his clients and did *not* disqualify TBF on that basis. Nevertheless, although the Mass Media Bureau had urged during the hearing that TBF was qualified, the Bureau changed course following the ALJ's initial decision and urged that Trinity was unqualified, in part because Mr. May "intentionally deceived the Commission." Mass Media Bureau's Consolidated Reply to Exceptions at 4, ¶ 6 (Feb. 28, 1996). The Bureau apparently based this charge on its view that § 73.3555 was so clear on its face that no attorney could reasonably and in good faith have believed that NMTV was a minority-controlled corporation under the Commission's Rules, and that Mr. May did not so believe. *See id.* at 18, ¶ 24. The Bureau characterized Mr. May's contrary advice as "incredible." *See id.* at 15-16, ¶ 20.

The Bureau has repeated these allegations in a recent pleading. Mass Media Bureau's Opposition to Motion to Vacate the Record on Improvidently Designated Issues at 3, ¶ 5 (Oct. 25, 1996) (emphasis added). While the Bureau does not here address the question whether Mr. May's advice was reasonable, the Bureau argued that the "obvious meaning" of § 73.3555 was contrary to the advice that Mr. May had given to his clients. *Id.* at 20, ¶ 32.

In light of the Bureau's continuing attack on his professional character, Mr. May seeks to file this petition to intervene. Section 1.223(c) of the Commission's Rules allows intervention under these circumstances. The petition shall "set forth the interest of the petitioner in the proceeding, show how [the] petitioner's participation will assist the Commission in the determination of the issues in question, . . . [and] set forth reasons why it was not possible to file a petition within the time prescribed [for intervening as of right]." 47 C.F.R. § 1.223(c) (1995).

First, Mr. May has the requisite interest in this proceeding. The Commission has recognized the vital role played by experienced communications counsel like Mr. May in helping licensees understand and comply with often complex regulatory requirements. See *Fox Television Stations*, 10 FCC Rcd 8452, 8501 n.68 (1995), *recon. denied*, 11 FCC Rcd 7773 (1996). But counsel will be deterred from performing this role unless they can adequately defend themselves against allegations such as those made against Mr. May.

In *West Jersey Broadcasting Co.*, 89 FCC 2d 469, 473 (1980), the Commission granted a person's petition to intervene where "the ALJ's decision tend[ed] to impugn [the person's] character and his ability to earn a livelihood in the communications industry." In so doing, the Commission relied on its prior decision in *Quality Broadcasting Co.*, 4 RR 2d 865 (1965). In that proceeding, the ID "contain[ed] findings of fact and conclusions of law detrimental to [the petitioner], which according to [him], adversely affect his reputation for truth and veracity, his reputation in the broadcasting community, his standing before the Commission, and his ability to continue to earn a livelihood in the broadcasting industry." *Id.* The Commission granted the petition to intervene, concluding that "this proceeding may have a direct bearing on [the petitioner's] reputation and on his future ability to earn a livelihood in the broadcasting industry." *Id.*

Mr. May has no less interest than the petitioners in *West Jersey Broadcasting* and *Quality Broadcasting*. The Mass Media Bureau's allegations directly impugn Mr. May's character by characterizing his advice as "incredible" and thereby attacking his reputation for truth and veracity. By this attack, the Bureau has threatened Mr. May's ability to earn a livelihood as a communications attorney. Accordingly, Mr May has a sufficient interest to support intervention pursuant to § 1.223(c). See also, e.g., *Waller v. Financial Corp. of Am.*, 828 F.2d 579, 582 (9th Cir. 1987) ("Anderson has interests in the litigation sufficient

to permit it to intervene as of right. The gravamen of plaintiffs' claims is that FCA's 1982 financial statements were inaccurate. Anderson, as FCA's auditor and accountant, has an obvious interest in defending against such allegations.").

Second, Mr. May's participation will assist the Commission in the determination of the issues in question in this proceeding. The issue of the reasonableness of Mr. May's advice regarding the minority status of NMTV is central to the Mass Media Bureau's arguments for affirmance of the ID. Mr. May is uniquely qualified to address that issue. As an attorney charged with fulfilling the professional standards of the bar and the commission in providing legal services to parties appearing before the agency, May holds a unique position and brings a perspective different than any other party to the crucial questions of proper legal conduct on which this case turns; his participation therefore will greatly assist the Commission in the proper determination of the issues in question; this is especially important because the Bureau's belated theory seeks to undercut completely recent Commission decisions that have given new and essential clarification of counsel's responsibilities in agency proceedings.

Third, it was not possible for Mr. May to file this petition to intervene within the time prescribed for intervening as of right (within thirty days after publication of the hearing designation order). As set forth above, it was not until earlier this year—more than two years after completion of the hearing—that the Bureau first made its allegations against Mr. May. Rather than react with haste, Mr. May awaited the outcome of discussions between counsel for Trinity, counsel for NMTV, and Bureau staff in an effort to convince the Bureau to change its position. It was not until just three weeks ago, when the Bureau repeated its allegations in its most recent pleading, that a formal request to intervene became necessary.

There are presently pending before the Commission several requests by other parties for oral argument. Pursuant to § 1.277(c) of the Commission's Rules, Mr. May also seeks leave to participate in oral argument of this matter, and for an allotment of 10 minutes of oral argument time.

For the foregoing reasons, the Commission should grant Mr. May's petition for leave to intervene in this proceeding, to file the attached comments, and to participate in the oral argument already requested by the existing parties. Attached is Mr. May's supporting declaration and his formal comments responding to the Commission's allegations.

Respectfully submitted,



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Counsel for Petitioner Colby May

November 15, 1996

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

In re Applications of)	MM Docket No. 93-75
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TRINITY BROADCASTING OF FLORIDA, INC.)	BRCT-911001LY
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For Renewal of License of Television Station WHFT(TV) in Miami, Florida)	
)	
GLENDALE BROADCASTING COMPANY)	BPCT-911227KE
)	
For Construction Permit for a New Television Station in Miami, Florida)	

To: The Commission

**DECLARATION OF COLBY MAY IN SUPPORT OF
PETITION FOR LEAVE TO INTERVENE, TO FILE COMMENTS
AND TO PARTICIPATE IN ORAL ARGUMENT**

1. My name is Colby M. May.
2. I am an attorney licensed to practice in the District of Columbia and other jurisdictions. My current business address is 1000 Thomas Jefferson Street, N.W., Suite 304, Washington, D.C. 20007.
3. I execute this declaration in support of my petition for leave to intervene, to file comments, and to participate in oral argument in the above-captioned proceeding.
4. During the period spanning the events that are the subject of this proceeding (1986-91), I served as communications counsel to Trinity Broadcasting of Florida, Inc. ("TBF"); National Minority TV, Inc. ("NMTV"); and Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("Trinity").

5. In that capacity, I rendered advice to my clients, which advice is a subject of recent filings by the Mass Media Bureau in this proceeding.

6. The Mass Media Bureau filed its consolidated reply exceptions to the initial decision in February of this year. That pleading, for the first time in this proceeding, accused me of lacking candor with the Commission with respect to applications filed by NMTV to acquire construction permits for full-power television stations.

7. I have been informed that counsel currently representing NMTV and Trinity discussed these issues with the Bureau staff on several occasions in an attempt to convince the Bureau to change its position.

8. I have been informed, however, that these discussions were unsuccessful, and the Bureau repeated those allegations in its opposition to Trinity's motion to vacate the record on improvidently designated issues.

9. That opposition was filed on October 25, 1996.

10. I am concerned that the Bureau's allegations adversely affect my reputation for truth and veracity, my standing before the Commission, and my ability to continue to earn a livelihood in the broadcasting industry.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of November 1996, in Washington, D.C.


Colby M. May

CERTIFICATE OF SERVICE

I, Timothy B. Dyk of the law firm of Jones, Day, Reavis & Pogue, hereby certify that on this 15th day of November, 1996, copies of the foregoing Petition of Colby May for Leave to Intervene, to File Comments, and to Participate in Oral Argument, together with the Declaration of Colby May in Support of Petition for Leave to Intervene, to File Comments, and to Participate in Oral Argument, were hand delivered or sent by first-class mail, postage prepaid, to the following:

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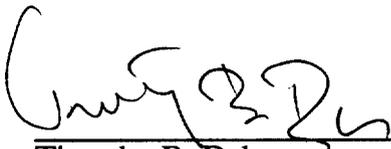
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