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

In re Application of:)
LIBERTY PRODUCTIONS,)
A LIMITED PARTNERSHIP)
For Construction Permit)
for an FM Broadcast Station)
Biltmore Forest,)
North Carolina)
To: The Commission)

MM Docket No. 88-577
File No. BPH-870831MI

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO STRIKE

Respectfully submitted,
WILLSYR COMMUNICATIONS,
LIMITED PARTNERSHIP

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January 3, 2000

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MOTION TO STRIKE

Willsyr Communications, Limited Partnership ("Willsyr"), by its counsel, hereby moves to strike the "Reply to Opposition to Amendment" filed by Liberty Productions, a Limited Partnership ("Liberty") on December 3, 1999. In support of its motion to strike, Willsyr submits the following comments.

Liberty filed an amendment to its application on November 10, 1999. Willsyr filed a timely opposition on November 22, 1999. Pursuant to 47 CFR 1.294, the filing of a reply to an opposition to an amendment is not allowed, unless requested by the Commission. Accordingly, the reply of Liberty must be stricken as violative of Commission Rules. Moreover, this violation by Liberty must be considered in determining its reliability in complying with Commission Rules and thus its trustworthiness to be a licensee.

Liberty's reliance, in its reply, upon Rio Grande Broadcasting, FCC 99-111, rel. May 25, 1999, is misplaced. Therein, the Commission did not address the "good cause" requirements for amendments. Rather, it allowed an applicant to participate in the auction, even though it had been dismissed because of lack of a tower site. However, that applicant's participation was subject to appeal of its previously adjudicated dismissal, if it was the high bidder. See, Rio Grande Broadcasting, petition for reconsideration denied, rel. October 1, 1999, at paras. 2, 7-8. Thus, this participation was at the risk of the applicant that its previously adjudicated dismissal might not be reversed on appeal.

The auction rulemaking does not address the "good cause" requirement for amendments and speaks to eliminating only unresolved tower site availability issues. See, First Report and Order, 13 FCC Rcd 15920, para. 99 (1998). Unresolved tower site issues would be pending motions to enlarge, or those that were specified but not adjudicated and resolved by an ALJ before the imposition of the "comparative freeze."

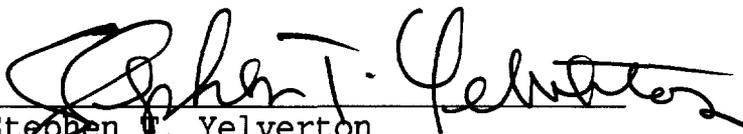
In the case of Liberty, the tower site availability issue was adjudicated and resolved against it by the ALJ, the Review Board, and the Commission. Thus, the only recourse of Liberty is to persuade the Commission to reconsider and reverse its decision and those of the ALJ and the Review Board.

However, a ruling by the Commission that the auction rulemaking nullified or mooted disqualifying matters which have previously been adjudicated, even if on appeal, would result in unlawful "retroactivity." Clark-Cowlitz Joint Operating Agency v. FERC, 826 F.2d 1074 (D.C. Cir. 1987); Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380 (D.C. Cir. 1972).

WHEREFORE, in view of the foregoing, the reply of Liberty must be stricken.

Respectfully submitted,

WILLSYR COMMUNICATIONS, LIMITED PARTNERSHIP

By: 
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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney at law, do hereby certify that on this 3rd day of January, 2000, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Motion to Strike" to the following:

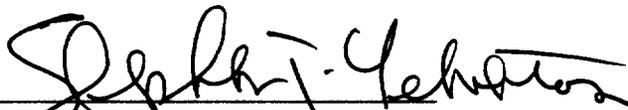
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