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

JUN 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of:)	MM DOCKET NO. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
For Construction Permit)	
for a New FM Broadcast)	
Station on Channel 243)	
)	
Biltmore Forest,)	
North Carolina)	

To: The Commission

CONSOLIDATED OPPOSITION TO MOTIONS FOR STAY

Respectfully submitted,
YELVERTON LAW FIRM, P.L.L.C.

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June 28, 2001

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CONSOLIDATED OPPOSITION TO MOTIONS FOR STAY

Willsyr Communications, Limited Partnership ("Willsyr"), by its counsel, hereby submits its "Consolidated Opposition to Motions to Stay." On June 13, 2001, Orion Communications Limited ("Orion") and Biltmore Forest FM Broadcasting, Inc. ("BFBFM") filed separate motions to stay the effectiveness of the Commission's decision in Memorandum Opinion and Order, FCC 01-129, rel. May 25, 2001. That decision granted the application of Liberty Communications, a Limited Partnership ("Liberty") and denied the applications of Orion, BFBFM, and Willsyr.

Although Willsyr has filed a notice of appeal with the U.S. Court of Appeals for the D.C. Circuit challenging the grant to Liberty (Case No. 01-1283, filed June 25, 2001), it opposes the issuance of a stay as requested by Orion and BFBFM. In support of its opposition, Willsyr submits the following comments.

The key test for granting a stay is a showing of "irreparable harm" if a stay is not granted. Here, if Liberty constructs and operates the Biltmore Forest station during the pendency of an appeal to the D.C. Circuit, neither Willsyr, BFBFM, nor Orion would suffer any "irreparable harm."

If the D.C. Circuit reverses or vacates the grant to Liberty, it will only be Liberty that would be harmed by its construction and operation prior to judicial review. However, such harm is not legally cognizable because Liberty is proceeding at its own risk and knows the risk that it is taking.

Likewise, Orion constructed and operated the Biltmore Forest station at its own risk prior to judicial review of its now invalidated grant of construction permit. In Orion Communications Ltd. v. FCC, 131 F.3d 176 (D.C. Cir. 1997), the Court explicitly stated that Orion had only interim operating authority and that such authority would cease whenever the Commission made a subsequent grant of construction permit to any one of the competing applicants.

Thus, Orion has no legal right to broadcast on a permanent basis and has known of its temporary status for at least three years. Even if the grant to Liberty is reversed or vacated by the D.C. Circuit, Orion would have no right to then immediately recommence broadcasting. BFBFM is the second highest bidder and, if it is found qualified, would be the grantee of the Biltmore Forest construction permit and the authorized operator.

If BFBFM is disqualified, Orion would then need to prove its own qualifications in a hearing before it could be the grantee of the Biltmore Forest construction permit and thus legally authorized to operate. See, Liberty Productions, 14 FCC Rcd 7637 (OGC 1999). The occurrence and timing of these two events --- the disqualification of BFBFM and the qualification of Orion --- is far too speculative to grant a stay for the benefit of Orion.

The possibility that the operator of the Biltmore Forest station could change one or more times is not contrary to the public interest. Indeed, Commission policy allows the ownership of stations to change without any holding period. Moreover, the

formats, programming, and personnel of stations across the country are in constant flux.

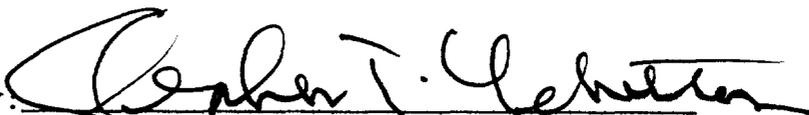
Grant of a stay would cause "irreparable harm" to Liberty. It has paid some \$2.3 Million to the U.S Treasury for the Biltmore Forest construction permit and thus has the legal and equitable right to operate in order to recoup its investment, until such time as the D.C. Court reverses or vacates its grant and the FCC makes a grant to another competing applicant. Orion has paid nothing to the U.S Treasury for the Biltmore Forest construction permit and it has had over seven years of interim operation to recoup whatever expenses it incurred to construct and operate. Therefore, the equities strongly favor Liberty and not Orion.

Grant of a stay would harm the public interest. Liberty proposes to operate as a Class C3 at a 25 kW equivalent. However, Orion is operating as a Class A at no more than a 6 kW equivalent. Accordingly, Liberty's greatly expanded coverage would best serve the public interest.

WHEREFORE, in view of the foregoing, the motions for stay should be denied. The movants can demonstrate no legally cognizable harm and both law and equity favor Liberty.

Respectfully submitted,

WILLSYR COMMUNICATIONS, LIMITED PARTNERSHIP

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June 28, 2001

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney, do hereby certify that on this 28th day of June, 2001, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Consolidated Opposition to Motions for Stay" to the following:

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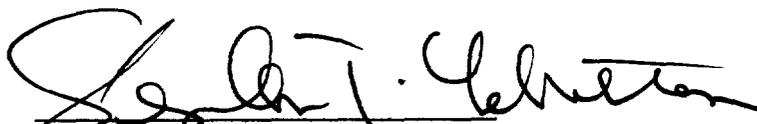
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