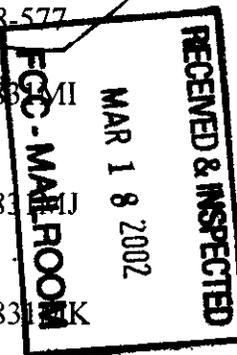


Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 021-02  
01011

In re Applications of )  
)  
LIBERTY PRODUCTIONS, )  
A LIMITED PARTNERSHIP )  
)  
WILLSYR COMMUNICATIONS )  
LIMITED PARTNERSHIP )  
)  
BILTMORE FOREST )  
BROADCASTING FM, INC. )  
)  
ORION COMMUNICATIONS )  
LIMITED )  
)  
For A Construction Permit For A )  
New FM Broadcast Station on )  
Channel 243A at Biltmore Forest, )  
North Carolina )

MM Docket No. 88-577  
File No. BPH-87083MI  
File No. BPH-87083J  
File No. BPH-87083K  
File No. BPH-870901ME



**ORDER**

Adopted: March 14, 2002; Released: March 15, 2002

By the Assistant General Counsel, Administrative Law Division:

1. By its Memorandum Opinion and Order, 16 FCC Rcd 12061 (2001), the Commission determined that Liberty Productions was fully qualified to be a Commission licensee and, subject to full payment of its winning bid, granted Liberty's application for a construction permit for a new FM station in Biltmore Forest, North Carolina. Liberty has fully paid its final bid in accordance with the Commission's payment rules, the staff has issued the construction permit,<sup>1</sup> and Liberty has commenced operations.<sup>2</sup>

<sup>1</sup> Public Notice, No.45043 (rel. Aug. 7, 2001).

<sup>2</sup> See Letter, dated February 21, 2002, from Timothy K. Brady, Attorney for Liberty Productions, A Limited Partnership, to Magalie Salas, Secretary, Federal Communications, advising that Liberty intends to commence operations at 12:01 AM on February 22, 2002.

2 Sutton Radiocasting Corporation, the licensee of WPEK(FM) in Greenwood, South Carolina, filed an application to change its community of license to Mauldin, South Carolina on January 17, 2001.<sup>3</sup> Following the release of the Commission's decision in the above-captioned proceeding, the staff advised Sutton that the site specified in its application is short-spaced to the reference coordinates for the FM channel 243C3 at Biltmore Forest, North Carolina. On June 13, 2001 Sutton filed a pleading requesting clarification of the Commission's decision insofar as it had accepted a technical amendment to Liberty's application that resulted in the above-described short-spacing.<sup>4</sup> However, Liberty and Sutton have reached a mutually acceptable technical solution and the Commission granted Sutton's application for modification of the license for station WPEK(FM) on August 8, 2001.<sup>5</sup> In these circumstances it is appropriate to grant pleadings filed July 10, and September 19, 2001, requesting the dismissal of Sutton's June 13, 2001 filing.<sup>6</sup> All related pleadings are moot and can be dismissed.

3. ACCORDINGLY, IT IS ORDERED, Pursuant to the authority delegated under 47 C.F.R. § 0.251(c), that the Joint Request, filed July 10, 2001 by Sutton Radiocasting Corporation and Liberty Productions and the Petition to Dismiss, filed September 19, 2001, by Liberty Productions ARE GRANTED and the Petition for Reconsideration and/or Clarification, filed June 13, 2001 by Sutton Radiocasting

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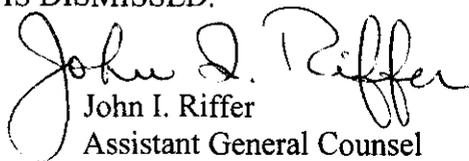
<sup>3</sup>At Sutton's request FM channel 244A was reallocated from Greenwood to Mauldin, South Carolina and the license for Station WPEK(FM) (formerly Station WCRS(FM)) was modified to specify Mauldin instead of Greenwood. See *Report and Order*, MM Docket No. 99-313 (RM-9753), DA 01-2332 (rel. Oct. 13, 2000). The modification application was filed to implement that rulemaking change.

<sup>4</sup> The following pleadings are pending before the Commission: (a) Petition for Reconsideration and/or Clarification, filed June 13, 2001 by Sutton Radiocasting Corporation; (b) Opposition to Petition For Reconsideration and/or Clarification, filed June 27, 2001 by Liberty Productions; (c) Joint Request, filed July 10, 2001 by Liberty Productions and Sutton Radiocasting Corporation; (d) Statement for the Record, filed July 10, 2001 by Sutton Radiocasting Corporation; (e) Motion to Dismiss, filed July 9, 2001 by Willsyr Communications, Limited Partnership; (f) Opposition to Motion to Dismiss, filed July 18, 2001 by Sutton Radiocasting Corporation; (g) Reply to Opposition, filed July 27, 2000 by Willsyr Communications, Limited Partnership; and (h) Petition to Dismiss, filed September 19, 2001 by Liberty Productions.

<sup>5</sup> Public Notice, No. 45047 (Aug. 13, 2001).

<sup>6</sup> Sutton and Liberty filed a Joint Request on July 10, 2001, and Liberty filed a Petition to Dismiss on September 19, 2001.

Corporation IS DISMISSED, and that the Motion to Dismiss, filed July 9, 2001 by Willsyr Communications, L.P. IS DISMISSED.<sup>7</sup>

  
John I. Riffer  
Assistant General Counsel  
Administrative Law Division  
Office of General Counsel

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<sup>7</sup> In dismissing Willsyr's motion, no consideration has been accorded to the allegation that Sutton's June 13, 2001 pleading may have been filed for an improper purpose. Contentions in support of this argument were set forth in Willsyr's reply, rather than in its motion, where Willsyr had stated only that "[t]he Commission might consider investigating whether [Sutton] has filed a 'strike' petition." (Motion, n.1) And, in any event, Sutton did not address the merits of this allegation in its opposition. In these circumstances, Willsyr's subsequent contentions were procedurally deficient under 47 C.F.R. § 1.45, limiting its reply to matters raised in the opposition.