

#135721

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ACCEPTED/FILED

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In re Application of)	Federal Communications Commission
)	Office of the Secretary
NORTH ALABAMA PUBLIC SERVICE)	
BROADCASTERS)	File No. BPL-20130813AAV
)	
For a construction permit for modification of)	
the facilities of Low Power FM Station)	Facility Identifier: 135721
WQJJ-LP, Jasper Alabama)	

MOTION TO DISMISS

North Alabama Public Service Broadcasters, an unincorporated non-profit association, is the licensee of station WQJJ-LP, a low power FM broadcast facility serving Jasper, Alabama. The licensee, by counsel, hereby moves for dismissal of the "Petition To Deny Application For Construction Permit For A Low Power FM Broadcast Station" (*sic*), filed with the FCC on August 16, 2013 by one Brett Elmore. Mr. Elmore did not assert that he has standing to file a petition to deny, and did not even supply his address as part of this pleading. Nevertheless, the "Petition" asks that the Commission "give serious consideration to denying the application of WQJJ-LP." ("Petition" at unnumbered page 3.)

Introduction

As the Commission's staff is well aware, petitions to deny do not lie against applications for minor changes in the facilities of licensed broadcast stations. That fact alone provides ample basis for dismissal of the "Petition." Further, the so-called "Petition" contains no certificate of service showing that it was served on the licensee, as required by the Commission's rules, and in

fact it was not served on the licensee. More gravely, it was not supported by an affidavit of a person or persons with personal knowledge of the matters alleged in it.

Fatally, it was not verified. As such, the "Petition" is not worthy of consideration by the Commission.

1. **The "Petition" Does Not Lie Against this Minor Change Application.**

The entire argument presented by the "Petition" (character qualifications, parties to the application, etc.) is the sort of cavil that one might expect against an original application for a construction permit for a new broadcast station. However, the "Petition" comes over a decade too late for that. The original application of North Alabama Public Service Broadcasters (FCC File No. BNPL-20010615BBC) was filed over twelve years ago. Any petition contesting the applicant's character qualifications and the like should have been filed promptly following the issuance of the FCC public notice of acceptance for filing. No such protest was filed. The application was granted almost ten years ago.

Likewise, North Alabama Public Service Broadcasters filed the application for renewal of the license to operate WQJJ-LP (FCC File No. BRL-20111129BVX) in November of 2011. Petitions to deny the application were due by March 1, 2012. No such petitions were filed. Accordingly, the Commission renewed the WQJJ-LP license on March 23, 2012 for a term of eight years.

At this stage the only relevant question is whether the proposed relocation of the Station's licensed facilities would violate the Commission's technical rules. The "Petition" presents no assertion, much less evidence, that such would be the case. Mr. Elmore's evident confusion about the distinction between a "party to an FCC application" and an employee of the applicant has no bearing on the pending facilities modification proposal. Thus, in terms of points that

would be germane to the instant application, the “Petition” is a nullity, and is due to be dismissed.

2. **The “Petition” Is Not Supported by a Sworn Statement.**

A petition to deny a broadcast application must be supported by allegations showing that the grant of the subject application “would be *prima facie* inconsistent with the public interest.” 47 CFR §309(d)(1). “Such allegations of fact shall, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.” *Id.*

The Commission need not consider allegations that are not supported by an affiant’s personal knowledge as true. *See KOLA, Inc.* 11 FCC Rcd 14297, 14305 (1996). This requirement saves the Commission from having to waste time in numerous proceedings considering unsubstantiated attacks on an applicant’s qualifications. Moreover, the sound policy behind this requirement saves applicants from having to defend against such flimsy allegations.¹ If a party wishes its protest to be taken seriously, surely it can go to the minimal trouble of presenting its allegations in the form of an affidavit or other sworn declaration. A failure to observe this requirement can only lead one to wonder why the objector failed to swear to the truth of the matters alleged.

¹ It would be difficult to find a better example of an allegation that serves only to waste the valuable time of a licensee and of the Commission’s staff than the assertion by Mr. Elmore that “the [sic] North Alabama Public Service Broadcasters was NOT organized under the laws of the State of Alabama. In fact, this organization was organized April 1, 2008, and NOT by Bessie P. Hammond, which (*sic*) is claimed to be the President of this organization. It was in fact organized by Ed Smith.” “Petition” at 1.

In reality, five years *after* the grant of the original construction permit to North Alabama Public Service Broadcasters, Mr. Smith organized, or purported to organize, a corporation with the name North Alabama Public Service Broadcasters, Inc. The corporation never designated a registered agent. It appears to be moribund.

In contrast, the licensee of WQJJ-LP has never held itself out as a corporation, nor has it ever used the suffix “Inc.” Rather, the licensee has consistently described itself as an unincorporated non-profit association. Such entities are recognized under Alabama law (though they are not required to file any papers with the Secretary of State), and are eligible to be licensed to own low power FM stations under the Commission’s rules.

3. The “Petition” Is Not Verified, and Therefore Merits No Consideration.

Significantly, the requirement for verification found in §1.52 of the Commission’s Rules applies to all pleadings submitted to the agency, not solely to petitions to deny. There is no exemption for informal objections. Mr. Elmore’s “Petition” is not verified. It should therefore be stricken or dismissed.

The requirement for verification is a threshold requirement. When it is not observed, the FCC has no duty to consider a given pleading. *See, e.g., James Glazier*, DA-02-2199 (MMB, Sept. 11, 2002); *Christiansted, Virgin Islands*, 17 FCC Rcd 15432 (MMB 2002). The requirement for verification has been upheld by the full Commission. *Lincoln, Osage Beach, Steelville and Warsaw, Missouri*, 17 FCC Rcd 6119 (2002). Where it appears that a pleading was intentionally left unverified, the pleading may be “stricken as sham and false, and the matter may proceed as if it had not been filed.” 47 C.F.R. §1.52.

As an unverified pleading, the “Petition” is not acceptable for filing. Without verification, the “Petition” is a procedural non-starter. No substantive response to such a pleading should be necessary.

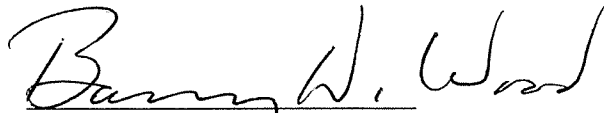
CONCLUSION

The “Petition” was not served on the applicant. It is unsupported by affidavit, and is not verified. Its author thereby violated bedrock rules of FCC procedure. This sort of unsubstantiated and irrelevant broadside is best ignored by the Commission. If the FCC were to entertain such an objection, it would only encourage others to flout the Commission’s procedural requirements in the future. The only attention paid to Mr. Elmore’s submission should be to dismiss it out of hand.

North Alabama Public Service Broadcasters takes its responsibilities as a Commission licensee very seriously. It is affronted by Mr. Elmore's unfounded and irresponsible allegations. WQJJ-LP has lost its original transmitter site, owing to the landowner's refusal to renew the lease on reasonable terms. North Alabama Public Service Broadcasters therefore needs a permanent authorization for its designated replacement site. Mr. Elmore's "Petition" – even assuming that it were otherwise worthy of considering – gives no hint of any reason for denial of this minor change application under the Rules applicable to such proposals. The Commission should therefore dismiss the "Petition" and grant the instant application.

Respectfully submitted,

**NORTH ALABAMA PUBLIC SERVICE
BROADCASTERS**

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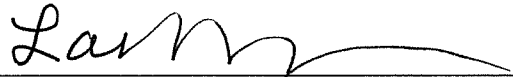
Its attorneys

CERTIFICATE OF SERVICE

I, Laura McCabe, hereby certify that on this date I caused the foregoing "Motion to Dismiss" to be served by U.S. first-class mail, postage prepaid, on the following:

Brett Elmore
1601 Highland Avenue
Jasper, Alabama 35501

September 6, 2013



Laura T. McCabe