

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

In the Matter of)	
)	
SAGA COMMUNICATIONS OF NEW)	
ENGLAND, LLC)	
)	
Application for a Construction Permit)	File No. BNPFT-20030829AUC
for a New FM Translator Station at)	
Manchester, New Hampshire)	
)	
Application for Minor Modification of a)	File No. BMPFT-20050527AQV
Construction Permit for W231BR,)	
Manchester, New Hampshire)	
)	
Application for License to Cover)	File No. BLFT-20050923ADD
Construction Permit for W231BR,)	
Manchester, New Hampshire)	

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2006

Released: March 17, 2006

By the Associate General Counsel, Administrative Law Division:

1. This order denies a Complaint and Request for Sanctions (the “Complaint”), filed July 1, 2005, by Northeast Communications Corporation (Northeast),¹ which alleges that Saga Communications of New England LLC (Saga), violated the Commission’s ex parte rules.² Northeast alleges that Saga failed to serve an application on Northeast.

¹ Saga filed an opposition (“Opposition”) on July 20, 2005 and Northeast filed a reply on July 29, 2005 (“Reply”). Good cause having been shown, we grant Saga’s unopposed Motion for Extension of Time, filed July 11, 2005, for an extension of time in which to file its opposition.

² 47 C.F.R. §§ 1.1200-16.

I. BACKGROUND

2. On April 28, 2004, Saga filed an application for a construction permit for a new FM translator station (W231BR, Channel 231) at Manchester, New Hampshire to operate on the same frequency as Northeast's FM station WFTN(FM), Franklin, New Hampshire.³ On May 18, 2004, Northeast petitioned to deny Saga's application, alleging that the new facility would cause excessive interference to Northeast's station. On March 8, 2005, the Commission's Media Bureau granted Saga the construction permit,⁴ and, on April 6, 2005, Northeast filed a Petition for Reconsideration.⁵ On May 27, 2005, Saga filed an application to modify W231BR, which was granted on June 1, 2005.⁶

3. In its complaint, Northeast contends that Saga failed to serve a copy of the modification application on Northeast. According to Northeast, service was required because the not yet final original application proceeding is classified as "restricted" under the ex parte rules⁷ and Northeast is a party to the proceeding by virtue of having filed a petition to deny. Northeast states that the application directly impacts the outcome of the original construction permit proceeding because it modifies the parameters of the technical operation of the proposed translator.⁸ Northeast further alleges that the modification application was granted in "record time" and contends, "[u]pon information and belief," that the Commission's staff was lobbied by Saga to act on the application.⁹ As sanction for these alleged violations of the Commission's ex parte rules Northeast asks the Commission to disqualify Saga and dismiss its applications and to issue a notice of apparent liability for forfeiture against Saga.¹⁰ Northeast asserts that Saga's violation is especially egregious since Saga previously accused Northeast of a ex parte violation and was therefore well aware of the ex parte rules.¹¹

4. Saga responds that Northeast's complaint is without basis.¹² Saga maintains that the ex parte rules do not require it to serve applications on Northeast because 47 C.F.R. § 1.1204(a)(1) exempts from the restrictions of the ex parte rules the filing of

³ See File No. BNPFT-20030829AUC (application accepted for filing April 28, 2004).

⁴ See Public Notice, Report No. 45939 (Mar. 11, 2005) at 20.

⁵ See File No. BNPFT-20030829AUC.

⁶ See Public Notice, Report No. 45999 (Jun. 6, 2005) at 29.

⁷ See 47 C.F.R. § 1.1208.

⁸ Complaint at 3.

⁹ Complaint at 2.

¹⁰ Complaint at 4.

¹¹ Complaint at 3. Saga's complaint was denied by DA 05-2292 (Aug. 18, 2005).

¹² Opposition at 1.

“required forms.” Saga asserts that an application for modification is a “required form.”¹³ In addition, Saga observes that Northeast provides no specific basis for alleging that Saga lobbied the Commission.¹⁴ Saga thus urges that Northeast’s complaint should be stricken as false and a sham and that Northeast should be sanctioned for filing it.¹⁵

5. Northeast replies that the modification application should not be deemed a “required form” for purposes of 47 C.F.R. § 1.1204(a)(1) since Saga was not required to modify the technical parameters of its proposal.¹⁶ Northeast asserts that an ex parte violation occurred because Saga admits that the application was intended to have impact on the reconsideration of its original application proceeding.¹⁷ Northeast further asserts that Saga does not deny that lobbying of Commission staff occurred.¹⁸

II. DISCUSSION

6. We find that Saga did not violate the ex parte rules by failing to serve its modification application on Northeast. Commission precedent supports Saga’s interpretation of section 1.1204(a)(1) of the rules, which exempts from ex parte requirements those presentations that involve the filing of “required forms.”

7. Association for Community Education, Inc., 19 FCC Rcd 12682, 12685 ¶¶ 7-8 (2004), involved a situation similar to the facts of the present case. There, the Association for Community Education, Inc. (ACE) filed an application for an FM translator station in 1996 and filed modification applications in 1998 and 1999. In its application for review of the grant of the 1999 modification application, Santa Monica Community College District (SMCCD), which was also opposing the 1996 application, complained that ACE violated the ex parte rules by not serving its 1998 and 1999 modification applications on SMCCD. The Commission declined to treat the applications as a single restricted proceeding and ruled that ACE was not required to serve the 1998 and 1999 modification applications on SMCCD. The Commission held that SMCCD did not become a party to the 1999 modification application until it filed an informal objection to that application. The Commission cited section 1.1204(a)(1) of its rules, which classifies as exempt a presentation if it “. . . involves the filing of required forms.” The Commission explained: “Requests for technical modification of FM translator authorizations, and the amendment filed by [ACE] converting the 1998 Modification Application to a minor change, must be filed on FCC Form 349.” The

¹³ Opposition at 2.

¹⁴ Opposition at 3.

¹⁵ Id.

¹⁶ Reply at 2.

¹⁷ Id.

¹⁸ Id.

Commission thus treated these filings as “required forms.” Consistent with Association for Community Education, Inc., we find that Saga did not violate the ex parte rules in not serving Northeast with its modification application and that sanctions against Saga are accordingly not appropriate. Additionally, we have no basis to find that Saga improperly lobbied the Commission. Northeast provides no specific evidence that this occurred, and we have discovered none.

8. We also deny Saga’s request for sanctions against Northeast for allegedly filing a sham complaint. The arguments presented by Northeast were not frivolous given that the Commission only recently interpreted the ex parte rules to exempt service in situations like this.¹⁹

9. ACCORDINGLY, IT IS ORDERED, that the Complaint and Request for Sanctions, filed July 1, 2005, by Northeast Communications Corp. IS DENIED, and the Request for Sanction, filed July 20, 2005, by Saga Communications of New England, LLC IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁹ See Association for Community Education, Inc., *supra*.