

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-523

In re Applications of

CR BROADCASTING, File No. BPH-870918ME
INC.

SAGA COMMUNICATIONS File No. BPH-870918MS
OF ILLINOIS, INC.

DANIEL S. STRATEMEYER File No. BPH-870918MZ

For Construction Permit for
New FM Station, Channel 271B1,
Mt. Vernon, Illinois

Appearances

James F. Freeman on behalf of CR Broadcasting, Inc.;
Allan G. Moskowitz, and Bruce A. Eisen, on behalf of Saga
Communications of Illinois, Inc.; Clifford M. Harrington
and Kathryn R. Schmeltzer on behalf of Daniel S.
Stratemeyer.

DECISION

Adopted: August 20, 1990; Released: August 28, 1990

By the Review Board: MARINO (Chairman), and
ESBENSEN. Board Member BLUMENTHAL absent.

Board Chairman MARINO:

1. In his *Initial Decision*, 5 FCC Rcd 1232 (1990) (I.D.), former Acting Chief Administrative Law Judge James F. Tierney (ALJ) granted the application of Daniel S. Stratemeyer to construct and operate a new FM station at Mt. Vernon, Illinois. In reaching this result, the ALJ disqualified CR Broadcasting, Inc. (CR) for providing inadequate city grade coverage pursuant to 47 CFR §73.315(a), and found that Stratemeyer was comparatively superior to both remaining applicants. CR and Saga Communications of Illinois, Inc. (Saga) under both the diversification and integration criteria of the standard comparative issue. We have reviewed the exceptions of CR and Saga (neither of whom requested oral argument) and conclude that they do not raise any serious or substantial questions warranting extended discussion. The Board will affirm the grant of Stratemeyer's application.

STRATEMEYER

2. Stratemeyer, an individual applicant, was awarded 100% integration credit based on his intention to serve full-time as general manager of the proposed Mt. Vernon station, with overall responsibility for all aspects of its

operation. I.D., paras. 16, 18, 49. Saga challenges this award on the grounds that the applicant's "educational pursuits" and potential for involvement of family members in his station operation negate the reliability of his proposed integration. Specifically, Saga contends that Stratemeyer contradicted his integration proposal by stating he would attend graduate school if this proceeding was not settled by the fall semester of 1989, and that Stratemeyer has a history of employment and/or ownership at family-owned stations in Anna and Metropolis, Illinois, which belies his claim that he would independently operate the proposed Mt. Vernon station without significant family involvement.

3. We reject Saga's exceptions. Stratemeyer, who was an undergraduate student at the time of the hearing in May 1989, expected to graduate in August 1989 and to enroll in a graduate studies program to commence the following semester. Tr. 177. He plainly testified, however, that he "will not allow [his] educational pursuits to interfere with [his] commitment to work full-time at the station." Stratemeyer, Exh. 2, p.2; I.D., para. 18. In this context, the ALJ reasonably found that although Stratemeyer intended to continue his studies if this proceeding was not quickly resolved, he would terminate those studies if he ultimately prevailed. I.D., para. 18.

4. The Commission has held that "[i]t is unrealistic . . . to expect the status of the principals of an applicant to remain static during often lengthy proceedings." *Coast TV*, 4 FCC Rcd 1786 (1989), and it appears here that Stratemeyer's planned enrollment in a graduate program, which he may terminate at will, does not undermine his commitment to the station upon final grant. Thus, this case is unlike *LeiningerGeddes Partnership*, 2 FCC Rcd 3199 (Rev. Bd. 1987), *rev. denied*, 3 FCC Rcd 1181 (1988), relied on by Saga, where integration credit was lost because principals had *continuing* obligations to other business activities which they did not eliminate or substantially diminish in order to effectuate their proposals. We also dismiss as speculative and entirely unsupported by record evidence Saga's vague allegations of impermissible family involvement in Stratemeyer's application. Stratemeyer has pledged to divest his ownership interest in the licensee of two stations previously owned by his parents in Anna, Illinois, and to give up any other employment he might hold in order to work full-time at the station. I.D., para. 18; Stratemeyer Exh. 2. There is thus no record basis upon which to infer untoward family influence. Further, Saga's surmise that a grant to Stratemeyer will have an adverse diversification impact is equally groundless in view of Stratemeyer's unambiguous divestiture pledge.

SAGA

5. Under the standard comparative issue, Saga was assessed a substantial diversification demerit primarily because it is the licensee of three broadcast stations in Illinois, each of which is within 130 miles of Mt. Vernon, and none of which it plans to divest. I.D., para. 47. Although we would reduce this demerit to moderate, *see, e.g., Ramon Rodriguez*, FCC 90-243, released July 6, 1990, Stratemeyer, having no attributable media interests, is plainly superior. Saga also was awarded no quantitative integration credit, I.D., para. 51, and does not except to this determination. Conversely, Stratemeyer, as discussed earlier, is entitled to 100% full-time integration credit.

With substantial integration and moderate diversification preferences, Stratemeyer readily prevails over Saga. Moreover, even if we agreed in whole or in part with Saga's attack on Stratemeyer's integration proposal, Saga's considerable diversification demerit would still leave it comparatively well behind Stratemeyer.

CR BROADCASTING

6. CR's application was designated on an issue to determine whether it would provide coverage of its proposed community of license (Mt. Vernon) with a city grade signal, as required by 47 CFR §73.315(a), and, if not, whether a rule waiver was justified. See *Hearing Designation Order*, 53 Fed. Reg. 48721, released November 21, 1988 (HDO). This issue was specified because CR's application proposed to place a 3.16 mV/m signal over only 22.3% of Mt. Vernon. The HDO rejected CR's waiver request, noting that all the other applicants (including Bryan Davidson, since dismissed) had managed to provide at least 80% city grade coverage. *Id.*, at para. 2. Although CR attempted to amend its application on January 3, 1989 to specify a new site (that used by Davidson), this amendment was rejected by the ALJ as untimely because 16 months had elapsed since the filing of CR's application. See *Memorandum Opinion and Order*, FCC 89M-200, released January 19, 1989. In light of CR's lack of diligence for its proposed amendment, and the magnitude of the waiver required to justify its minimal city grade coverage, the ALJ denied CR's application. In its exceptions, CR argues that its original application proposal was based on an erroneous engineering conclusion that its tower could not be located to provide a city grade signal to Mt. Vernon; that its corrective amendment should have been accepted as a matter of right pursuant to 47 CFR §73.3522(b); that even if good cause was required, it did not lack diligence because it did not know of the defect in its application until the HDO; and that acceptance of the amendment would not be disruptive to the proceeding.

7. We deny CR's exceptions. First, its reliance on 47 CFR §73.3522(b) is misplaced. That provision permits amendments relating to issues first raised in the HDO to be filed as a matter of right within 30 days of the HDO's publication in the Federal Register. Here, not only was CR's amendment submitted well beyond the 30 day deadline, but it is also extremely doubtful that this matter was first brought to CR's attention by the HDO since CR well knew that its original 22.3% coverage proposal was on its face deficient (and, indeed, it acknowledged as much by seeking a rule waiver in its application). In light of this knowledge, the ALJ properly considered CR's late-filed amendment as lacking due diligence because CR had ample opportunity to not only inspect its competitors' applications but to also perfect its own proposal -- in fact, it ultimately chose the site of one of its competitors -- but instead waited well over a year to take action. In view of CR's patently deficient proposal, the ALJ correctly resolved the issue against it. See *Millard Orick, Jr.*, 89 FCC 2d 571 (Rev. Bd. 1982), *rev. denied*, FCC 82-479, released November 3, 1982. But it is unnecessary to belabor CR's ultimate disqualification because even assuming, *arguendo*, that CR's amendment should have been accepted, and the city coverage issue resolved in its favor, CR's comparative posture in this case borders on the preposterous. Not only did the ALJ assess a significant diversification demerit against CR based on its ownership of numerous other

broadcast stations, but he also awarded it no integration credit because it claimed none. I.D., paras. 45-46, 50. CR does not except to these conclusions and, indeed, the only comment CR addresses to its comparative deficiencies is simply that it "reserve[s] the right to object to the application of the 1965 policy statement [*Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965)] in this proceeding." Br. at 4-5. As CR recognizes, the Board cannot give credence to such a position, and CR's relief, if any, must be obtained from the Commission. See *Anchor Broadcasting Limited Partnership*, 5 FCC Rcd 2432, 2439 n. 3 (Rev. Bd. 1990). Thus, we affirm the ALJ's conclusion that Stratemeyer, the only applicant before us offering a serious comparative proposal, is entitled to the grant.

8. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend filed August 13, 1990 by Saga Communications of Illinois, Inc. IS GRANTED, and the amendment IS ACCEPTED; and,

9. IT IS FURTHER ORDERED, That the application of Daniel S. Stratemeyer (File No. BPH-870918MI) for a construction permit for a new FM broadcast station in Mt. Vernon, Illinois IS GRANTED; and the applications of CR Broadcasting, Inc. (File No. BPH-870918ME) and Saga Communications of Illinois, Inc. (File No. BPH-870918MS) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board