

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

MM Docket No. 88-279

In re Applications of

POUGHKEEPSIE BROADCASTING LIMITED File No. BPH-870331OR

WICRAE EQUITIES LIMITED File No. BPH-870414KH

POUGHKEEPSIE COMMUNICATIONS LIMITED PARTNERSHIP File No. BPH-870415KT

THE KINNEY GROUP File No. BPH-870415ME

For a Construction Permit
for a New FM Station on
Channel 241A in Poughkeepsie,
New York

ORDER

Adopted: January 2, 1992; Released: January 22, 1992

By the Commission:

I. BACKGROUND

1. Poughkeepsie Broadcasting Limited (PBL) seeks reconsideration of a Commission memorandum opinion and order denying review of a Review Board decision that denied PBL's application for a construction permit for a new FM radio station in Poughkeepsie, New York. *Poughkeepsie Broadcasting Limited*, 6 FCC Rcd 2497 (1991). The Board granted the mutually exclusive application of Wicrae Equities Limited. *Poughkeepsie Broadcasting Limited*, 5 FCC Rcd 3374 (Rev. Bd. 1990). See also *Poughkeepsie Broadcasting Limited*, 4 FCC Rcd 6543 (I.D. 1989).¹

2. PBL is organized as a limited partnership. Its sole general partner, Steven Freeman, holds a 20 percent equity interest and would be integrated into management as the proposed station's general manager. PBL has three limited partners: Matthew Cooney (40 percent), Noel DeCordova (20 percent) and Peter DeCordova (20 percent). Cooney and the DeCordovas recruited Freeman as the general partner. 4 FCC Rcd at 6543-44 ¶¶ 6-8.

3. The Board affirmed the ALJ's denial of credit for Freeman's proposed integration. 5 FCC Rcd at 3376-78 ¶¶ 10-18. See also 4 FCC Rcd at 6544-45 ¶¶ 9-17, 6549-50 ¶¶ 55-63. The Board affirmed the ALJ's adverse findings regarding Freeman's credibility, finding that Freeman consistently exaggerated his role in the partnership and

that he was unlikely to be a moving force in the applicant. According to the Board, the testimony regarding Freeman's role was contradictory and unreliable. In view of these deficiencies, the Board declined to credit Freeman's claim to be PBL's controlling principal and, thus, rejected his claimed integration. Pursuant to 47 C.F.R. § 1.115(g), the Commission denied review of the Board's ruling without comment. 6 FCC Rcd at 2497 ¶ 1, 2498 ¶ 9.

II. DISCUSSION

4. In its petition for reconsideration, PBL complains that the Commission failed to discuss its arguments that it is entitled to 100 percent integration credit and PBL restates its arguments to that effect. As Wicrae correctly points out, PBL's petition for reconsideration is defective under the Commission's rules. Pursuant to 47 C.F.R. § 1.106(b)(2), the Commission will entertain a petition for reconsideration of an order denying an application for review only if:

(i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(ii) The petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

See also 47 C.F.R. 1.115(g). A petition for reconsideration which fails to rely on new facts or changed circumstances may be dismissed as repetitious. 47 C.F.R. 1.106(b)(3).

5. PBL's petition for reconsideration does not rely on new facts or changed circumstances. It essentially reiterates with minor variations the line of reasoning rejected by the Commission without comment in denying review. In so doing, the Commission found that the Board's decision amply justified rejecting PBL's integration proposal. PBL's petition for reconsideration will therefore be dismissed as repetitious.²

III. ORDER

6. ACCORDINGLY, IT IS ORDERED, that the Petition for Reconsideration filed June 10, 1991 by Poughkeepsie Broadcasting Limited IS DISMISSED as repetitious.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ Now pending before the Commission are: a Petition for Reconsideration filed June 10, 1991 by Poughkeepsie Broadcasting Limited and an opposition filed June 25, 1991 Wicrae Equities Limited.

² We do, however, wish to comment on a matter relating to another applicant in this proceeding, Poughkeepsie Communications Limited Partnership (PCLP). In our prior memorandum opinion and order, we found that we could not rely on PCLP's nominal general partner, Thomas H. Cooper, to exercise exclusive control over the limited partnership. We therefore denied PCLP any credit for Cooper's proposed integration. Recently, in *Evergreen Broadcasting Co.*, 6 FCC Rcd 5599, 5600-01 ¶ 12 (1991), we restated the considerations relevant to the evaluation of such proposals. We wish to make clear that our treatment of PCLP's proposal is consistent with the considerations set forth in *Evergreen*. We wish to note in particular that, although we discussed the facts concerning PCLP in chronological order rather than the order suggested in *Evergreen*, substantively our analysis is fully in accord with *Evergreen*. In *Evergreen*, we explained that we generally consider the principals' post-formation activities a better indicator of who will control the ongoing business than their pre-formation activities. 6 FCC Rcd at 5601 ¶ 16. However, we further explained that, where the post-formation record does not reliably demonstrate that the nominally active owners will exclusively control the ongoing business, we would look to both the pre- and post-formation records. *Id.* Here, we found that Cooper's post-formation activities did not reliably demonstrate his control of the applicant. See 6 FCC Rcd at 2498 ¶¶ 7-8. We therefore also considered the circumstances surrounding PCLP's formation. See 6 FCC Rcd at 2498 ¶ 6. In so doing we considered the pre-formation record regarding PCLP consistent with standards set forth in *Evergreen*, 6 FCC Rcd at 5600-01 ¶ 12.