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August 20, 2001

BY FAX (202/418-1410) and BY HAND

Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: WNCC-FM, Franklin, NC (Fac ID # 14551)  
Sorenson Southeast Radio, LLC  
BPH-20010301ABB

Attn: David H. Trout  
Mail Stop 1800B3  
Room 2-A336

Dear David:

Thanks for your letter of July 19, 2001, in which you state that WNCC-FM's referenced application (as amended on May 14, 2001) is short-spaced to a CP (issued to Liberty Productions, LP) for an unbuilt FM station at Biltmore Forest, NC (BPH-19870831MI, as amended on November 10, 1999)(FCC Public Notice released on August 7, 2001).

We respectfully request that you either (i) grant the referenced WNCC-FM application because, as argued below, Liberty's CP is not entitled to "protection" or (ii) HOLD THIS APPLICATION IN ABEYANCE pending the resolution of collateral challenges to the validity of the CP issued to Liberty.

First, the FCC's issuance of a CP to Liberty -- for a new FM station on channel "243C3" at Biltmore Forest, NC -- was erroneous. (The FCC's grant of the CP will be contested by WNCC-FM in a timely Petition for Reconsideration, which will be filed prior to September 6, 2001.) Liberty's 1999 amendment to its 1987 application -- which specified both a new tower site and also an upgrade from Class A to Class C3 -- was in conflict with another application that had been filed four months earlier and that had been accepted for filing (BPH-19990727AAA). Liberty's 1999 amendment, therefore, should have been rejected or dismissed under the FCC's rules. See 47 CFR 73.3573(f) (July 27, 1999 application "cut off" the right of Liberty's November 10, 1999 application). That 1999 amendment -- and its specification of new, "C3" coordinates for Liberty's proposed Biltmore Forest FM facility --

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cannot now lawfully "block" the grant of WNCC's referenced modification application.

Moreover, until the FCC's August 7, 2001 public notice of its grant of a CP to Liberty for channel 243C3 at Biltmore Forest, neither WNCC-FM nor the public generally had any notice that Liberty had filed a 1999 amendment to upgrade its proposed Biltmore Forest FM facility from channel 243A to channel 243C3. Indeed, in the first public notice having ANYTHING to do with Liberty's 1999 amendment, the FCC gave notice on two occasions recently that it intended to grant only a "Class A" permit to Liberty at Biltmore Forest, NC. See, e.g., Memorandum Opinion and Order, FCC 01-129, released May 25, 2001, at paras. 1 & 9; see also Public Notice, DA 01-1347, released June 5, 2001 (directing Liberty to pay the final installment due pursuant to the auction rules in order to be granted a CP for "channel 243A"). Not only was there no public notice to WNCC-FM of the existence of Liberty's 1999 amendment when WNCC-FM filed the referenced minor modification application in March of this year, Liberty's amendment did not appear in any of the FCC's databases or in ANY engineering database until just a few weeks ago. In such circumstances, the FCC should waive its rules and/or take such other action (such as requiring Liberty to "protect" WNCC-FM's application) as is appropriate under the circumstances.

Second, in the alternative, the FCC should HOLD THIS MATTER IN ABEYANCE pending the administrative and judicial "finality" of the grant of Liberty's subject CP. As you are aware, Liberty's Biltmore Forest CP is being contested vigorously in the Court of Appeals by parties who competed against Liberty in the lengthy FCC proceeding. (The CP was granted by the FCC in a "split" decision, with one Commissioner filing a blistering dissent.) Should the CP ultimately be rescinded, then the obstacle raised in your July 19, 2001 letter would no longer impede your grant of WNCC-FM's minor modification application. The public interest requires that the FCC not take precipitous action to deny WNCC-FM's attempt to expand its coverage area when the very basis for such a denial might be mooted in coming months by collateral action by the court. The FCC's rules require nothing less. See 47 CFR 73.3573(f) (WNCC-FM has right to stay in the processing "queue" until Liberty's channel 243C3 CP is "final").

Please contact me directly should we be able to assist in any way regarding this matter. Many thanks.

Sincerely,

  
Robert Lewis Thompson  
Counsel for WNCC-FM