

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

MM Docket No. 90-234

In re Applications of

REV. J. BAZZEL AND File No. BPH-870619MB
ELIZABETH MULL
d/b/a SEYMOUR
COMMUNICATIONS
(hereafter "Seymour")

CARMEL File No. BPH-870625MJ
COMMUNICATIONS
LIMITED
PARTNERSHIP
(hereafter "Carmel")

For Construction Permit for
New FM Station, Channel 242A, 96.3 MHz
Seymour, Tennessee

HEARING DESIGNATION ORDER

Adopted: April 13, 1990;

Released: May 17, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹

2. *Carmel*. Information before the Commission indicates that *Carmel* was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Carmel's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Carmel in this proceeding.

3. Carmel has not submitted a description in narrative form of proposed programming relating to the issues of public concern facing its service area, pursuant to Section IV, Form 301. Accordingly, Carmel will be required to file within 30 days of the release of this Order a narrative programming statement with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

4. Carmel's application indicates that its proposal, which is based on the provisions of 47 C.F.R. § 73.313, will cover only 68.3% of the area within the legal boundaries of Seymour, Tennessee. The applicant has, therefore, requested a waiver of 47 C.F.R. § 73.315(a). The applicant states that substantial compliance (80%) is not achievable due to a large ridge on the 180-degree radial, between 3 and 16 km, which must be included pursuant to 47 C.F.R. § 73.313. (We note that the actual height above average terrain has been computed properly.)

5. A supplemental showing to support the waiver request has been provided. This showing uses a truncated 180-degree radial to show the expected coverage, which will encompass 82.2% of the community of license. This radial, extending from 3 km to 10.5 km (the edge of the community in that direction) is used to show that the 70 dBu contour will actually extend further in that direction than is normally predicted under 47 C.F.R. § 73.313. The applicant concedes that coverage beyond the ridge will be significantly attenuated; however, the city of Seymour does not extend beyond the ridge in that direction. Consequently, we find that the proposal will place a field strength of 70 dBu or greater up to the ridge. Carmel's supplemental showing for city coverage is accepted, and the application is found to be in substantial compliance with the city coverage provisions of 47 C.F.R. § 73.315. Accordingly, its request for waiver of this section will be dismissed as moot.

6. *Other Matters*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR

HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Carmel.
2. To determine whether Carmel's organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to Issues 1 and 2, above, whether Carmel possesses the basic qualifications to be a licensee of the facilities sought herein.
4. To determine which of the proposals would, on a comparative basis, better serve the public interest.
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if either.

9. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the Carmel shall file an amendment with the presiding Administrative Law Judge describing its planned programming service relating to the issues of public concern facing its proposed service area.

10. IT IS FURTHER ORDERED, That the request for waiver of 47 C.F.R. § 73.315 of Carmel IS DISMISSED AS MOOT.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

¹ An application by Great Smoky Mountains Broadcasting, Inc. ("Great Smoky") was filed on June 25, 1987 (BPH-870625MK). On August 29, 1988, the Chief, FM Branch, dismissed Great Smoky's application in accordance with a July 11, 1988 Settlement Agreement between Great Smoky and Carmel. Seymour's application, as originally filed, had been returned by the Chief, FM Branch on May 3, 1988 as inadvertently accepted for tender since the legal boundaries of the community of license were not clearly and legibly defined on the contour map. On August 29, 1988, the Chief, Audio Services Division, denied Seymour's petition for reconsideration of the action by the Chief, FM Branch. Accordingly, in approving the settlement agreement between Carmel and Great Smoky, the Chief, FM Branch also granted a construction permit to Carmel. On September 29, 1988, Seymour filed a petition for reconsideration of the grant of Carmel's application. On October 11, 1989, the Chief, Audio Services Division granted Seymour's petition, rescinded the grant of Carmel's application and reinstated Seymour's application.