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October 7, 1991

Donna Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

91-10

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OCT - 7 1991

Federal Communications Commission
Office of the Secretary

Re: White Broadcasting Partnership, et al.
Docket No. 91-10
Jem Productions Limited Partnership
File No. BPH891214ND

Dear Ms. Searcy:

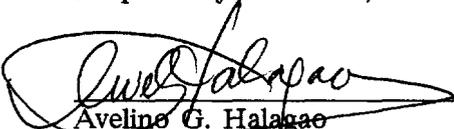
Transmitted herewith on behalf of Jem Productions Limited Partnership is an original and six copies of the following:

Opposition to Motion To Enlarge Issues Against Jem Productions Limited Partnership Filed by Peaches.

These pleadings are directed to the Honorable Administrative Law Judge Edward Luton.

Please communicate with the undersigned in the event you have any questions or if you need assistance.

Respectfully submitted,


Avelino G. Halagao
AVELINO G. HALAGAO & ASSOCIATES
Counsel to JEM Productions
Limited Partnership

Enclosures

cc: As per Certificate of Service

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OCT - 7 1991

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, DC 20554

In re Applications of	)	MM Docket No. 91-10
)	
WHITE BROADCASTING PARTNERSHIP	)	File No. BPH891214MM
)	
<u>et al.</u>)	
)	
For Construction Permit for)	
a New FM Station on Channel 289A)	
in Baldwin, Florida)	
)	
To: Honorable Edward Luton, A.L.J.)	

OPPOSITION TO MOTION TO ENLARGE ISSUES
AGAINST JEM PRODUCTIONS, L.P.

JEM Productions Limited Partnership ("JEM"), by its attorneys, and pursuant to Section 1.45 of the FCC Rules, hereby opposes the motion to enlarge issues filed on behalf of Peaches Broadcasting, Ltd. ("Peaches") on September 23, 1991. In support thereof the following is shown:

1. Peaches has moved to enlarge issues against JEM as follows:
 1. To determine whether George Enuton and Salvador Serrano are real parties in interest in JEM;
 2. To determine whether the legal and/or organizational structure of JEM is a sham;
 3. To determine whether JEM is financially qualified to construct and operate its proposed station; and
 4. to determine, in light of the evidence adduced under the above issues, whether JEM possesses the basic qualifications to become a Commission licensee.

2. Preliminary Statement

The Motion to Enlarge requests the addition of issues against JEM based on allegations that JEM is a classic sham applicant because JEM was "...created through an unnatural process..." (underscoring added for emphasis).

Contrary to Peaches' interpretation of the supposed facts presented by Peaches, it is clearly evident that JEM did indeed employ a "natural" process for the creation of its entity. Peaches has failed to demonstrate any basis for its allegations.

Further Peaches requests the addition of financial issues against JEM because "...it is unclear that JEM has any assurance of a financial source to build its station." Mr. Knobel, now and at all times during the pendency of the JEM application has been committed to provide funds for JEM. The record clearly shows that Mr. Knobel's net financial worth has exceeded 13 million dollars during this time. This net worth is more than enough to yield liquidity to simultaneously fund the construction and operation of the proposed five (5) FM stations in which Mr. Knobel has been involved. It has been shown conclusively that JEM has had for the entire aforementioned period, a solid financial source to build the proposed station and operate it for 3 months without revenue. Again Peaches has failed to demonstrate any sound basis for its allegations.

Peaches' Motion is a frivolous one based on misstatements and self-serving mischaracterizations. Its allegations are unsupported by sufficient facts. The Motion is a desperate attempt to harass and intimidate JEM. Further, this Motion appears to be designed to delay the proper and efficient dispatch of the hearing which falls in the realm of abuse of process. Peaches' Motion should be dismissed.

3. **Real Party in Interest Issue**

This issue is a rehash of allegation against George Enuton and Salvador Serrano that dated back since Deroblo Communications and reiterated in Playa del Sol. ¹Peaches wants the presiding Administrative Law Judge in this case to reverse himself because another Administrative Law Judge added this issue. This argument is pathetic. One judge is not bound by the opinion of another judge. Otherwise Judge Steinberg should have followed the lead of Judge Luton. ²

Furthermore, this issue in this case is already moot. The basis upon which this is being raised is no longer existing. Robin M. Rothschild, representing Atlantic Pacific Broadcasting, Inc., has transferred her interests to Joyce E. Morgan and Peter Knobel. This goes to show that George Enuton has no ownership interests in JEM. He is a broadcast consultant (see Transcript of Hearing dated August 22, 1991, Joyce E. Morgan, p. 430 and p. 438 and 439, Exh B1, B2 and B3.) who is assisting JEM in its application for a construction permit to build and operate an FM radio broadcast station.

4. **Sham Issue**

Peaches wants this issue added because it made it appear that George Enuton and Salvador Serrano are in control of Joyce E. Morgan and JEM. This statement is far from

¹Peaches is well aware of these two cases. (see Peaches Motion To Enlarge Issues against JEM Production, L.P., page 7 and the accompanying footnote 4.)

²The arrangement and agreement challenged in Deroblo Communications and Playa del Sol are similar. The "sham issue" in Playa del Sol was added on Judge Steinberg's own motion (See Memorandum Opinion and Order issued January 30, 1991, FCC 91-M-3962278 and Memorandum Opinion and Order issued June 28, 1991, FCC91-M-20425151, page 2, Exhs. A1 and A2)

being true. As broadcast consultants, George Enuton and Salvador Serrano assist and help Joyce E. Morgan in JEM's application. Under the theory of agency, they act on behalf of the principal. But in order to show that the broadcast consultants exercise control over Joyce E. Morgan and JEM, Peaches resorted to distortion of fact. Nowhere in the record can be found any piece of evidence in support of Peaches' allegation. Instead the record shows that Joyce E. Morgan has made all the decisions in putting forward JEM's application upon consultation and through the help and assistance of her broadcast consultants (see Transcript of Hearing dated August 22, 1991 Joyce E. Morgan, pp 438-439, Exhs. B2 and B3).

Peaches even made it appear that George Enuton and Salvador Serrano work for Peter Knobel. This allegation is unfounded. Peter Knobel is a qualified investor who wants to be a financial partner in radio applications. After understanding the program, he became interested in financing broadcast applications. (see Transcript of Hearing, dated August 22, 1991, Peter Knobel, pp. 477-478, Exhs. C1 and C2.)

To press further the "sham issue", Peaches focused on Section 8.3 (iii) of JEM's Partnership Agreement and then concluded that "the limited partner will have an absolute right to seize the station if there are two quarters of operating losses". This attempt of Peaches to interpret a part of the whole section only demonstrates its penchant for misstatement. Had Peaches read further, the true meaning of the aforecited section would be grasped by it. For the section provides further:

then, in any such event, the General Partner shall, upon the vote by Limited Partners holding a majority-in interest of the Interests in the Partnership, be removed as a General Partner (without any further action by the Limited Partners). Prior to the effectiveness of the removal of the General Partner, the Limited Partners shall ratably allocate a portion of

their Partnership Interests to a replacement General Partner. Upon the qualification of a replacement General Partner to be General Partner (as provided in Sections 7.1(III), (iv) and (v) with respect to successor General Partners) the General Partner's interest shall be converted to a limited partnership interest and the General Partner shall become a Limited Partner, and the replacement General Partner shall become the General Partner of the Partnership. (see attached, Exh. D)

It is very clear that the Limited Partners will look for a replacement and they will allocate ratably a portion of their Partnership Interests to the new General Partner. This provision does not allow any of the Limited Partners to be the General Partner. Once a new General Partner is installed, then he or she assumes the rights and obligations of the General Partner under the terms of the Partnership Agreement (Sections 5.1 and 5.6 define the roles of the General Partner and the Limited Partners [see attached, Exhs E1 and E2]).

So JEM can not comprehend as to why Peaches arrived at a conclusion that the Limited Partner can control the applicant. ³At best, this section can be viewed as a protective device for the Limited Partners who will join the project for investment purposes. They want the General Partner who will manage the radio station as one who is capable of making it profitable. Additionally, this is an incentive for Joyce E. Morgan to run the radio station profitably.

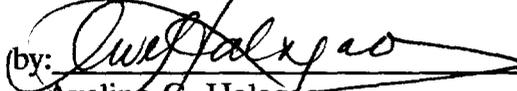
³Under Section 8.3, the interest of the General Partner who is removed is converted to limited partnership interest. Under the scenario contemplated by this Section, Joyce E. Morgan's interest will remain 50% but she will become a Limited Partner. Peter Knobel who will allocate a portion of his interest to the new General Partner will have less than 50% interest. Instead of gaining control, Peter Knobel's interest will be reduced.

5. Financial Issue

True to form, Peaches again distorted the facts to win the argument. ⁴It hastily concluded that Peter Knobel is planning to borrow from the bank to finance the project of JEM. It overlooked the firm commitment of Peter Knobel to Joyce E. Morgan that he will personally finance the project and his explanation that his going to the bank will occur only when he will be financing 20 projects at the same time in the future. (see Transcript of Hearing, dated August 22, 1991, Peter Knobel, p. 490, Exh.F.) He was committed to finance five (5) projects including JEM at one time. ⁵But with his net worth of over \$13,000,000.00, he could personally finance these projects. (see Statement of Financial Condition, Exhs H1 and H2). So even under the guideline of Breeze Broadcasting Co. Ltd. 5FCC Red 6365 (Review Board 1990), Peter Kobel's financial position will pass the test.

Wherefore it is respectfully requested that this Motion to Enlarge Issues against JEM and the accompanying request for discovery and documents be denied.

Respectfully submitted,
JEM Productions Limited Partnership

by: 
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⁴Peaches also tries to inject the Peter Knobel-Beylen Communications issue, but this has been settled in an order issued July 31, 1991 (Memorandum Opinion and Order, FCC91M-2386 5764 Exh. G)

⁵As of today, JEM is the only applicant of the five actively pursuing a construction permit for a new FM Broadcast station.

EXHIBIT A-1

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

FCC 91M-396
 2278

In re Applications of	)	MM DOCKET NO. 90-364
)	
DEROBLO COMMUNICATIONS	)	File No. BPH-890503MJ
)	
REY-CEL BROADCASTING	)	File No. BPH-890503MM
LIMITED PARTNERSHIP)	
)	
For Construction Permit for a)	
New FM Station on Channel 288A)	
in Hail' Imaile, Hawaii)	

MEMORANDUM OPINION AND ORDER

Issued: January 30, 1991; Released: February 1, 1991

1. Under consideration are 1) Second Motion to Enlarge Issues, filed November 20, 1990 by Deroblo Communications, Inc.; 2) Erratum to Second Motion to Enlarge Issues, filed November 21, 1990 by Deroblo; 3) Opposition to Deroblo's Second Motion to Enlarge Issues, filed December 20, 1990 by Rey-Cel Broadcasting Limited Partnership; and 4) Reply to Opposition to Deroblo's Second Motion to Enlarge Issues, filed January 11, 1991 by Deroblo.

2. Deroblo seeks a real party-in-interest issue against Rey-Cel. Deroblo claims that information in Rey-Cel's integration statement indicates that its engineering consultants, Salvator Serrano and George Enuton, are holders of undisclosed interests in the Rey-Cel application. This claim is made because the integration statement informs that the consultants had at first considered taking a percentage of the partnership as payment for their services but, instead, "the percentage of the partnership was...placed in the name of Manuel Enuton, who is George Enuton's brother." The purpose of this arrangement is stated to be "to further insulate the consultants, and to show that they had no intention of controlling the application or running the station if a construction permit is granted." Thus, Manuel Enuton, who has contributed nothing to the partnership, owns 40 percent of it. However, by an agreement entered December 19, 1990, Manuel Enuton agreed to sell his entire equity interest to the general partner, Cecelia P. Piros, for the sum of \$500, upon satisfactory payment by Piros to the two engineering consultants for their services to the partnership (a payment expected to range between \$5,000 and \$10,000).

3. The test for determining whether a third person is a real party-in-interest is whether that person has an ownership interest, or will be in the position to actually or potentially control the operation of the station. Arnold L. Chase, 61 RR 2d 111, 135 (1986). While the arrangement between Rey-Cel's general partner and its limited partners may be somewhat unusual, nothing about the arrangement suggests that either George Enuton or Salvator Serrano is a real party-in-interest. The motion will be denied.

IT IS ORDERED that the Second Motion to Enlarge Issues IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


 Edward Luton
 Administrative Law Judge

EXHIBIT A-2

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

FCC 91M-2042
5151

In re Applications of	)	MM Docket No. 90-504
)	
PLAYA DEL SOL BROADCASTERS	)	File No. BPH-890501MJ
)	
VALDOVINO BROADCASTING, LIMITED PARTNERSHIP	)	File No. BPH-890503MO
)	
MICHAEL DURDEN	)	File No. BPH-890503MP
)	
For Construction Permit for a)	
New FM Station on Channel 249A)	
in Mecca, California)	

MEMORANDUM OPINION AND ORDER

Issued: June 28, 1991 ; Released: July 2, 1991

1. Under consideration are a Petition to Enlarge Issues Against Valdovino Broadcasting, Limited Partnership, filed on May 17, 1991, by Michael Durden ("Durden"); an opposition thereto filed on May 29, 1991, by Valdovino Broadcasting, Limited Partnership ("VBLP"); and a reply filed on June 17, 1991, by Durden.

2. Durden seeks the addition of real party-in-interest, financial qualifications, and false financial certification issues against VBLP. In support, Durden claims that Salvador Serrano, through his sister Lura Madarang, is a real party-in-interest in VBLP. Serrano is a broadcast consultant who, with his business partner, George Enuton, found VBLP's proposed site, recruited its general partner, prepared its engineering, helped draft its application, brought its limited partners into the application, drafted its partnership agreement, and otherwise guided the VBLP application. Madarang, who is a 40% limited partner in VBLP, has no obligation to contribute funds to the applicant, knows virtually nothing about the applicant, and holds her interest as a surety for her brother, that is, to insure that he and Enuton receive their fee for consulting services. Madarang will transfer her 40% interest to VBLP's general partner if and when Serrano and Enuton are paid.

3. In support of its request for financial and false certification issues, Durden argues that, at the time of certification, VBLP general partner Feliciano Valdovino had no idea about where the money to build the station might come from. After the application was filed, Enuton told Valdovino that her limited partners would provide her with the money to build the proposed station. She never received any information which would show that her limited partners could meet their commitments, but relied on Enuton's verbal assurances that they could do so.

4. In its opposition, VBLP maintains that Serrano is not a real party-in-interest because he will not hold any future interest in the proposed station. VBLP also alleges that, at the time of her financial certification, Valdovino was relying on her own resources, and that they were sufficient to construct and operate the proposed station. In support of this assertion, VBLP supplies Valdovino's balance sheet showing her financial condition as of March 31, 1991.

5. Durden's petition to enlarge issues will be granted. Although Madarang is the legal owner of a 40% interest in VBLP, she admittedly holds that interest on behalf of her brother, who appears to possess and control that interest in all but name. Moreover, at the hearing, Serrano candidly testified that he used his sister to hold this interest because, if he held such interest himself, it would be attributable to the applicant and reduce its integration credit. Under these circumstances, it appears that Serrano and Enuton may be real parties-in-interest in VBLP and the requested issue will be added. Moreover, based upon the above, it appears that the legal and organizational structure of VBLP may be a sham and, on the Presiding Judge's own motion, an appropriate issue will be specified.

6. Financial and false certification issues will also be added. It appears that VBLP had no firm financial plan in place to finance the construction and operation of its proposed station at the time of its financial certification. Moreover, even assuming that VBLP was relying on Valdovino's personal finances, it has failed to establish that she had at the time of certification sufficient net liquid assets to cover the applicant's costs. Similarly, even assuming that VBLP was relying on its limited partners' assets, Valdovino had no concrete, firsthand information at the time of her certification establishing that they could fulfill their commitments. Northampton Media Associates, 4 FCC Rcd 5517, 5518-19 (1989).

Accordingly, IT IS ORDERED that the Petition to Enlarge Issues Against Valdovino Broadcasting, Limited Partnership, filed by Durden on May 17, 1991, IS GRANTED, and the following issues are added to this proceeding:¹

4. To determine whether Salvador Serrano and/or George Enuton is a real party-in-interest in Valdovino Broadcasting, Limited Partnership;
5. To determine whether the legal and/or organizational structure of Valdovino Broadcasting, Limited Partnership, is a sham;
6. To determine whether Valdovino Broadcasting, Limited Partnership, is financially qualified to construct and operate its proposed station;
7. To determine whether Valdovino Broadcasting, Limited Partnership, was financially qualified to construct and operate its proposed station at the time its application was filed;
8. To determine whether Valdovino Broadcasting, Limited Partnership, falsely certified that it was financially qualified to construct and operate its proposed station; and
9. To determine, in light of the evidence adduced under Issues 4 through 8, whether Valdovino Broadcasting, Limited Partnership, possesses the basic qualifications to become a Commission licensee.

¹ Under Issues 6 and 7, VBLP must also establish that its limited partners have continually had the ability to fulfill their commitments to all of the pending applications in which they were involved. Breeze Broadcasting Company, Ltd., 5 FCC Rcd 6365 (Rev. Bd. 1990).

IT IS FURTHER ORDERED that because the facts required to resolve these issues are peculiarly within the knowledge of VBLP, the burden of proceeding and the burden of proof on these issues ARE ASSIGNED to VBLP.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

1 Q I'd like to bring to your attention a
2 document which is an agreement between Salvador Serrano
3 and yourself. I'd like to have it marked as Peaches
4 16.

5 Are you familiar with this document?

6 A Yes, I am.

7 (The document referred to
8 above was marked Peaches
9 Exhibit No. 16 for
10 identification.)

11 Q Okay. Part of your agreement with Mr.
12 Serrano was to prosecute the application, isn't that
13 correct?

14 A That is correct.

15 Q Okay. Who paid Mr. Serrano to do that?

16 A I did.

17 Q Who paid Mr. Newton to be involved in this?

18 A He has not been paid.

19 Q But he is involved in the process?

20 A Yes, he is. He is my consultant.

21 MS. ROBINSON: Your Honor, I'd like to have
22 Peaches 16 moved into evidence.

23 JUDGE LUTON: Any objections?

24 MR. HALAGAO: No objection, Your Honor.

25 JUDGE LUTON: Sixteen is received.

1 Q And he's also the signature on the last page
2 of Peaches 19, the notice of appearance?

3 A Yes, it is.

4 Q Whose idea was the original equity
5 percentage?

6 A Whose idea was that?

7 MR. HALAGAO: Excuse me, Your Honor. Was it
8 received?

9 MS. ROBINSON: No, I'm not ready to have it
10 received.

11 MR. HALAGAO: We are going to another
12 question now?

13 BY MS. ROBINSON:

14 Q The original equity structure?

15 A The original equity structure came about,
16 basically through my talks with George. Because, as my
17 consultant and the one who introduced the whole process
18 to me, I had no idea of exactly how to set it up or
19 what should be where and what should be done and he
20 assisted me with that and coming up with the totals.

21 Q Who was the this again, I'm sorry.

22 A George Newton.

23 Q And whose idea was it to incorporate it into
24 Delaware, to incorporate the partnership?

25 A Well, that goes along with the whole idea of

1 the consultant, because of the fact that I had no idea
2 of how to do most of this. He also helped me with
3 that. And I talked with Peter Knobel as well about
4 where and how to set up.

5 MS. ROBINSON: Your Honor, at this time I
6 would like to move Peaches 19 and 20 into evidence.

7 JUDGE LUTON: Any objections to either?

8 MR. HALAGAO: Yes, Your Honor. I would like
9 to ask the relevancy of the exhibits here. Ms. Morgan
10 has indicated that she agrees with this and I think
11 it's already on the record that she agrees on this one.
12 So I don't know if you would like to have more
13 documents in the record, Your Honor. So I would like
14 to object. I don't mind it come in, but I think Ms.
15 Morgan has indicated that she already agree to this
16 documents.

17 JUDGE LUTON: Then it ought not to be
18 objectionable. The objections are overruled. Nineteen
19 and 20 are received.

20 (The documents heretofore
21 marked Peaches Exhibits No. 19
22 and 20 for identification were
23 received into evidence.)

24 JUDGE LUTON: Henceforth, would you offer
25 them singly, one at a time, so we can deal with that

1 Island. We have a weekend home in Suffolk County,
2 which is the county that Montauk is in. And Robin
3 said, "wouldn't it be great if you owned the radio
4 station." And also to my wife. My wife thought it
5 would be a good idea.

6 George contacted me wife, came up to see my
7 wife and educate her on what the possibilities were to
8 owning a radio station and I got to listen, so I would
9 pop in and out and then my wife discussed it with me
10 and my wife applied for the radio station, the
11 application.

12 Q For which radio station?

13 A The Montauk application.

14 Q Okay, but as far as this application, how did
15 you --

16 A After my wife started working with George
17 Newton, I got to know him better and better and said to
18 George, maybe there would be other -- when I started to
19 understand the program -- maybe there would be other
20 applicants around the country who needed financing.

21 So George said that his business was going
22 out and putting these projects together. I said,
23 "well, when you find an applicant, have them call me
24 and let me know whether they could use me as a
25 prospect." And that's occurred in this situation.

1 Q So that's what prompted finding Joyce Morgan,
2 your request by them to --

3 A No, I had no request. I said to George that
4 I would be interested as an investor in other radio
5 applications. And that I had no specific needs, say,
6 Jacksonville or Oklahoma or Tennessee, wherever. If he
7 had an applicant who was interested, that I would
8 review who the applicant was and their qualifications
9 and maybe I would become their financial partner.

10 Q But they, in fact, found you Joyce Morgan?

11 A Correct.

12 Q What is the function of Mr. Serrano is this,
13 besides what you've mentioned. Are there any
14 additional roles that he's played?

15 A Be more specific.

16 Q What is his overall role in the application,
17 Mr. Serrano, beside matching you with your partner. Do
18 you know of any other --

19 A I believe he's an engineer.

20 Q An engineer?

21 A Yes.

22 Q Not in this particular application?

23 A I don't specifically know.

24 Q But as far as his particular role in this
25 particular application, what is your knowledge of his

EXHIBIT D

hereof and shall execute and file an amendment to the Certificate of Limited Partnership to the extent required under the Act.

Section 8.3. Termination of General Partner. Upon the first to occur of the following events (each a "Terminating Event"):

(i) the occurrence of an Event of Default under any loan agreement, guaranty or other similar instrument or document to which the Partnership is a party;

(ii) the occurrence of a notice of demand under any guaranty, suretyship, or other similar arrangement pursuant to which any indebtedness of the Partnership is guaranteed or assured by the holder or beneficiary thereof;

(iii) the Partnership suffers two consecutive fiscal quarters of operating losses, as shown on the financial statements referred to in Section 6.2(b)(i) or (ii);

(iv) the General Partner fails to provide the documents required to be furnished pursuant to Section 6.2 as and when required; or

(v) the General Partner breaches any of its obligations or duties pursuant to this Agreement and fails to cure any such breach within 15 days after notice thereof;

then, in any such event, the General Partner shall, upon the vote by Limited Partners holding a majority-in-interest of the Interests in the Partnership, be removed as a General Partner (without any further action by the Limited Partners). Prior to the effectiveness of the removal of the General Partner, the Limited Partners shall ratably allocate a portion of their Partnership Interests to a replacement General Partner. Upon the qualification of a replacement General Partner to be General Partner (as provided in Sections 7.1(iii), (iv) and (v) with respect to successor General Partners) the General Partner's interest shall be converted to a limited partnership interest and the General Partner shall become a Limited Partner, and the replacement General Partner shall become the General Partner of the Partnership.

ARTICLE IX DISSOLUTION OF THE PARTNERSHIP

Section 9.1. Dissolution. The Partnership shall be dissolved and its affairs shall be wound up upon any of the following events:

EXHIBIT E-1

(ii) then, all of the balance thereof, to the Partners in accordance with their Interests.

ARTICLE V MANAGEMENT DECISIONS AND RELATED MATTERS

Section 5.1. Management. Except as provided in Section 5.2 hereof, or as otherwise expressly provided in this Agreement, all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Partnership shall be made by the General Partner, and the General Partner shall have the exclusive right and full authority to manage, conduct and operate the Partnership's business. Any additional and/or successor general partner appointed or elected in accordance with any of the provisions of this Agreement shall have and be subject to all of the rights, powers and duties and obligations which the General Partner has hereunder. Specifically, but not by way of limitation, the General Partner shall be authorized in the name and on behalf of the Partnership:

(i) to acquire the site for, construct, own and operate the Station;

(ii) to cause to be paid all amounts due and payable by the Partnership to any person or entity;

(iii) to employ such agents, employees, managers, accountants, attorneys, consultants and other persons necessary or appropriate to carry out the business and affairs of the Partnership, whether or not any such persons so employed are affiliated with or related to any Partner, and to pay such fees, expenses, salaries, wages and other compensation to such persons as it shall, in its sole discretion, determine;

(iv) to pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise, upon such terms as it may determine and upon such evidence as it may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Partnership;

(v) to pay any and all fees and to make any and all expenditures which it, in its sole discretion, deems necessary or appropriate in connection with the organization of the Partnership, the construction of the Station, the management of the affairs of the Partnership, and the carrying out of its obligations and responsibilities under this Agreement;

EXHIBIT E-2

be entitled to any salary, fees or other compensation for any services rendered or to be rendered by it to the Partnership.

(b) Notwithstanding the limitations contained in paragraph (a) hereof, the General Partner shall be employed at the Station as full time General Manager and shall be entitled to receive compensation (including salary and benefits) at a rate that is commensurate with the compensation generally paid to persons exercising similar levels of responsibility, as determined by reference to local cost of living assumptions and estimates.

Section 5.4. Indemnification. To the fullest extent permitted by law, the Partnership shall indemnify and hold harmless, to the extent there is cash available after paying or providing for the payment of all other Partnership expenses, the General Partner from any loss, damage, fine, penalty, expense (including reasonable attorneys' fees), judgment or amount paid in settlement incurred by the General Partner by reason of its performance or nonperformance of any act concerning the activities of the Partnership or in furtherance of its interests or purposes; provided, however, that there shall be no indemnification in relation to matters as to which the General Partner is adjudged in a final judgment by a court of competent jurisdiction, all avenues of appeal having been exhausted or waived, to have been guilty of fraud, bad faith or gross negligence.

Section 5.5. Liability of General Partner. The General Partner shall not be personally liable to the Partnership or the Limited Partners for any loss or damage to the Partnership or its property, or a Partner, unless caused by the fraud, bad faith or gross negligence of the General Partner.

Section 5.6. Participation by Limited Partners. The Limited Partner shall have no part in the conduct or control of the business of the Partnership and shall have no right or authority to act for or bind the Partnership. The Limited Partner shall not have the right to bring any action for partition against the Partnership or its Partners. Except for an obligation to return distributions to the extent required by law, the Limited Partner shall not be personally liable for any expense, liability or obligation of the Partnership. No prior consent or approval of the Limited Partners shall be required in respect of any act or transaction to be taken by the General Partners on behalf of or by the Partnership unless provided in writing in this Agreement.

Section 5.7. Conflicts of Interest. It is contemplated that from time to time in furtherance of the purposes of the Partnership, the Partnership may enter into contracts and transactions with one or more Partners or other entities controlled by one or more of the Partners. The creation

1 Q Okay. I take it that then, at the time of
2 its formation, there was no equity in the corporation?

3 A No equity.

4 Q Also, you mentioned that one of the reasons
5 for reforming the limited partnership agreement is that
6 you were thinking of getting bank financing.

7 Did you discuss this at any point in time
8 with Ms. Morgan?

9 A The ability to get bank financing?

10 Q Well, the fact that you would not personally
11 be providing the financing?

12 A No, that was not my intention. My
13 intention -- I had told her that my intention was that
14 I was financing the station. But if I had gone out and
15 done 20 of these stations, at some point you just don't
16 have \$27,000,000 in the bank. So, it was my intention
17 that banks do finance these stations and to have an
18 agreement that was acceptable to an institution to be
19 financed.

20 So I was looking down the road. I could have
21 just had the same agreements that the other applicants
22 have here, which say really nothing and then, at that
23 point, said we'll have a new agreement to go to a bank.
24 But I felt that we had a very good shot at winning this
25 application and wanted to have an application that was

EXHIBIT G

Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, D.C. 20554

FCC 91M-2386
5764

In re Applications of	)	MM DOCKET NO. 91-10
)	
CHARLEY CECIL & DIANNA MAE WHITE	)	File No. BPH-891213M
d/b/a WHITE BROADCASTING PARTNERSHIP)	
)	
PEACHES BROADCASTING, LTD.	)	File No. BPH-891214MN
)	
DOUGLAS JOHNSON	)	File No. BPH-891214MZ
)	
NORTHEAST FLORIDA BROADCASTING CORP.	)	File No. BPH-891214NA
)	
JEM PRODUCTIONS, LIMITED PARTNERSHIP	)	File No. BPH-891214ND
C/O JOYCE MORGAN)	
)	
For Construction Permit for a)	
New FM Station on Channel 289A)	
in Baldwin, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: July 31, 1991 ; Released: August 5, 1991

1. Under consideration are 1) Motion to Enlarge Issues Against JEM Limited Partnership, filed May 24, 1991 by White Broadcasting Partnership; 2) Opposition to Motion to Enlarge Issues Against JEM Productions Limited Partnership, filed June 17, 1991 by JEM; and 3) Reply to Opposition to Motion to Enlarge Issues Against JEM Productions Limited Partnership, filed June 27, 1991 by White. White seeks the addition of the following issues against JEM:

- a) Whether JEM has violated Section 1.65 of the Commission's Rules in failing to timely report changes in the status of the formation of the limited partnership, and changes in the status of its limited partners from individuals to corporations, and the impact of such violation on Jem's basic qualifications to be a Commission licensee.
- b) Whether JEM misrepresented the status of its own formation as a limited partnership in its application to the Commission, such as to render it a sham limited partnership, and the impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee.
- c) Whether JEM misrepresented the ownership interests of Mr. Peter Knobel and/or Beylen Communications, Inc. in its application to the Commission, and the impact of such misrepresentation on JEM's basic qualifications to be a Commission licensee.

2. JEM's May 9, 1991 amendment purports to reflect the "true date the certificate of limited partnership was filed in Dover, Delaware." In its application as originally filed, JEM stated that the date and place of its enabling charter was December 14, 1989, in Dover, Delaware. By its May 9, 1991 amendment, JEM informed the Commission that, in fact, its certificate of limited partnership was not filed until April 9, 1991. As good cause, JEM offered only that its error had been "recently" discovered. Since, according to JEM, its certificate of limited partnership was filed on April 9, 1991, JEM's discovery of its failure to file the certificate must have occurred prior to that date. If so, the amendment may be untimely pursuant to Section 1.65 of the Commission's rules. "It is possible," argues White, "that JEM discovered the problem as early as February, 1991." That mere possibility does not warrant the addition of an issue, at least, not at this time. JEM will be required to inform the presiding officer and the parties of the time it made its discovery, and the circumstances in which the discovery was made.

3. JEM was originally constituted this way:

Joyce Morgan, general partner, 20%
Peter Knobel, limited partner, 40%
Robin Rothschild, limited partner, 40%

A later Agreement of Limited Partnership, dated February 26, 1991, shows JEM to have become this:

Joyce Morgan, general partner, 20%
Beylen Communications, Inc., limited partner, 40%
Atlantic-Pacific Broadcasting, Inc., limited partner, 40%

A still later Agreement of Limited Partnership, this one dated May 2, 1991, shows JEM to be this:

Joyce Morgan, general partner, 50%
Beylen Communications, Inc., limited partner, 50%

4. The ownership change represented by the February 26, 1991 Agreement was never reported to the Commission. The genesis of JEM's most recent ownership change lies in two assignments executed by Ms. Robin Rothschild on May 3, 1991. By these assignments, Rothschild transferred "75% of [Atlantic-Pacific's] limited partnership interest in JEM" to the general partner Joyce Morgan, and "25% of [Atlantic-Pacific's] limited partnership interest in JEM" to Beylen Communications, Inc.

5. As a technical matter, Ms. Rothschild in her individual capacity had no limited partnership interest in JEM which she could have assigned on May 3, 1991 since, by the February 26, 1991 Agreement, JEM's only limited partners were Beylen Communications, Inc. and Atlantic-Pacific Broadcasting, Inc. However, Beylen is owned 100% by Peter Knobel and Atlantic-Pacific is owned 100% by Robin Rothschild. If prior to Rothschild's May 3, 1991 "assignments" she had assigned her individual interest in JEM to Atlantic-Pacific, and if Peter Knobel had assigned his individual interest in JEM to Beylen, a more symmetrical picture would be presented here. Such assignments were never reported to the Commission by JEM because they never occurred. JEM explains:

"The sole general partner in JEM believed it was unnecessary to inform the Commission of this change in status of the Limited Partners because the limited partners and the shareholders of the respective corporations are the same and there were no changes in their respective equity ownership interest."

6. Any reporting failure here is only technical in nature, involves no matter of decisional significance and does not warrant the specification of any issue. Merrimack Valley Broadcasting, Inc., 55 RR 2d 23 (1983); 99 FCC 2d 680 (1989).

7. White claims that JEM misrepresented its partnership status to the Commission. As indicated, JEM filed its application as a limited partnership, with Morgan as its general partner and with Knobel and Rothschild as its limited partners. When the application was filed, JEM had not filed its certificate of limited partnership with the State of Delaware. White argues that the non-filing of JEM's certificate with the State of Delaware rendered JEM, for all legal purposes, a general partnership, and this must have been known by JEM when it filed its application. JEM nevertheless elected to make application to the Commission as a limited partnership so that JEM could claim 100% quantitative integration credit for Morgan's participation rather than the mere 20% credit to which she might otherwise be entitled. In short, according to White, JEM's motive for "misrepresenting" its status as a limited partnership was to garner an integration credit to which it knew it was not entitled. White's argument is rejected. White cites no Commission authority, and the presiding officer is aware of none, for the proposition that JEM's failure to have filed its certificate before it filed its application rendered that applicant a general partnership for Commission purposes. The motive of JEM to falsify posited by White will not be found.

8. White claims that JEM engaged in deliberate misrepresentation in reporting an increase in Mr. Knobel's media holdings. Again, on the theory that JEM was a general partnership when Knobel held a certain media interest, White argues that that interest was not timely reported because of JEM's desire to avoid attribution of the media interest. The presiding officer finds no such motive.

Accordingly, IT IS ORDERED that the Motion IS DENIED; IT IS FURTHER ORDERED that JEM, within seven (7) days after the release of this Order, shall inform the parties and the presiding officer of the time and circumstances surrounding its discovery of the non-filing of its certificate of limited partnership.

FEDERAL COMMUNICATIONS COMMISSION


Edward Luton
Administrative Law Judge

EXHIBIT H-1
(EXHIBIT E2)

PETER B. KNOBEL

STATEMENT OF FINANCIAL CONDITION

FEBRUARY 1, 1989

PETER B. KNOBEL

STATEMENT OF FINANCIAL CONDITION
FEBRUARY 1, 1989

ASSETS:

Cash	\$ 147,000
Residences (Notes 1(b), 2 and 7)	1,600,000
Investments in real estate (Note 3)	9,998,265
Investment in Gilbert Charles Beylen, Incorporated (Note 4)	1,687,000
Investment in United Title Abstract Corporation (Note 5)	200,000
Other assets (Note 6)	<u>458,798</u>
TOTAL ASSETS	14,091,063

LIABILITIES:

Mortgage notes and loan payable (Note 7)	<u>722,987</u>
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NET WORTH \$13,368,076

See accountants' compilation report.

The accompanying notes to financial condition are an integral part of this statement.