

facts in support hereof. ^{1/} The potential for the financial and site availability issues first became apparent after the exchange of documents on May 5, 1993, in response to the standard document exchange. Thereafter, Santiago-Santos and Bonet filed on May 17, 1993 a request seeking additional documents that might clarify the financial showing and the site availability showings based on documents exchanged in the standard document exchange. On June 7, 1993, Matos by his attorneys responded to that supplemental document request. Santiago-Santos and Bonet filed this petition within 15 days of June 7, 1993.

Financial Qualifications Issue

2. Santiago-Santos and Bonet request that the following issues be added concerning the financial qualifications of Matos:

- a. To determine whether Matos was financially qualified to construct and operate its proposed facilities when he filed his Form 301 application.

^{1/} This Petition is premised upon documents from FCC files (portion of Matos application), documents produced by Matos (Southern Mortgage Corporation letter and Colon letter) or from other government agencies (Colon Special Use Permit). Accordingly, official notice may be taken of the facts relied on to support this Petition.

b. To determine whether Matos is presently financially qualified to be a Commission licensee.

3. It is fundamental that an applicant for a new station be financially qualified to construct and operate the proposed facility. Dutchess Communications Corporation, 101 FCC 2d 243, 244 (Rev. Bd. 1985). Thus, the truthfulness and accuracy of the certification of such financial qualifications are of paramount importance. Indeed, the Commission has from time-to-time expressed concern that many applicants were abusing its certification procedures. Revision of Application for Construction Permit (FCC Form 301), 4 FCC Rcd 3853, 3858-59 (1989)(Quoting Public Notice, 2 FCC Rcd 2122 (1987)). In response to these abuses, the Commission substantially strengthened the financial showing requirements for new applicants. See Revision, supra at 3859.

4. Matos in the FCC Form 301 application filed on or about November 13, 1991, in response to Section III, Financial Qualifications, noted that the estimated costs to construct and operate of \$228,600.00 would be met from a

savings account (\$67,067.98) ^{2/} and a \$250,000 loan from Southern Mortgage Corporation, Mayaguez, Puerto Rico. See Copy of Section III, Financial Qualifications, attached as Exhibit 1. Thus, Matos certified that he had net liquid assets of over \$67,000.00 and that funds were available from committed sources, i.e., Southern Mortgage Corporation, to construct and operate the proposed facilities.

5. However, when one examines the financial qualifications of Matos at the time of the certification in November, 1991, it is submitted that Matos has failed to demonstrate that he had reasonable assurance of committed sources of funds, North Hampton Media Associates, 4 FCC Rcd 5517 (1989). Construing the Southern Mortgage Corporation letter attached as Exhibit 2 in the best light possible, one can only conclude that it fails to provide reasonable assurance of a present intention on the part of Southern Mortgage to enter into a loan with Mr. Matos. The letter at best is a statement of the parties' positions, without any commitment on the part of Southern Mortgage.

^{2/} To the extent Mr. Matos relies on the availability of \$67,067.98, from his personal funds, there is no evidence to indicate that Mr. Matos has net liquid assets available in excess of \$67,000. A statement that \$67,067.98 was available in November, 1991 in a savings account is hardly probative of the issue of whether Mr. Matos had sufficient net liquid assets to cover an obligation of over \$67,000. In any event, even assuming full availability of the \$67,000 for use in connection with the proposed Culebra radio station, it falls far short of the estimated costs of over \$228,000.

6. We do not know what the Southern Mortgage Corporation is. It must be assumed that it is a mortgage company, not a recognized financial institution. Thus, Southern Mortgage must demonstrate that it has sufficient net liquid assets to fund the \$250,000 loan. There is no evidence that Southern Mortgage Corporation has sufficient liquid assets uncommitted to others to fund the \$250,000 loan.

7. Assuming arguendo that Southern Mortgage has sufficient funds available to cover the Matos commitment, the essential terms of the loan, i.e., the interest rate, and the term were left to be negotiated. Thus, we do not have a situation where even tentative terms of the loan have been specifically identified and agreed to by both the borrower and lender. See Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990).

8. While we recognize that the Commission's reasonable assurance standard does not require a legally binding commitment, it does require a present firm intention to make the loan. See Scioto Broadcasters, supra. Reasonable assurance means that the applicant has passed initial muster for a loan and unless circumstances change, the loan is almost certainly forthcoming. Marlin Broadcasting of Central Florida, Inc., 4 FCC Rcd 7945 (Rev. Bd. 1989). There is no comfort in the November 4 letter that Southern Mortgage will almost certainly make a \$250,000.00 loan to

Mr. Matos. In fact, Southern Mortgage disclaims any obligation to make the loan.

9. Matos has failed to demonstrate that he had, at the time he certified his application, reasonable assurance of the availability of committed funds sufficient to cover the estimated costs of construction and operation. Based on the information available, one must assume that Southern Mortgage Corporation is not a bank or other recognized financial institution. Thus, Matos must demonstrate that Southern Mortgage has net liquid assets available in excess of \$250,000. There is no such showing. Further, the Southern Mortgage letter does not on its face evidence a present intent to make a loan to Matos. There has been no meeting of the minds on the essential terms of a loan. Thus, the requested financial issues must be added.

Site Availability Issue

10. It is requested that the following issue be added concerning the availability of the antenna site proposed by Matos:

a. To determine whether Matos had at the time the application was filed reasonable assurance that the proposed transmitter site was available for its intended purpose.

b. To determine whether Matos presently has reasonable assurance of the availability of the proposed antenna site.

11. Matos proposes in his application to utilize the tower of the WSAN FM facilities in Culebra for his FM proposal. In the standard document exchange, there is a letter dated September 23, 1991 from Carlos J. Colon Ventura on WAPA letterhead which purports to be evidence of site availability. Copy attached as Exhibit 3.

12. Assuming Mr. Colon is properly authorized to make representations concerning the availability of the WSAN FM site, the four line letter is not evidence of a meeting of the minds concerning basic terms and conditions for the use of the proposed site. There is no discussion of the terms and conditions of any lease or other arrangement for use of the property. Compare National Communications Industries, 6 FCC Rcd 1978 (Rev. Bd. 1991). This four line letter falls far short of evidencing a meeting of the minds resulting in some firm understanding between the site owner and the applicant that is minimally required to establish reasonable assurance of a proposed transmitter's sites availability. See Webster Fuller Communications Associates, 3 FCC Rcd 6967 (Rev. Bd. 1988).

13. We appreciate that reasonable assurance of a transmitter site does not require a binding agreement. However, it does require some indication that the owner of the site is favorably disposed toward reaching an agreement with respect to the use of the property for the transmitting facilities. It requires more than a vague willingness to

deal on the part of the owner as we have here. See Progressive Communications, Inc., 3 FCC Rcd 5758 (Rev. Bd. 1988).

14. More importantly, however, the Colon facilities which Matos proposes to use are located on U.S. Fish and Wildlife Service property. The use accordingly is subject to permission by the Fish and Wildlife Service pursuant to Fish and Wildlife regulations. See 50 C.F.R. §§25-36. Mr. Colon has been issued a Special Use Permit, #36302, copy attached as Exhibit 4. That permit prohibits sub-leasing. See Exhibit 4, General Conditions, Item 10. Yet, the September 23, 1991 letter makes no mention of the Fish and Wildlife Service permit or any conditions or limitations thereof. Mr. Colon may be willing to "endorse" the Matos project, but that is not, under the circumstances here, reasonable assurance of the availability of the proposed site. The site issue must be added so that this basic issue can be fully explored.

WHEREFORE the premises considered, Santiago-Santos and Bonet respectfully request that the Presiding Judge grant the instant Petition to Enlarge and add the requested issues against Aurio A. Matos. The burden of proof as well as the

burden of proceeding should be on the applicant Aurio A. Matos. 3/

Respectfully submitted,

LLOYD SANTIAGO-SANTOS
and
LOURDES RODRIGUEZ BONET

By:


David E. Hill
Audrey P. Rasmussen
Their Attorneys

O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483
(202) 887-1400

Dated: June 22, 1993

3892h

3/ A Contingent Document Request is attached hereto as Exhibit 5. Depositions will be noticed as provided for in the Prehearing Order should this Petition be granted.

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

Yes No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 228,600

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the

[The following area contains multiple horizontal lines, likely representing a table or form for listing sources of funds, but the content is illegible due to heavy scanning artifacts.]



**SOUTHERN
MORTGAGE
CORPORATION**

50 West, Méndez Vigo Street
Mayagüez, Puerto Rico 00708
Tel. 833-7759



November 4, 1991

Mr. Aureo A. Matos
Pablo Casals St.
Mayaguez, Puerto Rico 00680

Dear Mr. Matos:

I have met you to discuss securing a loan for \$250,000. The loan amount will finance the construction and operating expenses of a New FM (CHANNEL 293 A) Radio Station in Culebra, Puerto Rico.

Here are the terms:

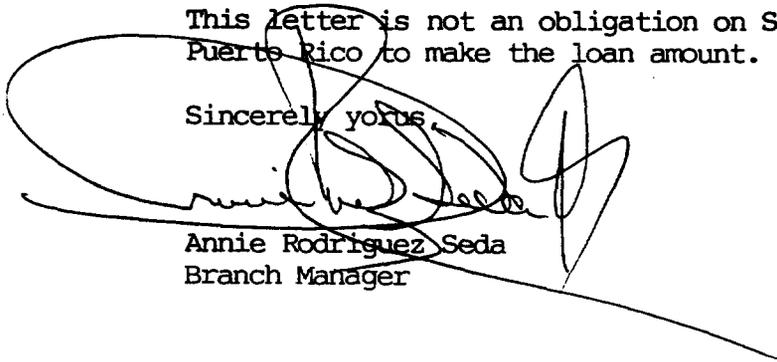
Loan Amount	\$250,000.
Interest Rate	To be negotiated
Years	To be agreed upon
Payment Plan	Interest only for the First Three Years

You have provided sufficient documentation and will personally guarantee the \$250,000 loan amount.

I understand that this letter is intend to provide reasonable assurance to the FCC (Federal Communications Commission) that sufficient funding is available to finance the construction and peration of a class A, FM Radio Station in Culebra, Puerto Rico. Also I understand expenses in contingent on you being granted the FCC license to construct and operate this station.

This letter is not an obligation on Southern Mortgage Corporation in Mayaguez, Puerto Rico to make the loan amount.

Sincerely yours,


Annie Rodriguez Seda
Branch Manager

WAPA
NOTI-RADIO 680

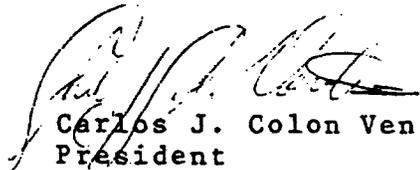
COPY

September 23, 1991

Mr. Aureo Matos Barreto
Mayaguez, Puerto Rico

Dear Sirs:

WSAN - FM in Flamenco Ward in Culebra will be please
to endorse Mr. Aureo Matos Barreto, in his proyect to
C.P. in our facilites in said place, where he can place
a transmitter.


Carlos J. Colon Ventura
President

 <p>UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE</p> <p>Culebra National Wildlife Refuge</p> <p>SPECIAL USE PERMIT</p>	Station No. to be Credited 41520	Permit Number 36302
	Date March 15, 1993	
	Period of Use (Inclusive) From October 1, 1992 To September 31, 1993	
Permittee Name Carlos J. Colon	Permittee Address P.O. Box 237 Culebra, P.R. 00771	
Purpose (specify in detail privilege requested, or units of products involved) Operation of a commercial FM Radio broadcasting antenna facility.		
Description (specify unit numbers; meles and bounds, or other recognizable designations) The site is located in the Flamenco Municipality at the western boundary of the Mt. Resaca unit of the Culebra National Wildlife Refuge. The facility is located wholly within the borders of the refuge unit.		
Amount of fee \$ 1,800.00 if not a fixed payment, specify rate and unit of charge: _____		
<input type="checkbox"/> Payment Exempt - Justification: <input checked="" type="checkbox"/> Full Payment <input type="checkbox"/> Partial Payment - Balance of payments to be made as follows:		

General Conditions

1. Payments

All payments shall be made on or before the due date to the local

7. Compliance

Failure of the Service to insist upon a strict compliance with any of the

**APPENDIX A: Special Conditions attached to
Special Use Permit No. 36302 Permit Holder: Carlos J. Colón**

SPECIAL CONDITIONS

1. Permit holder is subject to all general conditions detailed on the back of the Special Use Permit (SUP) and to all conditions and restrictions within the Code of Federal Regulations Title 50.

2. Use of site:

a) Restricted to the purpose described in the SUP. No activities other than the inspection and maintenance of the site by station employees or contracted workers will be permitted.

b) Site is open for inspection by Federal and Commonwealth officials.

c) Permittee must accommodate the operation of Cellular Communications of P.R. This includes, but is not limited to, ~~access through the site and use of the access road electrical~~

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

In re Applications of)

AURIO A. MATOS)

LLOYD SANTIAGO-SANTOS and)
LOURDES RODRIGUEZ BONET)

For Construction Permit for a)
New Station on Channel 293A)
in Culebra, Puerto Rico)

MM Docket No. 93-89

File No. BPH-911114MS

File No. BPH-911115MP

To: The Honorable Joseph P. Gonzalez

C. Mr. Colon Ventura (site availability)

ATTACHMENT 1

DOCUMENT PRODUCTION REQUEST

1. All documents that constitute the documentation referred to in the November 4, 1991 letter from Southern Mortgage Corporation.

2. All documents concerning, describing, relating to or regarding the November 4, 1991 letter from Southern Mortgage Corporation to Aurio A. Matos.

3. All documents concerning, describing, relating to or regarding the letter dated September 23, 1991 from Carlos J. Colon Ventura to Aurio A. Matos regarding the proposed FM site location.

4. All documents concerning, describing, relating to or regarding the proposed site specified in the Matos application for the Culebra FM facilities.

CERTIFICATE OF SERVICE

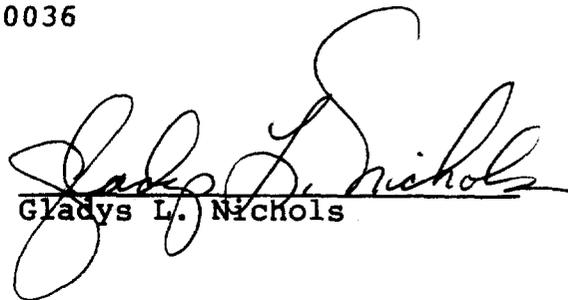
I, Gladys L. Nichols, do hereby certify that on this 22nd day of June, 1993, the foregoing **PETITION TO ENLARGE ISSUES** was served to the following persons by First Class Mail:

* The Honorable Joseph P. Gonzalez
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 221
Washington, D.C. 20554

Gary Schonman, Esq.
Hearing Branch
Federal Communications Commission
STOP CODE 1800C4
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

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Gladys L. Nichols

* Hand Delivered

3892h