

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

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MM Docket No. 93-43

DISPATCHED BY

In re Applications of

OJEDA  
BROADCASTING, INC.

File No. BPH-910705ML

For Construction Permit for  
a New FM Station on Channel 243A  
in Hobbs, New Mexico

**Appearances**

*Nathaniel F. Emmons, Esq.* and *Christopher A. Holt, Esq.*  
on behalf of Ojeda Broadcasting, Inc. and *Y. Paulette Lad-  
en, Esq.* on behalf of the Mass Media Bureau, Federal  
Communications Commission.

**SUMMARY DECISION OF ADMINISTRATIVE  
LAW JUDGE JOHN M. FRYSIK**

Issued: July 2, 1993;

Released: July 9, 1993

1. Ojeda Broadcasting, Inc. (Ojeda) pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. §1.251, has moved for summary decision in its favor on the issues specified against it in the *Hearing Designation Order*, DA 93-215, released March 9, 1993 (*HDO*).

2. The *HDO* specified the following issues against Ojeda:

- (1) To determine whether or not Ojeda was financially qualified at the time she filed her application.
- (2) To determine, in light of the evidence adduced pursuant to issue 1 above, whether Ojeda misrepresented facts or lacked candor with the Commission in certifying its financial qualifications.
- (3) To determine, in light of the evidence adduced pursuant to issues 1 and 2 above, whether Ojeda possesses the basic qualifications to be a licensee of the facilities sought herein.

Ojeda's was the only application for this facility designated for hearing.

**FINDINGS**

3. Ojeda is the sole applicant for a new FM facility in Hobbs, New Mexico. Originally, Ojeda's application was filed by Perla Acosta Ojeda as an individual applicant. However, Mrs. Ojeda subsequently amended her application as a matter of right on September 18, 1991, prior to the B cut-off deadline, to substitute Ojeda as the new corporate applicant. A copy of that tender amendment is attached to Motion herein as Exhibit 1. Perla Acosta Ojeda is the President, Treasurer and Director of Ojeda, and she

owns 80% of the applicant's authorized stock. Hermilio Ojeda, Perla Acosta Ojeda's husband, owns 20% of the applicant's stock but is neither an officer nor a director of the corporation. The Ojedas are both of Hispanic origin and they have lived in Hobbs, New Mexico, the proposed station's community of license, for a combined total of over 55 years. See Affidavit of Perla Acosta Ojeda attached as Exhibit 2 (at ¶ 2). Moreover, they both are active and longstanding community leaders and they both have substantial broadcast experience in the proposed market. *Id.* at ¶ ¶ 2-3.

4. Attached to Ojeda's Motion, at Exhibit 3, is the affidavit of Ojeda principal Perla Acosta Ojeda. Therein, Mrs. Ojeda asserts that she and her husband had sufficient net liquid assets on hand to meet Ojeda's projected expenses. Bank records which have been provided support the assertion. Specifically, Mrs. Ojeda has shown that, when they caused the application to be filed, she and her husband anticipated costs of \$50,000 to construct and operate the station for three months. They were counting on using a studio and equipment which they already employ to produce a radio program, as well as land which the Ojedas already own. In addition both Mr. and Mrs. Ojeda expected to work at the station. The Ojedas had \$55,000 in cash at the time and all of their assets, including their home, were owned free of debt. Thus, it is clear that Ojeda was financially qualified at the time the application was filed, even if, as the *HDO* concluded, there was some question as to whether the bank letter Ojeda first obtained constituted reasonable assurance of financing from the bank. Because Ojeda's sole principals had the necessary funds in cash, bank financing was not needed at that time. In view of the foregoing, Ojeda has clearly established that Issue 1 should be resolved in its favor. See *Northampton Media Associates*, 4 FCC Rcd 5517 (1989), *recon. denied*, 5 FCC Rcd 3075 (1990), *aff'd*, 941 F.2d 1214 (D.C. Cir. 1991).

5. Since Ojeda was financially qualified at the time it filed its application, it necessarily follows that Ojeda did not falsely certify as to those qualifications. In addition, even though the first letter obtained by the Ojedas, before they had the assistance of counsel, appears to fall short of the Commission's requirements for such letters, the fact remains that Mr. and Mrs. Ojeda believed that they had reasonable assurance of financing from the bank at that time. Thus, they had no deceptive intent when they certified that Ojeda had such reasonable assurance. Issue 2 will be decided in Ojeda's favor, as will be conclusory Issue 3.

6. The *HDO* did not specify a separate issue to specifically determine Ojeda's current financial qualifications, but it is noted that Ojeda's second bank letter, dated September 16, 1991, complies with Commission requirements. See Exhibit 2. Because the second letter is from the same bank, it also suggests that Ojeda may have had reasonable assurance at all times. In any event, Ojeda's Motion now appends the affidavit of D. Kirk Edens, the bank official with whom Mr. and Mrs. Ojeda met. Exhibit 5. Edens asserts that he was familiar with the Ojedas, who were regular bank customers. When Edens met with the Ojedas, he discussed with them their business plans, their broadcast experience, their financial resources, and possible financing terms. Thus, notwithstanding deficiencies in the original letter, now corrected in the new letter, the record indicates that Ojeda has reasonable assurance of bank financing sufficient to construct the proposed station and operate it for three months without revenue. *Scioto Broadcasters*

*Limited Partnership*, 5 FCC Rcd 5158 (Rev. Bd. 1990), review denied 6 FCC Rcd 1893, recon. dismissed 6 FCC Rcd 4626 (1991).

### CONCLUSIONS

7. The Commission's Rules provide that summary decision may be granted where there exists no genuine issue of material fact that requires examination at hearing. 47 C.F.R. §1.251(a). The purpose of this rule is to avoid unnecessary hearings where material facts are not in dispute. *Summary Decision Procedures*, 34 FCC 2d 485, 487 (1972); see, *Telecorpus, Inc.*, 30 RR 2d 1641 (ALJ 1974). Where, as here, the party seeking summary decision establishes through sworn affidavits or other suitable materials that no triable issue exists, summary decision is appropriate. See *Ramon Rodriguez & Associates*, 66 RR 2d 1878, 1879 (Rev. Bd. 1989). The materials and sworn affidavits attached to this Motion as Exhibits 1-5 satisfy this requirement and conclusively establish that the specified issues should be resolved in Ojeda's favor.

8. Since the issues specified against Ojeda have been resolved in its favor, there is no impediment to the grant of Ojeda's application.

Accordingly, IT IS ORDERED that the Motion for Summary Decision, filed on June 8, 1993, by Ojeda Broadcasting, Inc. IS GRANTED, and the issues specified against Ojeda in the HDO ARE RESOLVED in its favor.

IT IS FURTHER ORDERED that, unless an appeal from this Summary Decision is taken to the Commission or the Commission reviews this Summary Decision on its own motion in accordance with Section 1.276 of the Rules, the application of Ojeda Broadcasting, Inc. to construct and operate a new FM Station on Channel 243A in Hobbs, New Mexico IS GRANTED and this proceeding IS TERMINATED.<sup>1</sup>

### FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak  
Administrative Law Judge

<sup>1</sup> In the event exceptions are not filed within 30 days after the release of this Summary Decision and the Commission does not review the case on its own motion, this Summary Decision

shall become effective 50 days after its public release pursuant to Rule 1.276(d).