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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC

In re Applications of	)	MM Docket No. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	
ASF BROADCASTING CORP.	)	File No. BPH-911230MB
	)	
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES	)	File No. BPH-911231MC

For Construction Permit for an
FM Station on Channel 280A in
Westerville, OH

To: Administrative Law Judge
Walter C. Miller

REPLY TO OPPOSITION TO MOTION TO ENLARGE THE ISSUES
AGAINST WILBURN INDUSTRIES, INC.

Shellee F. Davis ("Davis"), by her attorney, hereby submits her Reply to the "Opposition to Motion to Enlarge Issues" ("Opposition") filed by Wilburn Industries, Inc. ("Wilburn") in this proceeding.[1] With respect thereto, the following is stated:

As Davis established previously, evidence gathered during discovery revealed that Wilburn did not prepare a written budget prior to filing its application, did not learn the details underlying the "bottom line" operational figure supplied to it by a WBBY employee until 1993 (nearly 1 1/2 years after filing its application), did not review its financial

[1] Wilburn filed its Opposition on September 3, 1993, which was at least one day late. See Wilburn Opposition at 12 n.9. This Reply is being filed five days after the opposition was filed (as computed under Section 1.4 of the Commission's Rules), as permitted under Section 1.294(c). This Reply therefore is timely filed.

No. of Copies rec'd 0+16
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sources' (its principals') balance sheets prior to executing its application, has not included a figure for attorneys fees in its construction/operation budget, and did not include funds sufficient to purchase the equipment that Mid-Ohio will not necessarily be supplying. Wilburn does not dispute the vast majority of these facts, and instead argues that the Commission's standard requirements are inapplicable to it.

Wilburn first claims that was justified in utilizing prior to the time it filed its application as a "budget" the bottom-line "$30,000" figure supplied to it by ASF's former General Manager. As Wilburn concedes, it did not have knowledge of the components of that budgetary figure until a year later -- no individual budget was prepared.[2]

First of all, Wilburn's "budget," even if it in fact was timely prepared (see n.2), clearly was deficient. As the Review Board stated in Gilbert Broadcasting Corp., 43 R.R.2d 51 (Rev. Bd. 1978):

> Each applicant is required, among other things, to include within its application estimates that it believes reflect the costs of implementing its particular proposal for operating the station....These estimates can be expected to vary greatly among applicants depending upon how each applicant intends to operate the station. Thus, as correctly noted by Judge Naumonwitz, each applicant must be evaluated on the basis of the costs of operation that it has proposed and not on the basis of costs proposed by other applicants. ....Thus, we cannot find [the applicant] to be financially qualified.

Id. at 75-76 ¶ 23 (emphasis added). Therefore, Wilburn's financial proposal must stand or

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[2] Although Wilburn notes that its alleged "budget" was supplied to counsel for Davis (Motion at 4 n.3), the copy of the document supplied to Davis is undated, and according to Bernard Wilburn's testimony, the document was not prepared until May 1993. See Attachment 5. The date on the copy of the letter attached to Wilburn's Opposition at Attachment C also is partially cut-off and unreadable.

fall on its own merits, yet it was not even formulated prior to the time its application was filed. In Armando Garcia, 3 FCC Rcd 1065 (Rev. Bd. 1988), an applicant was permitted to rely on a "bottom line" budget such as the one prepared by Wilburn only because the applicant was an experienced broadcaster who had proposed expenses which were "virtually identical" to a similar facility in a neighboring community. Thus, "under the specific circumstances of [that] particular proceeding," the Review Board held that the applicant's estimate of costs were reasonable. Id. at 1066 ¶¶ 8-9. In contrast here, Wilburn is not an experienced broadcaster and has never applied previously for a facility. Wilburn therefore does not fall within the narrow exception established in the Garcia case, and its budget (or lack thereof) therefore necessitates the additional of an issue concerning whether Wilburn possessed sufficient knowledge of the cost of construction and initial operation of its particular proposed station at the time it filed its application, and consequently, whether it legally was "financially qualified" at the time it filed its application.

Secondly, Wilburn concedes that its principals did not timely prepare financial statements to establish their financial qualifications prior to executing their application, but further argues that their preparation in this instance should be unnecessary. Opposition at 5 n.5 and 7.

In this regard, Wilburn also is incorrect. First, the Commission's application Form 301 unambiguously states:

> The applicant must also have on hand at the time it files its application, BUT NEED NOT SUBMIT WITH THE APPLICATION, the following documentation:
>
> (b) For each person identified in response to Question 3, Section III, who has already furnished funds [or] extended credit...:

> A copy of the agreement obligating the party to furnish funds...
>
> (c) For each person identified in response to Question 3, Section III, who has **agreed to** furnish funds [or] extend credit... a balance sheet or financial statement showing:
>
> > All liabilities and current and liquid assets sufficient to meet current liabilities
> >
> > Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and
> >
> > Net income after Federal income tax, received for the past two years

Attachment 1.[3] Both of Wilburn's principals executed Wilburn's application -- therefore, since both of Wilburn's principals personally have proposed to furnish funds for the construction and operation of Wilburn's proposed station, in order for Wilburn's principals to be familiar with the ability of the other principal to meet their $75,000 commitment, it would have been necessary for each principal to review the requisite financial statements prior to execution of their application.[4]

Wilburn argues that it should be unnecessary for financial statements to be prepared for each principal since they are employed by the same business, and are familiar with each others' income. Motion at 5 n.5. This argument cannot be credited. There has

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[3] Wilburn questioned whether the same instructions were included in the 1991 Version of the FCC Form 301. Wilburn Opposition at 4-5 n.4. As seen in Attachment 1, they were.

[4] Arguably, even for a principal to be aware of the availability of sufficient "net liquid funds" from his own resources, it should be necessary for each principal to compile and review his own financial statement in order for the applicant to comply with the Commission "reasonable assurance" standard.

been no declaration or record evidence that has been supplied by Wilburn substantiating that its principals are familiar with each others' "financial position" or that they have ever seen the others' financial statement. Cf. 47 C.F.R. §1.229(d) ("oppositions shall contain specific allegations of fact...[s]uch allegations of facts...shall be supported by affidavits of a person or persons having personal knowledge thereof"). Moreover, review of Bernard Wilburn's financial statement demonstrates why review is necessary -- even though Bernard Wilburn has pledged to supply $75,000 in funds, the Statement of Financial Position shows that he possessed only $39,500 in liquid funds as of January 31, 1992.[5] See Motion at Attachment 4. Wilburn also argues that the fact that the financial sources are father and son should negate the need to have provide financial statements. Opposition at 5 n.5. However, the fact that the principals are relatives also is of no consequence -- as the Review Board established in Short Broadcasting Co., FCC 93R-40 (Rev. Bd., Aug. 19, 1993), the fact that an applicant is placing reliance on funds from a relative is of no consequence where the principal has not previously reviewed a financial statement in order to establish the source's ability to provide financing and has no direct knowledge of the source's assets and liabilities. Id. at 4 ¶¶ 13-15.

Wilburn also fails to sufficiently rebut Davis' showing that Wilburn is not financially qualified because its budget has failed to include sufficient funds to purchase or confidently obtain other equipment for its station -- specifically, the equipment dealt with in the Mid-Ohio letter. Therefore, Wilburn has never been financially qualified to construct

[5] There is no indication that the "Accounts Receivable" constitute liquid funds, and the Statement concedes that the property owned by Bernard Wilburn constitutes "Fixed" assets.

and operate its proposed station.

Wilburn responds by falsely re-interpreting the Mid-Ohio letter, and adding words into the Mid-Ohio letter which do not exist. Compare Wilburn Opposition at 10 with Attachment 2. A standard "turn-key" equipment lease is attached hereto as Attachment 3. As seen, in a standard equipment lease, a leasing company commits to provide certain specific equipment in return for certain compensation. In such a standard arrangement, a lessor is not left to "guess" "which if any" or whether "some or all" of the equipment will, in fact, be made available. By the plain terms of the Mid-Ohio letter, the Mid-Ohio letter provides far less than the assurances contained in a typical leasing arrangement -- while Mid-Ohio agrees to lease "equipment," instead of stating which equipment it is willing to lease, the letter states:

> The equipment would include some or perhaps all of the equipment itemized in the inventory accompanying this inventory. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price.

Attachment 2. In fact, the author of the Mid-Ohio letter has been contacted, and as seen in Attachment 4, Mr. Fry confirms that Mid-Ohio has no provided no assurances of necessarily leasing all of the equipment to any applicant. As Mr. Fry, Mid-Ohio's Authorized Agent states in his Declaration issued under penalty or perjury, while valid assurances have been provided by Mid-Ohio for lease of the Mid-Ohio tower, transmitter builder and studio, the same cannot be said for the tangible personal property owned by Mid-Ohio:

> In regard to the personal property, Mid-Ohio provided no assurance concerning what itemized equipment in the inventory accompanying the correspondence would be available to the successful applicant.

Attachment 4.

Thus, the facts are as Davis has known all along -- namely, that while it is possible that the Mid-Ohio equipment will be made available by lease to Davis or another successful applicant at such time as the construction permit in this proceeding is awarded, no assurances of that availability yet exist.[6] Instead of including funds in its budget sufficient to accommodate the possible unavailability of all of the equipment for the operation of the station, Wilburn blithely has wrongly proceeded under the assumption that "all" equipment has been pledged to it (or any other successful applicant), and consequently, no additional funds for the purchase or lease of funds have been budgeted by Wilburn to ensure its ability to successfully construct and operate its proposed station. It is well established that an applicant is not free to ignore the express conditions or limitations imposed on property by an owner. Intermart Broadcasting Gulf Coast, Inc., 8 FCC Rcd 2937, 2939 ¶ 11 (Rev. Bd. 1993), citing, South Florida Broadcasting Co., Inc., 57 R.R.2d 495, 500 (Rev. Bd. 1984). As a result, it must be concluded that a prima facie case has been presented indicating that Wilburn did not possess a "reasonable assurance" of the availability of sufficient funds for the construction and initial operation of its proposed station at the time it filed its application (or thereafter), which also necessitates the addition of the requested issue.

In sum, Wilburn all but concedes that it did not fulfill "one or two of the detailed steps called for by Commission policy." Opposition at 11. In fact, its situation is

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[6] In contrast, although Davis is proposing to use the Mid-Ohio equipment, she has prepared a "worst case" budget and has made arrangements for the availability of funds sufficient to purchase, if necessary, new equipment to replace the Mid-Ohio equipment in the event the Mid-Ohio equipment becomes unavailable prior to the execution of a lease between Davis and Mid-Ohio. Davis' budget also provides for a $50,000+ financial cushion.

far worse. In its defense, Wilburn repeatedly argues that those omissions were mistaken and done in "good faith." Wilburn's "good faith," however, is not at issue -- as the Review Board has observed:

> Reasonable assurance is an objective standard. An applicant's subjective belief...is not sufficient to meet the standard, although it may reflect on the applicant's intent when certifying to [its] application. See generally Janice Fay Surber, 5 FCC Rcd at 6159 ¶ 59.

Isis Broadcast Group, 7 FCC Rcd 5125, 5130 n.17 (Rev. Bd. 1992). Davis pointedly has not requested the addition of an issue calling into question Wilburn's character or veracity. That fact, however, nevertheless does not negate the need for a financial issue to be added in this proceeding, under the facts presented in this case.

In short, it is well established that an applicant must have reasonable assurance of financing at the time it files its application. Aspen FM, Inc., 6 FCC Rcd 1602, 1603 (1991). No new financial proposal can be accepted absent the submission of a petition for leave to amend pursuant to 47 C.F.R. § 73.3522(b) demonstrating good cause. Texas Communications Limited Partnership, 6 FCC Rcd 3186, 3187 ¶ 9 (1991). Here, since Wilburn "knew or should have known" that its financial proposal was not sufficient, it would be unable to demonstrate good cause for any amendment to its financial proposal at this late date. The facts presented in Davis' original Motion and herein therefore pertains to a matter clearly of potential decisional significance in this case, and warrants the addition of the requested issue.

WHEREFORE, it is respectfully requested that the Motion to Enlarge Issues Against Wilburn Industries, Inc. filed by Shellee F. Davis be granted, and that the issues be enlarged in this proceeding against Wilburn Industries, Inc., as requested.

Respectfully requested,

SHELLEE F. DAVIS

By: _____
Dan J. Alpert

Her Attorney

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September 16, 1993

ATTACHMENT 1

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0027
Expires 2/28/92

Instructions for FCC 301
Application for Construction Permit for Commercial Broadcast Station
(FCC Form 301 attached)

GENERAL INSTRUCTIONS

A. This FCC form is to be used to apply for authority to construct a new commercial AM, FM or TV broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

I. GENERAL INFORMATION
II. LEGAL QUALIFICATIONS
III. FINANCIAL QUALIFICATIONS
IV-A. PROGRAM SERVICE STATEMENT
IV-B. INTEGRATION STATEMENT
V. ENGINEERING DATA AND ANTENNA AND SITE INFORMATION
VI. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
VII. CERTIFICATIONS

An applicant for change in facilities need file only Sections I, V and VII. Do not file Sections II, III, IV-A, IV-B and VI.

B. Many references to FCC Rules are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in 47 Code of Federal Regulations (C.F.R.):

(1) Part 0 "Commission Organization"
(2) Part 1 "Practice and Procedure"
(3) Part 17 "Construction, Marking and Lighting of Antenna Structure"
(4) Part 73 "Radio Broadcast Services"

FCC Rules may be purchased from the Government Printing Office, Washington, D.C. 20402. You may telephone the GPO Order desk at (202) 783-3238 for current prices.

C. Prepare an original and two copies of this form and all exhibits. This application with all required exhibits should be filed with the FCC's Washington, D.C. office in accordance with 47 C.F.R. Section 0.401.

D. By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, applicants seeking to construct a new commercial AM, FM or TV broadcast station or to make changes in the authorized facilities of such a station are required to pay and submit a fee with the filing of the application. See 47 C.F.R. Section 1.1112. A listing of the required charges is set forth in 47 C.F.R. Section 1.1104. Full payment of the required fee may be made by check, bank draft or money order payable to the Federal Communications Commission. An application submitted with an insufficient payment or with an inappropriate form of payment will be returned, along with the tendered payment, to the applicant without processing. Except for the limited circumstances enumerated in 47 C.F.R. Section 1.1111, an accepted fee payment will be retained by the government irrespective of the subsequent substantive disposition of the underlying application. For further information regarding fees, see 47 C.F.R., Part 1, Subpart G.

E. Public Notice Requirements:

(1) 47 C.F.R. Section 73.3580 requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in 47 C.F.R. Sections 73.3571(a)(1) (AM), 73.3572(a)(1) (television), or 73.3573(a)(1) (FM)) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in 47 C.F.R. Sections 73.3571(b) (AM), 73.3572(b) (television), and 73.3573(b) (FM).

(2) Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirements must be certified in Section VII of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of 47 C.F.R. Section 73.3580. Proof of publication need not be filed with this application.

F. A copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to 47 C.F.R. Section 73.3526.

G. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. **Defective or incomplete applications will be returned without consideration.** Furthermore, inadvertently accepted applications are also subject to dismissal.

H. In accordance with 47 C.F.R. Section 1.65, the applicant has a **continuing obligation** to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

I. Amendments to previously filed applications should be prepared and submitted in triplicate (an original and two duplicate copies), signed in the same manner as the original application, and should contain the following information to identify the application being amended:

(1) Applicant's name.
(2) Service (AM, FM or TV).
(3) Call letters or specify new station.
(4) Channel number (FM or TV) or frequency (AM).
(5) Community of license.
(6) File number (if known) of application being amended.
(7) Date of filing of application (if file number not known).

INSTRUCTIONS FOR SECTION I - GENERAL INFORMATION

A. The name of the applicant stated in Section I shall be:

(1) if a corporation, the EXACT corporate name;
(2) if a partnership, the names of all general partners, and the name under which the partnership does business;
(3) if an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;
(4) if an individual applicant, the full legal name.

In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.

B. In Section I use the following State abbreviations:

Alabama	AL	Kentucky	KY	Ohio	OH
Alaska	AK	Louisiana	LA	Oklahoma	OK
American Samoa	AS	Maine	ME	Oregon	OR
Arizona	AZ	Marshall Islands	MH	Palau	PW
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federal States of		Montana	MT	Texas	TX
Micronesia	FM	Nebraska	NE	U.S. Minor Outlying	
Florida	FL	Nevada	NV	Islands (etc.)	UM
Georgia	GA	New Hampshire	NH	Utah	UT
Guam	GU	New Jersey	NJ	Vermont	VT
Hawaii	HI	New Mexico	NM	Virginia	VA
Idaho	ID	New York	NY	Virgin Islands	VI
Illinois	IL	North Carolina	NC	Washington	WA
Indiana	IN	North Dakota	ND	West Virginia	WV
Iowa	IA	Northern Mariana		Wisconsin	WI
Kansas	KS	Islands	MP	Wyoming	WY

INSTRUCTIONS FOR SECTION II – LEGAL QUALIFICATIONS

A. As used in Section II, the words "party to this application" have the following meanings:

APPLICANT: The individual or entity seeking the proposed facilities.

INDIVIDUAL APPLICANT: The natural person applying for the facilities in his or her own right.

PARTNERSHIP APPLICANT: All partners, including limited partners. However, limited partners in a limited partnership are not considered parties to the application IF the limited partners are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the applicant so certifies in response to Question 5(a), Section II. Sufficient insulation of a limited partner for purposes of this certification would be assured if the limited partnership agreement:

(1) specifies that any exempt limited partner (if not a natural person, its directors, officers, partners, etc.) cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company;

(2) bars any exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises;

(3) restricts any exempt limited partner from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business;

(4) empowers the general partner to veto any admissions of additional general partners admitted by vote of the exempt limited partners;

(5) prohibits any exempt limited partner from voting on the removal of a general partner or limits this right to situations where the general partner is subject to bankruptcy proceedings, as described in Sections 402 (4)-(5) of the Revised Uniform Limited Partnership Act, is adjudicated incompetent by a court of competent jurisdiction, or is removed for cause, as determined by an independent party;

(6) bars any exempt limited partner from performing any services to the limited partnership materially relating to its media activities, with the exception of making loans to, or acting as a surety for, the business; and

(7) states, in express terms, that any exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.

Notwithstanding conformance of the partnership agreement to these criteria, however, the requisite certification cannot be made if the applicant has actual knowledge of a material involvement of the limited partner in the management or operation of the media-related business of the partnership. In the event that the applicant cannot certify as to the noninvolvement of the limited partners, the limited partners will be considered as parties to this application.

CORPORATE APPLICANT: All officers and directors and each owner of or subscriber to stock accounting for 5% or more of the outstanding votes in the corporation. However, where an individual or a single entity holds more than 50% of the applicant's voting stock, and a simple majority is all that is required to control corporate affairs, other stockholders are not considered parties to this application.

Where a corporation is a party to this application by virtue of its ownership or subscription to 5% or more of the voting stock of the applicant, each of the corporate stockholder's directors and "executive officers (president, vice-president, secretary, treasurer or their equivalents) is considered a party to this application UNLESS the applicant submits a statement establishing that an individual director or officer will not exercise authority or influence in areas that will affect the applicant or the proposed station. The applicant should identify the individual by name and title, describe the individual's duties and responsibilities, and explain why that person should not be attributed an interest in the corporate applicant or considered a party to this application. In addition, a person or entity holding an ownership interest in the corporate stockholder of the applicant is considered a party to this application ONLY IF that interest, when multiplied by the corporate stockholder's interest in the applicant, would account for 5% or more of the votes of the applicant. For example, where X owns or subscribes to stock accounting for 25% of the applicant's votes, only those stockholders of corporation X which hold stock accounting for 20% or more have a 5% indirect interest in the applicant (.25 x .20 = .05) and, therefore, are considered parties to this application. In applying the multiplier, any entity holding more than 50% of its subsidiary will be considered a 100% owner.

If any stockholder agreement exists pertaining to cooperative voting accounting for 5% or more of the votes, that block of stock is regarded as if held by a single entity and any stockholder holding 5% or more of the stock in that block is considered a party to this application.

An investment company, insurance company or trust department of a bank is not considered a party to this application IF its aggregated holding accounts for less than 10% of the outstanding votes in the applicant AND IF the applicant certifies that:

(1) such entity exercises no influence or control over the corporation, directly or indirectly; and

(2) such entity has no representatives among the officers and directors of the corporation.

ANY OTHER APPLICANT: All executive officers, members of the governing board and owners or subscribers who hold 5% or more of the votes in the applicant.

B. As used in Section II, the words "non-party equity owners in the applicant" have the following meanings:

PARTNERSHIP APPLICANT: All holders of equity interests in the applicant that are not considered parties to the application, including all limited partners. In the event there are more than fifty (50) owners of equity interests in the applicant, only those who own 5% or more of the total equity in the applicant are considered non-party equity owners for purposes of Section II.

CORPORATE APPLICANT: All holders of equity interests in the applicant that are not considered parties to the application, including all nonvoting stockholders, stockholders with less than 5% voting stock interest and stockholders with less than a majority interest in voting stock where a single entity owns more than 50% of the voting stock. In the event that there are more than fifty (50) stockholders or owners of equity interests in the applicant, only those who own 5% or more of the total equity in the applicant are considered non-party equity owners for purposes of Section II.

ANY OTHER APPLICANT: All holders of equity interests in the applicant that are not considered parties to the application.

C. An attributable interest is an ownership interest in or relation to an applicant or licensee which will confer on its holder that degree of influence or control over the applicant or licensee as should subject it to limitation by the Commission's multiple ownership rules. Parties to the application are holders of attributable interests. Non-party holders of equity interests in the applicant are holders of nonattributable interests. While these holders of nonattributable interests are not considered parties to the application, Section II information must be provided for them. Moreover, they may have attributable interests in other media that are considered under the Commission's cross-interest policy which seeks to ensure the promotion and maintenance of arms' length competition between stations in the same area. For example, a limited partner in an applicant, which has made the above partnership certification, may have an attributable interest in a newspaper or broadcast station in the same area, or in a station with contours that overlap the applicant's proposed station, or in a cable television (CATV) system that is located within the Grade B contour of a proposed television station. See, generally, 47 C.F.R. Sections 73.3555 and 76.501 as to the relevant contours. If so, the applicant is required:

(1) to identify the individuals or entities that have an attributable interest in another medium of mass communications in the area;
(2) to state the nature and extent of the interest in the applicant; and
(3) to identify the other medium and the nature and extent of the interest held.

In situations in which a marital relationship is involved, the interests held by one spouse are presumptively attributed to the other and both spouses may, unless this presumption is rebutted by an appropriate showing, be considered to be holders of attributable interests and parties to this application.

D. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

Section 310 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain UNLESS the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986).

INSTRUCTIONS FOR SECTION III – FINANCIAL QUALIFICATIONS

A. All applicants filing Form 301 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.

B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.

D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

(b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.

(2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: If the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 30 days, four monthly payments; if due in 60 days, three monthly payments, etc.)

(3) The applicant must also have on hand, at the time it files its application, **BUT NEED NOT SUBMIT WITH THE APPLICATION**, the following documentation:

(a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.

(b) For each person identified in response to Question 8, Section III, who has already furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

(c) For each person identified in response to Question 8, Section III, who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

(d) For financial institutions or equipment manufacturers, identified in response to Question 8, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.

E. It is Commission policy not to approve extensions of time for construction on the basis of financial inability or unwillingness to construct.

INSTRUCTIONS FOR SECTION IV-A – PROGRAM SERVICE STATEMENT

Applicants need only file a program service statement called for in Section IV-A of this application. See Deregulation of Radio, 84 FCC 2d 968 (1981), reconsideration denied, 87 FCC 2d 797; and Commercial TV Stations, 98 FCC 2d 1076 (1984), reconsideration denied, 60 RR 2d 526 (1986).

INSTRUCTIONS FOR SECTION IV-B – INTEGRATION STATEMENT

The applicant's integration statement must identify each principal who will participate in the management of the station, his or her position, duties and hours, and for each principal whether a qualitative credit will be claimed for minority status, past local residence, female status, broadcast experience or civic activity. Any claim for "daytimer" preference must also be stated. An applicant may include its integration statement in this application, but it must file its integration statement with the Commission by the amendment as-of-right date in FM proceedings, or the "B" cut-off date in AM and television proceedings. If an applicant fails to disclose its integration statement by the amendment as-of-right or "B" cut-off date, whichever is applicable, it will receive no credit for integration in the comparative hearing.

INSTRUCTIONS FOR SECTION V – ENGINEERING DATA AND ANTENNA AND SITE INFORMATION

A. An indication as to the specific transmitter make and model is not required on the application. Rather, any subsequent permit authorizing construction will require installation of a type accepted transmitter or one complying with the provisions of 47 C.F.R. Section 73.1660. Applicants for AM facilities are reminded of the maximum rated power limitations for transmitters imposed by 47 C.F.R. Section 73.1665.

B. Prior to January 4, 1982, parties submitting AM directional antenna patterns pursuant to 47 C.F.R. Sections 73.150 and 73.152 (standard patterns and modified standard patterns) had to submit patterns which were tabulated and plotted using units of millivolts per meter at one mile. Beginning on January 4, 1982, such patterns must be tabulated and plotted using units of millivolts per meter at one kilometer. Applications which are amended should use the units in effect as of the day of submission of the amendment. Applications which were on file prior to January 4, 1982, need not be amended solely for the purpose of conversion to metric units. Applications which are submitted using the wrong units will be returned unless they are promptly amended to use the correct units. See 47 C.F.R. Section 73.181(f) concerning uses of the metric system with AM stations.

C. When applying for FM station construction permit, one of the submissions required by FCC Form 301, Section V-B, is a 7.5 minute series U.S. Geological Survey topographic quadrangle map upon which is marked the transmitter site. The Commission recommends that applicants submit at least one original copy of each appropriate full-scale USGS quadrangle map, if available, with the transmitter site properly marked and labeled.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an FM application, it is necessary for this site map to show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers (if available) or miles and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGS maps, provided they are clear, dark and legible. It is not necessary to submit an entire map (although this is perfectly acceptable), but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvenient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies toward the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

D. The latitude and longitude coordinates for all points in the United States are based upon the 1927 North American Datum (NAD 27). The National Geodetic Survey is in the process of replacing NAD 27 with the more accurate 1983 North American Datum (NAD 83) and updating current topographic maps with NAD 83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datums, however, the Commission announced that until

further notice, applicants are to furnish coordinates based on NAD 27 datum on all submissions and the Commission will continue to specify NAD 27 coordinates in its data bases and authorizations. In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD 27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988). Accordingly, in furnishing the information called for in Section V (e.g., V-A (AM) #4, V-B (FM) #2, V-C (TV) #2), NAD 27 datum should be used.

E. The following guidance is provided for the questions regarding environmental impact (V-A (AM) #14, V-B (FM) #20, V-C (TV) #20):

(1) Place an (X) in the appropriate box to indicate whether a Commission grant of the proposed communication facility(ies) may have a significant environment impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

(a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.

(b) A facility whose construction will involve significant change in surface features.

(c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.

(d) The facilities or the operation of which will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

(2) If you answer Yes, submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:

(a) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.

(c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.

(3) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

(4) The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

(5) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(6) An EA need not submitted to the Commission if another agency of the Federal Government has assumed responsibility (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

INSTRUCTIONS FOR SECTION VI – EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

A. Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This is submitted to the Commission as the Model EEO Program on FCC Form 396-A, which should be filed as part of the application. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five full-time employees, no EEO program for women or minorities need be filed.

B. Guidelines for developing an Equal Employment Opportunity program are set forth in FCC Form 396-A.

NOTE: This five-point Broadcast Equal Employment Opportunity Model Program Report (FCC 396-A) is to be utilized only by applicants for new construction permits, assignees and transferees.

INSTRUCTIONS FOR SECTION VII – CERTIFICATIONS

A. Applicants for a new AM, FM or TV broadcast station or for a major modification of the authorized facilities of such stations (as defined in 47 C.F.R. Sections 73.3571(a), 73.3573(a), or 73.3572(a), respectively) are required to give public notice of the filing of their applications by publication in a local newspaper and/or by broadcast announcements in accordance with 47 C.F.R. Section 73.3580.

B. An applicant need not have a binding agreement or absolute assurance of the availability of the transmitter site it proposes to utilize. However, the applicant must be able to show that it has obtained reasonable assurance that the proposed site is available to it. The Commission's requirements will be satisfied where an applicant has contacted the property owner or the owner's representative and has obtained reasonable assurance, in good faith, that the proposed site will be available for the intended purpose.

C. The original of this application form must be signed by the applicant. The required copies can be conformed. See 47 C.F.R. Section 73.3513.

NOTE: Certification of site availability is required only in applications for authority to construct a new station or to change the site of an existing facility.

ATTACHMENT 2

MID-OHIO COMMUNICATIONS, INC.
Post Office Box 14
Westerville, Ohio 43081

December 24, 1991

Charles W. Wilburn
Attorney at Law
210 S. Court Street
Circleville, OH 431131

WILBURN INDUSTRIES, INC.
"Exhibit 2"

RE: Mid-Ohio Communications, Inc./WBBY-FM/Lease of Assets

Dear Mr. Wilburn:

This correspondence is in regard to your recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which is utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are planning to apply for the broadcast license of WBBY-FM, Westerville, Ohio, and this correspondence is to confirm that should the Federal Communications Commission award you the construction permit, Mid-Ohio Communications, Inc., the former licensee of WBBY-FM, is willing to negotiate appropriate leases with you for certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies in the amount of Six Thousand Dollars ($6,000.00) per month.

The real estate lease and equipment lease which would commence upon the FCC granting your construction permit would include the use of the tower site (tower and building) located at State Route 37, Sunbury, Ohio 43074; studio facilities located at 14 Dorchester Court, Westerville, Ohio 43081; and equipment utilized in the operation of the station. The equipment would include some or perhaps all of the equipment itemized in the inventory accompanying this correspondence. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price. This correspondence conveys an intent to negotiate terms of lease agreements and does not in and of itself constitute lease agreements. Although it is contemplated that mutually acceptable terms will be negotiated in regard to the various leases, there is no guarantee of that occurrence.

Within sixty (60) days of the date of this letter, you must provide Mid-Ohio Communications, Inc. with a showing of financial qualifications satisfactory to Mid-Ohio Communications, Inc. for it to enter into the above-referenced leases. Mid-Ohio Communications, Inc. reserves the right to cancel this letter within sixty (60) days of receipt of your financial information. Notwithstanding the above, at the time you receive the construction permit, Mid-Ohio Communications, Inc. reserves the right to again review your financial condition to determine if you then have financial qualifications satisfactory to Mid-Ohio Communications, Inc. to enter into the above-referenced leases. In regard to a showing of financial strength, if the lessee is a corporation, the principals of lessee will have to personally sign unconditional guarantees in regard to the lease obligations.

Mid-Ohio Communications, Inc. hereby grants you the authority to specify WBBY-FM's transmitter location in your FCC application. We wish you the best of luck in your application for licensure being prepared for filing with the Federal Communications Commission.

Sincerely,

MID-OHIO COMMUNICATIONS, INC.

By: Carl B. Fry
Carl B. Fry, Authorized Representative

Attachment

ATTACHMENT 3

PLC

Priority Leasing Corporation
4210 Spicewood Springs Road • Suite 203 • Austin, Texas 78759
512 • 345-5298 800 • 999-9546 FAX 512 • 345-8650

DATE: September 15, 1993

TO: Dan Alpert VIA FAX

FROM: Cathie Hayden, ext 135

SUBJ: Blank Lease

Mr. Alpert:

The following lease copies illustrate a "standard" lease that would be used for an equipment lease. We have placed an 'X' where individual information would be shown. The lease document, along with the Schedule A (itemized with specific equipment) is industry standard and accepted by most underwriters.

I hope this is of assistance to you. Please call me if you have any other questions.

Cathie Hayden

LESSOR	LEASE NUMBER

FULL LEGAL NAME AND ADDRESS OF LESSEE	SUPPLIER OF EQUIPMENT (COMPLETE ADDRESS)
JOINTLY AND SEVERALLY RESPONSIBLE	

EQUIPMENT LEASED

EQUIPMENT LOCATION IF DIFFERENT — STREET ADDRESS

CITY _____ COUNTY _____ STATE _____ ZIP _____

TERMS	AMOUNT OF EACH PAYMENT (PLUS SALES TAX, IF APPLICABLE)	MONTHLY ☐ OTHER/SPECIFY ☐	TERM OF LEASE (NO. OF MONTHS)	NO. OF PAYMENTS	SECURITY DEPOSIT

TERMS AND CONDITIONS OF LEASE

1. LEASE. Lessee hereby leases from Lessor, and Lessor leases to Lessee, the personal property described above, together with any replacement parts, additions, repairs or accessories now or hereafter incorporated in or affixed to it (hereinafter referred to as the "Equipment").

2. ACCEPTANCE OF EQUIPMENT. Lessee agrees to inspect the Equipment and to execute an Acknowledgement and Acceptance of Equipment by Lessee notice, as provided by Lessor, after the Equipment has been delivered and after Lessee is satisfied that the Equipment is satisfactory in every respect. Lessee hereby authorizes Lessor to insert in this Lease serial numbers or other identifying data with respect to the Equipment.

3. DISCLAIMER OF WARRANTIES AND CLAIMS; LIMITATION OF REMEDIES. THERE ARE NO WARRANTIES BY OR ON BEHALF OF LESSOR. Lessee acknowledges and agrees by his signature below as follows:

(a) LESSOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, ITS DESIGN, ITS CAPACITY, ITS QUALITY, OR WITH RESPECT TO ANY CHARACTERISTICS OF THE EQUIPMENT;

(b) Lessee has fully inspected the Equipment which it has requested Lessor to acquire and lease to Lessee, and the Equipment is in good condition and to Lessee's complete satisfaction;

(c) Lessee leases the Equipment "as is" and with all faults;

(d) Lessee specifically acknowledges that the Equipment is leased to Lessee solely for commercial or business purposes and not for personal, family, household, or agricultural purposes;

(e) If the Equipment is not properly installed, does not operate as represented or warranted by the supplier or manufacturer, or is unsatisfactory for any reason, regardless of cause or consequence, Lessee's only remedy, if any, shall be against the supplier or manufacturer of the Equipment and not against Lessor;

(f) Provided Lessee is not in default under this Lease, Lessor assigns to Lessee any warranties made by the supplier or the manufacturer of the Equipment;

(g) LESSEE SHALL HAVE NO REMEDY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES AGAINST LESSOR; and

(h) NO DEFECT, DAMAGE, OR UNFITNESS OF THE EQUIPMENT FOR ANY PURPOSE SHALL RELIEVE LESSEE OF THE OBLIGATION TO PAY RENT OR RELIEVE LESSEE OF ANY OTHER OBLIGATION UNDER THIS LEASE.

INITIALS _____

The parties have specifically negotiated and agreed to the foregoing paragraph.

4. STATUTORY FINANCE LEASE. Lessee agrees and acknowledges that it is the intent of both parties to this Lease that it qualify as a statutory finance lease under Article 2A of the Uniform Commercial Code. Lessee acknowledges and agrees that Lessee has selected both: (1) the Equipment; and (2) the supplier from whom Lessor is to purchase the Equipment. Lessee acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or of the supplier, and Lessor has not selected, manufactured, or supplied the Equipment.

LESSEE IS ADVISED THAT IT MAY HAVE RIGHTS UNDER THE CONTRACT EVIDENCING THE LESSOR'S PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER CHOSEN BY LESSEE AND THAT LESSEE SHOULD CONTACT THE SUPPLIER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS.

5. ASSIGNMENT BY LESSEE PROHIBITED. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE EQUIPMENT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE EQUIPMENT COVERED HEREBY.

6. RENTAL PAYMENTS. Lessee agrees to pay the total rent equal to the "Amount of Each Payment" multiplied by the number of payments specified in "No. of Payments." Payments will be made in advance and periodically as specified in "Terms" above. Payments shall be made by Lessee at Lessor's address set forth above, or as otherwise directed by Lessor. Lessee shall not abate, set off, deduct any amount, or reduce any payment for any reason. The first payment shall be due on the date of acceptance of the Equipment by Lessee, and subsequent payments shall be due on the same day of each succeeding month throughout the term of the Lease.

(a) THIS LEASE IS NOT CANCELABLE OR TERMINABLE BY LESSEE.

(b) SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE A PART OF THIS LEASE.

(c) LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT NO BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, IS AN AGENT OF LESSOR. NO BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE, AND NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY THE BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, SHALL IN ANY WAY AFFECT LESSEE'S DUTY TO PAY THE RENTALS AND TO PERFORM LESSEE'S OBLIGATIONS SET FORTH IN THIS LEASE.

7. CHOICE OF LAW. This Lease shall not be effective until signed by Lessor at its principal office listed above. This Lease shall be considered to have been made in the state of Lessor's principal place of business listed above and shall be interpreted in accordance with the laws and regulations of the state of Lessor's principal place of business.

Lessee agrees to jurisdiction in the state of Lessor's principal place of business listed above in any action, suit or proceeding regarding this Lease, and concedes that it, and each of them, transacted business in the state of Lessor's principal place of business listed above by entering into this Lease. In the event of any legal action with regard to this lease or the equipment covered hereby, Lessee agrees that venue may be laid in the County of Lessor's principal place of business.

LESSEE: _____ DATE _____

_____ DATE _____

LESSOR: _____ DATE _____

FORM 104 4/90

EQUIPMENT LEASE GUARANTY

LESSOR: X _____

LEASE NO: _____

DATE OF LEASE: _____

This Guaranty Agreement made and entered into this _____ day of _____, 19 _____ by _____

_____

(hereinafter referred to collectively as "Guarantor"), in favor of X _____ (hereinafter referred to as "Lessor").

X WHEREAS, it is contemplated that Lessor may enter into a lease and/or other related agreements (hereinafter collectively "Lease") with _____

_____

(hereinafter collectively "Lessee"); and,

WHEREAS, Guarantor has an interest, financial or otherwise, in Lessee, and it is to the benefit of Guarantor that Lessor enter into the Lease with Lessee, and Guarantor has read the proposed Lease in full and finds the terms of said Lease acceptable, and in recognition that Lessor would be unwilling to enter into the Lease without the Guaranty hereinafter set forth, and in recognition of Lessor's reliance upon the Guaranty in entering into the Lease;

NOW, THEREFORE, in order to induce Lessor to enter into the Lease, Guarantor, jointly and severally, unconditionally guarantees the faithful and full performance by Lessee of all terms and conditions of the Lease. In the event of default by Lessee, or failure to faithfully perform any of the terms or conditions required of Lessee under the Lease, or in the event of failure of Lessee to make any or all payments of money required of it under the Lease, Guarantor unconditionally promises to pay to Lessor, in lawful money of the United States, all sums at any time due and unpaid under the Lease, plus costs of collection, including reasonable attorney fees with or without trial, and upon appeal and review.

The obligations of Guarantor hereunder are joint and several and are independent of the obligations of Lessee under the Lease, and a separate action or actions may be brought against Guarantor, whether action is brought against Lessee or whether Lessee be joined in any action or actions, the liability of Guarantor hereunder being primary. Guarantor hereby waives the benefit of any suretyship defenses affecting its liability hereunder or the enforcement hereof.

Guarantor authorizes Lessor, without notice or demand, and without affecting Guarantor's liability hereunder, from time to time to renew, extend, accelerate, or otherwise change the payment terms or other terms of the Lease or any part thereof. Lessor may, without notice, assign this Guaranty in whole or in part.

Guarantor hereby waives any right to require Lessor to: (a) proceed against Lessee; (b) proceed against or exhaust any security held by Lessor; or (c) pursue any other remedy in Lessor's power. Guarantor waives any defense arising by reason of any defense of Lessee, or by reason of the cessation, from any cause whatsoever, of the liability of Lessee under the Lease. Guarantor waives any and all demands for performance, notices of nonperformance or default, and notices of cancellation or forfeiture. Lessor may apply all proceeds received from Lessee or others to such part of Lessee's indebtedness as Lessor may deem appropriate without consulting Guarantor and without prejudice to or in any way limiting or lessening the liability of Guarantor under this Guaranty.

If Lessee is a corporation, the undersigned warrant and represent that they are stockholders, directors or officers and/or are financially or otherwise interested in Lessee, and, if married, their marital communities are so interested.

This Guaranty shall not be affected or discharged by the death of the undersigned, but shall bind Guarantor's heirs and personal representatives, and shall inure to the benefit of any successors or assigns of Lessor.

This instrument constitutes the entire agreement between Lessor and Guarantor. No oral or written representation not contained herein shall in any way affect this Guaranty, which shall not be modified except by the parties in writing. Waiver by Lessor of any provision hereof in one instance shall not constitute a waiver as to any other instance.

IMPORTANT: THIS AGREEMENT CREATES SPECIFIC LEGAL OBLIGATIONS. DO NOT SIGN IT UNTIL YOU HAVE FULLY READ IT. BY SIGNING YOU COMPLETELY AGREE TO ITS TERMS.

IN WITNESS WHEREOF, the undersigned Guarantor(s) has/have executed this Guaranty this _____ day of _____, 19 _____ .

GUARANTOR: X	GUARANTOR:
NAME	NAME
Home Address	Home Address
City State Zip	City State Zip
WITNESS	WITNESS