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

MM Docket No. 93-89 ✓

In re Applications of

AURIO A. MATOS

File No. BPH-911114MS

LLOYD SANTIAGO-SANTOS AND LOURDES

File No. BPH-911115MP

RODRIGUEZ BONET

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

Appearances

Scott Cinnamon and Stephen Diaz Gavin on behalf of Aurio A. Matos, *David Hill and Audrey Rasmussen* on behalf of Lloyd Santiago-Santos and Lourdes Rodriguez Bonet, *Gary P. Schonman* on behalf of the Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P. GONZALEZ

Issued: October 25, 1993;

Released: November 4, 1993

1. This proceeding involves the mutually exclusive applications of Aurio A. Matos (Matos) and Lloyd Santiago-Santos and Lourdes Rodriguez Bonet (Santos and Bonet) for a construction permit for a new radio station on channel 293A in Culebra, Puerto Rico. The matter was designated for hearing pursuant to an *Order* of the Commission, DA 93-331, released on April 8, 1993, and assigned to the Undersigned by *Order* FCC 93M-160, released on April 13, 1993.

2. The *Hearing Designation Order* (HDO) setting this matter for hearing specified the following Issues:

- (1) To determine which of the proposals would, on a comparative basis, best serve the public interest.
- (2) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applicants should be granted, if any.

3. The Commission, in the aforementioned *HDO*, noted that there was a significant difference in the size of the areas and populations to be served by the two proposals. Accordingly, it further specified that the areas and populations that would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue.

4. Procedural dates were specified by *Order*, FCC 93M-166, released on April 15, 1993, issued prior to the date of the prehearing conference held in the matter on June 9, 1993. Direct case exhibits were exchanged prior to the Admissions Session held on August 18, 1993, and were received on that date. After hearing argument advanced in favor of permitting the cross-examination of certain sponsoring witnesses, the Presiding Judge concluded that no need had been shown for cross-examining anyone of the sponsoring witnesses. He concluded, therefore, that a decision on the designated issues would be reached based on the direct case exhibits and the argument contained in the Proposed Findings of Fact and Conclusions of Law and the replies thereto. The record was closed, but then reopened for the sole purpose of receiving the joint engineering exhibit addressing the so-called "areas and populations" issue. See *Order* 93M-544, released August 25, 1993.

5. Proposed Findings of Fact and Conclusions of Law were filed by both Applicants and the Mass Media Bureau. Mr. Matos filed a reply to the Proposed Findings submitted by Santos and Bonet. The matter now stands ripe for the issuance of an initial decision.

FINDINGS OF FACT

Aurio A. Matos

6. Mr. Matos is an individual applicant who proposes to serve as General Manager at his proposed station in Culebra, Puerto Rico. He has indicated that he will devote a minimum of forty hours a week to his duties at the station. As General Manager, he will direct the overall operation of the station, establishing and implementing the station's policies and practices. He will also supervise and have responsibility for the station's compliance with all applicable Federal Communications Commission (F.C.C.) rules, and he will also be charged with hiring and firing, if necessary, of the station's personnel (Matos Exhibit 1). The Matos proposal calls for the installation of an auxiliary power source so that a broadcast service can continue to be provided in the event of a power failure (Matos Exhibit 2).

7. Mr. Matos is a Hispanic male who has lived his entire life in Puerto Rico. For approximately the past three years, Mr. Matos has been a resident of Mayaguez, Puerto Rico. Prior to moving to Mayaguez, he was a life long resident of Bajaguez, Aguada, Puerto Rico. In the event that he is the successful applicant, Mr. Matos has pledged to move to Culebra, Puerto Rico (Matos Exhibit 1).

8. Mr. Matos is presently employed as the Station Manager of WCXQ(AM), Moca, Puerto Rico. His previous broadcast experience consists of the following:

1980-1989 - General Manager, WRFE-FM, Mayaguez City, Puerto Rico;

1989-July 31, 1992 - General Manager and President, as well as a director of the licensee of non-commercial educational FM station WJDZ (now WKVN), Levittown, Puerto Rico.

Mr. Matos has pledged that he will terminate his present employment and any other employment he might undertake in order to meet his commitment to the Culebra facility (Matos Exhibit 1).

9. Mr. Matos has no existing media interests (Matos Exhibit 1).

Santos and Bonet

10. Lloyd Santiago-Santos and Lourdes Rodriguez Bonet are husband and wife, and they filed their application for the Culebra broadcast facility as a general partnership with each person having a 50 percent interest in the venture, and an equal share of the overall responsibility for the project (Santos and Bonet Exhibit 1).

Lloyd Santiago-Santos

11. Mr. Santiago-Santos proposes to serve as the station's Sales Manager. He will also be responsible for the development of its advertising policies, and advertising rates, as well as the supervision of its sales personnel. Mr. Santiago-Santos proposes to devote a minimum of forty hours a week to his duties at the station (Santos and Bonet Exhibit 2).

12. Mr. Santiago-Santos, an Hispanic male, was born in Puerto Rico, where he has lived his entire life. He proposes to move to Culebra, Puerto Rico in the event that his application is granted (Santos and Bonet Exhibit 2). From 1981 until 1982, Mr. Lloyd Santiago-Santos worked as a sales person at radio station WQIL, San Juan, Puerto Rico, and from 1982 until 1991, as General Manager for station WMSW-AM, Hatillo, Puerto Rico (Santos and Bonet Exhibit 2).

Lourdes Rodriguez Bonet

13. Ms. Bonet, an Hispanic female, will serve as the station's General Manager. As General Manager, she will be responsible for the day-to-day operations of the station, as well as the supervision of the station's personnel. She will also act as principal liaison between the Culebra station and the community, and in such a role, she will oversee the continuing ascertainment of community needs and the formulation of programming designed to meet those needs. Ms. Bonet proposes to devote a minimum of forty hours a week to her duties at the station, and she has indicated that she intends to move to Culebra, Puerto Rico in the event that her application is granted (Santos and Bonet Exhibit 1).

14. Ms. Bonet worked as an accountant in the accounting/business office of radio station WQBS, San Juan, Puerto Rico, from 1980 to 1981. Her duties involved preparing invoices which required an examination of the station's logs for spot runs and the coordination of sales commissions with the sales department. Ms. Bonet testified that her duties at WQBS involved her in all aspects of the station's financial operations (Santos and Bonet Exhibit 1).

15. Other than a thirty-three and one-third ownership interest in Santiago Communications, Inc., a publisher of a monthly medical newspaper in the northern part of Puerto Rico from Vega Alta to Isabela, Ms. Bonet has no other interests in any other form of mass communications. In the event that the Santos and Bonet application is granted, Ms. Bonet will divest herself of her interest in Santiago Communications, Inc. As to Mr. Santiago-Santos, he too holds a thirty-three and one-third interest in Santiago Communications, Inc. He also owns fifty percent of a corporation that publishes *El Periodico del Norte*, a weekly newspaper published in Arecibo, Puerto Rico, and distributed free to communities on the northern part of the island. Mr.

Santiago-Santos is committed to divest himself of these interests in the event that the Santos and Bonet application is granted (Santos and Bonet Exhibits 1 and 2).

16. The Santos and Bonet proposal calls for the installation of an auxiliary power source at the proposed station's transmitter site in order to ensure continued operations in the event of a power failure (Santos and Bonet Exhibit 1).

Comparative Coverage

17. Mr. Matos proposes to serve, in its 60 dBu contour, a population of 69,092 people in an area of 440 square kilometers. The Santos and Bonet application proposes to serve, in its 60 dBu contour, 1,542 persons in a 44 square kilometer area. The parties have stipulated that all of the areas and populations proposed to be served by the two applicants are already served by five or more aural services (Joint Exhibit 1).

CONCLUSIONS OF LAW

18. Neither applicant is subject to a diversification demerit. In addition, both Applicants propose to install an auxiliary power source to ensure continued operations in the event of a power failure. Furthermore, all principals are members of a recognized minority group, and neither Applicant sought a comparative credit for local residence or civic involvement. Both Applicants propose a 100 percent integration of ownership into management at their respective stations, and all principals of both Applicants are committed to move to the city of license in the event of a grant of their application. The only disparities between the two applicants relate to the past broadcast experience of the principals and the areas and populations to be served by the two proposals. Otherwise, both Applicants are on an equal footing from a comparative standpoint.

19. Mr. Matos is entitled to a slight comparative preference over the Santos and Bonet application on the basis of his proposal to serve forty-five times the number of persons and ten times the area. His application also demonstrates a superior past broadcast experience which entitles his application to a further, very slight preference. Although the comparative advantage that Mr. Matos holds over his rival is slight, it is nevertheless decisive in this case, and entitles his application to a comparative preference over that of Santos and Bonet, warranting a grant of his application. It will be so ordered.

RULING

20. IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's rules, 47 C.F.R. 1.276, the application of Aurio A. Matos (File No. BPH-911114MS) for a construction permit for a new FM station on Channel 293A in Culebra, Puerto Rico IS GRANTED, subject to the outcome of MM Docket No. 91-259; and that the application of Lloyd Santiago-Santos and Lourdes Rodriguez Bonet (File No. BPH-911115MP) IS DENIED.¹

¹ In the event exceptions are not filed within 30 days after the

release of this Initial Decision, and the Commission does not

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Joseph P. Gonzalez
Administrative Law Judge

review the case on its own motion, this Initial Decision shall
become effective 50 days after its public release pursuant to

Section 1.276(d).