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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before The

*Federal Communications Commission*

Washington, DC 20554

In re Applications of	)	MM Docket No. 93-264
	)	
<b>FRANK B. DUROSS</b>	)	File No. BPH-92051MC
	)	
<b>KENNETH F. ROSER, JR.</b>	)	File No. BPH-920513MI
	)	
<b>KEVIN O'KANE</b>	)	File No. BPH-920514MK
	)	
For a Construction Permit for	)	
a New FM Station on Channel 250A,	)	
at Whitesboro, New York	)	

To: The Honorable Joseph P. Gonzalez  
Administrative Law Judge

OPPOSITION TO MOTION TO ENLARGE ISSUES

Kenneth F. Roser, Jr., by counsel, hereby submits his opposition to the Motion to Enlarge Issues Against Kenneth F. Roser, Jr., filed in this proceeding by Frank B. Duross.

In support of this opposition, the following is shown:

1. In his motion, Duross seeks issues to explore whether Roser was financially qualified at the time he filed his application, whether he continues to possess the necessary financial qualifications, and whether Roser misrepresented his financial qualifications. The sole basis for the requested issues is the fact that Roser did not provide any financial documents to Duross.

2. Duross points out that in his application, Roser stated that he had \$200,000

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available to him from two sources - \$100,000 from Marine Midland Bank and \$100,000 from his own resources. Duross states that Roser was obliged to have on hand "at the time it files its application" the following:

a detailed balance sheet showing his financial position; a statement showing the yearly net income, after Federal Income tax, for each of the past two years; and documentation to support the availability of the bank loan commitment.

3. Roser did not provide a balance sheet, a statement as to yearly net income, or any document from Marine Midland bank. Duross concludes that the failure to hand over these documents "raises a substantial and material question of fact as to whether Roser had \$100,000 worth of net liquid assets available to him at the time he filed", and whether he had reasonable assurance of funding.

4. The basic problem with the Duross allegations is that they are based on an unwarranted assumption. Duross assumes that if documents are not produced and the response is that "no such documents are known to exist", that no such documents ever existed. Attached hereto as Attachment A is a declaration from Kenneth Roser in which he states that at the time he filed his application he had a budget which showed that \$111,000 was needed for construction and operation. Mr. Roser included a substantial cushion of \$89,000 for a total of \$200,000. He had available his 1991 balance sheet, and reviewed his yearly net income figures for 1990 and 1991, but, did not prepare a statement of net income. It is submitted that the failure to prepare the two line statement of yearly net income was a harmless omission which does not impact Mr. Roser's financial qualifications. When Mr. Roser attempted to respond to the Standard Document Production Order, he was unable to locate the balance sheet. Counsel informed Mr. Roser

that he was supposed to produce existing documents and was not required to create documents.

5. As far as bank documents are concerned, Duross assumes that Roser was claiming that he had arranged for a loan commitment from Marine Midland bank and therefore, should have had available a "loan commitment letter" from the bank. However, as Mr. Roser points out in his declaration, he had not arranged for a loan commitment letter but had a "line of credit" on which he could draw. Thus, the lack of a loan commitment letter does not support the conclusion that Mr. Roser had no arrangement with the bank.

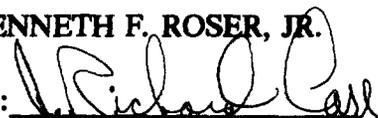
6. In order to eliminate any question about his financial qualifications, Mr. Roser has drawn the \$100,000 from Marine Midland bank and has provided herewith his balance sheets for 1991 and 1992, and a statement of yearly net income for 1990, 1991 and in addition for 1992. See Attachment B. Also attached hereto as Attachment C is a letter dated November 29, 1993 from Marine Midland Bank acknowledging that a line of credit was established in April 1992 and that the funds have now been drawn.

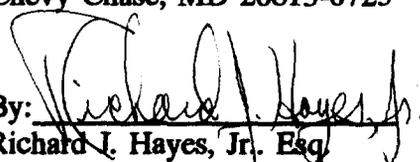
7. It is clear that Duross's allegations are speculative. Section 1.229(d) requires that motions to enlarge issues must contain facts supported by affidavits of persons with personal knowledge. The Duross allegations are based on assumptions that documents not produced never existed. Since document production is a discovery process, Duross could have explored this matter at deposition and would have learned the facts. In any event it is clear that Mr. Roser was, and is, financially qualified, and that there is no basis for addition of the requested issues.

In view of the foregoing, it is respectfully submitted that the Duross Motion to Enlarge Issues must be denied.

Respectfully submitted,

KENNETH F. ROSER, JR.

By:   
J. Richard Carr, Esq.  
P.O. Box 70725  
Chevy Chase, MD 20813-0725

By:   
Richard I. Hayes, Jr., Esq.  
13809 Black Meadow Road  
Spotsylvania, VA 22553

His Attorneys

December 1, 1993

**ATTACHMENT A**

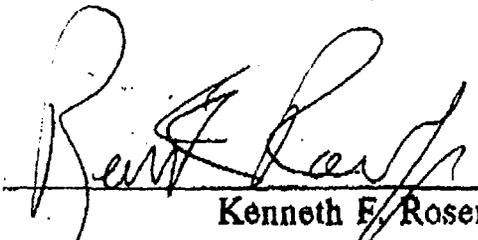
## DECLARATION OF KENNETH F. ROSER, Jr.

At the time I signed my Whitesboro FM application in May 1992, I reviewed a personal balance sheet as of December 31, 1991 and reviewed the figures for yearly net income after taxes for 1990 and 1991. February 13, 1992 was a date within ninety days of the application signing. There was no significant difference in the balance sheet as of that date. The balance sheet was not available at the time of document production and I understood that I did not have to prepare a new document. I did not actually prepare a statement listing the two yearly net income figures but did not feel that it would be significant.

In addition, I did not obtain a loan commitment letter from Marine Midland Bank because in April 1992 I had arranged for a line of credit with the bank in the amount of \$100,000.

My construction and operating budget which was exchanged shows that I need \$111,000.00. I was relying primarily on the line of credit with Marine Midland Bank supplemented by my personal assets. In order to remove any questions about my financial qualifications at the time I signed the application, I have attached a new copy of my 1991 balance sheet and a copy of my 1992 balance sheet, both of which show sufficient liquid assets to provide up to \$100,000.00 if it were needed. In addition, I have drawn down the line of credit with Marine Midland Bank as shown by the attached letter from Marine Midland Bank, dated November 29, 1993.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

  
Kenneth F. Roser, Jr.

12/1/93  
Date

**ATTACHMENT B**

**ROXANNE AND KENNETH F. ROSER, JR.  
STATEMENT OF YEARLY NET INCOME AFTER TAXES:**

<b>1990</b>	<b>\$70,622.00</b>
<b>1991</b>	<b>\$87,927.00</b>
<b>1992</b>	<b>\$75,070.00</b>

# PERSONAL FINANCIAL STATEMENT

Name: **KENNETH F. ROSER, JR.** Birth Date: **10/14/55** Social Security Number: **10 11 111-15 121-11 1612 19 1** Home Telephone No.: **815 797-8236**  
 Address: **5819 GRAHAM ROAD (SAME RESIDENCE NEW#)** Previous Address: **726 DEEFIELD DRIVE E** Years There: **3**  
 City: **DEERFIELD** State: **NV** Zip: **13502** City: **UTICA** State: **NV** Zip: **13502**  
 Self Employed: **SELF EMPLOYED** Years There: **11** Your Position: **OWNER/PRESIDENT** Business Telephone No.: **815 797-8236**  
 Employer's Address: **5819 GRAHAM ROAD DEERFIELD, NV.** Number of Dependents: **2** Ages: **12 & 8 years old**  
 Applicant's Name: **ROXANNE ROSER** Relationship: **WIFE** Social Security Number: **10 11 181-5 141-5 1218 12 1**

ALL CASES USE THE WORD "NONE" WHERE NO AMOUNT IS TO BE ENTERED. MARK WITH AN ASTERISK (\*) THOSE ASSETS OWNED JOINTLY WITH ANYONE ELSE AND THOSE LIABILITIES OWED JOINTLY WITH ANYONE ELSE.

ASSETS	DOLLARS	CENTS	LIABILITIES AND NET WORTH	DOLLARS	CENTS
Money on hand	2	000	Notes Payable to this Bank	none	
Money in this Bank	21	322	Notes Payable to ( ) Bank	none	
Money in ( ) Bank	none		Other Notes & Installment Contracts Payable (See Schedule E)	none	
Value Life Insurance (See Schedule A)	2	000	Accounts Payable	none	
Estate (See Schedule B)	370	000	Unpaid Real Estate Taxes	none	
Government & Marketable Securities	5	400	Liability for Income Taxes	none	
ROSER COMM.NET	225	000	Mortgages on Real Estate	76	161
Marketable Securities (See Schedule D)			Other Liabilities - Itemize:		46
Automobiles & Other Personal Property	45	000			
Other Assets - Itemize: FURS, JEWELRY	8	000	Total Liabilities	76	161
PROFESSIONAL MEDIA SERVICES, INC.	1,000	000	Net Worth	1,702	561
OWPATH COMMUNICATIONS	100	000	TOTAL	1,778	722
TOTAL	1,778	722			80

Please complete IN FULL including negative replies.  
 ANNUAL INCOME: Income from alimony, maintenance and child support need not be revealed if you choose not to rely on such income.  
 Salary \$ 69,510.00 Fees or Commissions \$ \_\_\_\_\_ Dividends \$ 1058.00 Other Income \$ 19,200.00  
 Dependents: Number 2 Ages 12 & 8 YRS. **RENT**  
 Do you have any liability on notes or accounts receivable discounted or sold? NO If so, give details \_\_\_\_\_  
 Do you endorse, guarantor or accommodation maker for others (including obligations due to Marine Midland Bank)? \_\_\_\_\_  
 If so, state amount \$ NO and for whom \_\_\_\_\_  
 Do you have any liability on real estate mortgage bonds covering property NOT SHOWN on this statement? NO If so, give details \_\_\_\_\_  
 Are there any suits, foreclosures, or unsatisfied judgments against you, or have you ever gone through bankruptcy or made a general assignment? NO If so, give details \_\_\_\_\_  
 Do you have any liability in leases? NO If so, give details \_\_\_\_\_  
 Do you have any other contingent liability of any kind? NO If so, give details \_\_\_\_\_  
 Do you have a will?  YES  NO If so, who is the executor? \_\_\_\_\_

**SCHEDULE A - LIFE INSURANCE (Excluding Health, Accident or Special Benefit)**

FACE AMOUNT	NAME OF INSURANCE COMPANY	OWNER OF POLICY	BENEFICIARY	TYPE OF POLICY	CASH VALUE	LOANS AGAINST POLICY	GIVE NAME OF ASSIGNEE, IF ANY
2,000	PRUDENTIAL INS.	KEN ROSER, JR.	ROXANNE	LIFE	2,000.00	none	
TOTAL (as shown on statement)					\$	\$	

Life Insurance (amounts and kinds) \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

**SCHEDULE B - REAL ESTATE OWNED**

**LAND AND BUILDINGS OWNED AND MORTGAGES PAYABLE (Attach Separate Schedule if Necessary)**

Parcel No.	Location	Description of Buildings	Name of Owner of Record	Owner's Valuation	Assessed Value	Insured For	Taxes in Arrears	
1	5819 GRAHAM RD	LARGE CEDAR CONTEMPORARY	KENNETH & ROXANNE	300,000	48,000	full insur.	NONE	
Parcel No.	Mortgage	Amount	Held By	Rate Interest	Maturity Date	Amount Due Within 1 Yr.	Terms of Payment on Balance	Mortgage Interest in Arrears
1	1st	76,161	MARINE MIDLAND BANK	7.5			MONTHLY PYMTS.	NONE
	2nd							
Parcel No.	Location	Description of Buildings	Name of Owner of Record	Owner's Valuation	Assessed Value	Insured For	Taxes in Arrears	
2	341 S. SECOND ST	ONE STORY BLDG.	KEN & ROXANNE	50,000		full v	none	
Parcel No.	Mortgage	Amount	Held By	Rate Interest	Maturity Date	Amount Due Within 1 Yr.	Terms of Payment on Balance	Mortgage Interest in Arrears
2	1st		NONE					
	2nd							

TOTAL \$ 380,000.00 (as shown on statement) 50% OWNERSHIP OF HOME OLD FLOYD RD. FLOYD, NY \$20,000.00

ive details concerning any mortgage installments or interest in arrears.

ive details concerning any taxes and assessments due and unpaid.

any of the above parcels covered by a collateral mortgage NOT SHOWN in mortgage schedule? NO If so, give amount and by whom held

are there any other liens of any nature against any of the above property? NO If so, give details

**SCHEDULE C - U.S. GOVERNMENT & MARKETABLE SECURITIES (Attach Separate Sheet if Necessary)**

No. Shares or Bonds	Name of Security	Where Traded	In Whose Name Reg.	Market Value Statement Date	Valuation Used in Statement	If Pledged or Loaned State to Whom
100	IBM	STOCK EXCHANGE	KENNETH F. ROSER, JR	5400.00	5400.00	

TOTAL \$5400.00 (as shown on statement)

**SCHEDULE D - NON-MARKETABLE SECURITIES (Attach Separate Sheet if Necessary)**

No. Shares or Bonds	Name of Security	In Whose Name Reg.	Source of Value	Valuation Used in Statement	If Pledged or Loaned State to Whom

TOTAL \$ (as shown on statement)

**SCHEDULE E - OTHER NOTES AND INSTALLMENT CONTRACTS PAYABLE (Attach Separate Sheet if Necessary)**

Payable to	Amount	Terms of Payment and Security Pledged, if Any

TOTAL \$ (as shown on statement)

Signature

to Marine Midland Bank, N.A.

I give you this statement knowing it will be relied on by you from time to time. This statement is a true and complete description of my financial condition as of this date. You may rely upon it until I tell you of any material change in it or until I give you a new statement. It shall be an event of default if anything in this statement turns out to have been false as of the date of this statement. You can obtain a credit report about me in connection with this statement, and any update or renewal of it. If you obtain a credit report, you will tell me the name and address of the credit bureau. If I ask you to, you may verify what I have stated in this statement and exchange with others information about your credit and deposit transactions with me.

Applicant's Signature: Kenneth F. Roser, Jr.  
 Co-Applicant's Signature: Roxanne F. Roser

Signed this 31st day of MARCH 19 93  
 At 5819 GRAHAM ROAD UTICA, NY 13502

TO Seneca Street OFFICE

**MARINE MIDLAND BANK**

**PERSONAL FINANCIAL STATEMENT, CREDIT APPLICATION AND AGREEMENT**

Applied by Applicant only  jointly with Roxanne Rose Relationship Wife  
 APPLICANT(S)

Applicant Kenneth J. Roxanne Rose Jr Financial Condition as of 01 July 1991  
RR1 Box 195F Graham Road Occupation Self Employed Adv  
10/14/55 Telephone Number [315] 797-8236 Employer Self Employed

PLEASE USE THE WORD "NONE" WHERE NO AMOUNT IS TO BE ENTERED. MARK WITH AN ASTERISK (\*) THOSE ASSETS OWNED WITH ANYONE ELSE AND THOSE LIABILITIES OWED JOINTLY WITH ANYONE ELSE.

ASSETS	DOLLARS		CENTS	LIABILITIES AND NET WORTH		DOLLARS		CENTS
Hand				Notes Payable to this Bank				
to this Bank				Notes Payable to ( ) Bank				
( ) Bank				Other Notes & Installment Contracts Payable (See Schedule E)				
Life Insurance (See Schedule A)				Accounts Payable				
Life (See Schedule B)				Unpaid Real Estate Taxes				
Government & Marketable Securities (Schedule C)				Liability for Income Taxes				
Marketable Securities (See Schedule D)				Mortgages on Real Estate				
Real Estate & Other Personal Property				Other Liabilities - Itemize:				
Assets - Itemize: <u>Furs, Jewelry</u>				<u>Credit Card</u>				
<u>Business Interest 100%</u>								
<u>Partnership: Professional Media</u>								
<u>Media Inc.</u>				Total Liabilities				
<u>Communications Inc</u>				Net Worth				
TOTAL				TOTAL				

Please complete IN FULL including negative replies.

INCOME: Income from alimony, maintenance and child support need not be revealed if you choose not to rely on such income.  
 Fees or Commissions \$ \_\_\_\_\_ Dividends \$ \_\_\_\_\_ Other Income \$ \_\_\_\_\_  
 Dependents: Number \_\_\_\_\_ Ages 6+10 yrs old

any liability on notes or accounts receivable discounted, or sold? \_\_\_\_\_ If so, give details \_\_\_\_\_

guarantor or accommodation maker for others (including obligations due to Marine Midland Bank)? \_\_\_\_\_  
 amount \$ \_\_\_\_\_ and for whom \_\_\_\_\_

any liability on real estate mortgage bonds covering property NOT SHOWN on this statement? \_\_\_\_\_ If so, give details \_\_\_\_\_

any suits, foreclosures, or unsatisfied judgments against you, or have you ever gone through bankruptcy or made a general assignment? \_\_\_\_\_  
 details \_\_\_\_\_

any liability in leases? \_\_\_\_\_ If so, give details \_\_\_\_\_

any other contingent liability of any kind? \_\_\_\_\_ If so, give details \_\_\_\_\_

will?  YES  NO If so, who is the executor? \_\_\_\_\_

**SCHEDULE A - LIFE INSURANCE (Excluding Health, Accident or Special Benefit)**

NAME OF INSURANCE COMPANY	OWNER OF POLICY	BENEFICIARY	TYPE OF POLICY	CASH VALUE	LOANS AGAINST POLICY	GIVE NAME OF ASSIGNEE, IF ANY
				<u>1501.00</u>		
TOTAL (as shown on statement)				<u>\$1501.00</u>		

Balance (amounts and kinds) \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

**SCHEDULE B — REAL ESTATE OWNED**

**LAND AND BUILDINGS OWNED AND MORTGAGES PAYABLE**

(Attach Separate Schedule if Necessary)

Location	Description of Buildings	Name of Owner of Record	Owner's Valuation	Assessed Value	Insured For	Taxes in Arrears	
1st							
2nd							
Mortgage	Amount	Held By	Rate Interest	Maturity Date	Amount Due Within 1 Yr.	Terms of Payment on Balance	Mortgage Interest in Arrears
1st		<i>See</i>		<i>Attached</i>			
2nd							
<b>TOTAL \$</b>							<b>(as shown on statement)</b>

Are there any mortgage installments or interest in arrears \_\_\_\_\_

Are there any taxes and assessments due and unpaid \_\_\_\_\_

Are there any parcels covered by a collateral mortgage NOT SHOWN in mortgage schedule? \_\_\_\_\_ If so, give amount and by whom held \_\_\_\_\_

Are there any liens of any nature against any of the above property? \_\_\_\_\_ If so, give details \_\_\_\_\_

**SCHEDULE C — U.S. GOVERNMENT & MARKETABLE SECURITIES**

(Attach Separate Sheet if Necessary)

Name of Security	Where Traded	In Whose Name Reg.	Market Value Statement Date	Valuation Used in Statement	If Pledged or Loaned State to Whom
<i>IBM</i>	<i>Stock Exchange</i>	<i>—</i>	<i>7-31-91</i>	<i>Market</i>	
<b>TOTAL \$ 11,000</b>					

**(as shown on statement)**

**SCHEDULE D — NON-MARKETABLE SECURITIES**

(Attach Separate Sheet if Necessary)

Name of Security	In Whose Name Reg.	Source of Value	Valuation Used in Statement	If Pledged or Loaned State to Whom
<i>Towpath Communications Ltd</i>	<i>Kenneth</i>	<i>Personal Book Value</i>	<i>Statement</i>	
<b>TOTAL \$ 60,000.00</b>				

**(as shown on statement)**

**SCHEDULE E — OTHER NOTES AND INSTALLMENT CONTRACTS PAYABLE**

(Attach Separate Sheet if Necessary)

Payable to	Amount	Terms of Payment and Security Pledged, if Any
<b>TOTAL \$</b>		

**(as shown on statement)**

**FOLLOWS: 1. MEANING OF WORDS.** "I" or "my" means everyone who signs below. "You" or "your" means Marine Midland Bank. "Statement" means personal financial statement, credit application and agreement of mine. 2. **RELIANCE ON STATEMENT.** I give you this statement knowing it will be true and correct from time to time. 3. **MY REPRESENTATIONS.** This statement is a true and complete description of my financial condition as of this date. I will not change it until I tell you of any material change in it or until I give you a new statement. 4. **EVENTS OF DEFAULT.** If I owe you any debt, or if I become insolvent, bankrupt or incompetent or die or go out of business; if anything in this statement turns out to have been false as of the date of this statement or if I break any written promise I make to you. 5. **CREDIT REPORTS.** You can obtain a credit report about me in connection with this statement. If you obtain a credit report, you will tell me the name and address of the credit bureau if I ask you to. You may verify what is stated in this statement and exchange with others information about your credit and deposit transactions with me.

Executed this *23rd* day of *August*, 19*91* At *RL1 Box 19 SE Hickman VA*  
 Debtor's Signature *[Signature]* Social Security Number *021-52-7629*  
 Creditor's Signature *[Signature]* Social Security Number *022-54-5282*

KENNETH F. & ROXANNE ROSER, JR.  
P.O. BOX 195F GRAHAM ROAD  
UTICA, NY 13502

SCHEDULE "B" REAL ESTATE

RESIDENCE	GRAHAM ROAD, UTICA, NY	
	FAIR MARKET VALUE	\$300,000.
	MORTGAGE 91,842.80	
2ND FAMILY HOUSE	50% OWNERSHIP OLD FLOYD ROAD FLOYD, NY	
	FAIR MARKET VALUE	20,000.
COMMERCIAL PROPERTY	341 S. SECOND STREET LITTLE FALLS, NY	
	FAIR MARKET VALUE	50,000.
	TOTAL REAL ESTATE	\$370,000.
	MORTGAGE	91,842.80

**ATTACHMENT C**



**MARINE MIDLAND BANK, N.A.**

520 Seneca Street  
Utica, New York 13502

November 29, 1993

Mr. Kenneth Roser  
Professional Media Services, Inc.  
5819 Graham Road  
Utica, New York 13502

Dear Ken:

Thank you for drawing down on the \$100,000 line of credit established in April, 1992. We appreciate your business.

If we can be of further service, please let us know.

Sincerely,

Anthony F. Munski  
Assistant Vice President

AFM:jp

**CERTIFICATE OF SERVICE**

I, J. Richard Carr, Esq. certify that on this 1st day of December 1993, copies of the foregoing "Opposition to Motion to Enlarge Issues" were mailed via first class mail, postage pre-paid, or as otherwise noted, to the following:

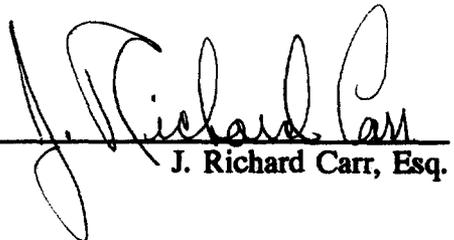
The Honorable Joseph P. Gonzalez\*  
Administrative Law Judge  
Federal Communications Commission  
Room 231  
2000 L Street, NW  
Washington, DC 20554

James Shook, Esquire\*  
Hearing Branch  
Federal Communications Commission  
2025 M Street, NW  
Room 7212  
Washington, DC 20554

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
Suite 510  
1990 M Street, NW  
Washington, DC 20036

James L. Oyster, Esq.  
Route 1  
Box 203 A  
Castleton, VA 22716  
Counsel to Kevin O'Kane

\*Hand Delivery

  
J. Richard Carr, Esq.