

DEC - 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Application of)	MM DOCKET NO. 93-155
)	
RICHARD BOTT II)	File No. BAPH-920917GO
(Assignor))	
)	
and)	
)	
WESTERN COMMUNICATIONS, INC.)	
(Assignee))	
)	
)	
For Assignment of Construction)	
Permit of Station KCVI (FM),)	
Blackfoot, Idaho)	

To: Administrative Law Judge
Arthur I. Steinberg

**MASS MEDIA BUREAU'S COMMENTS IN SUPPORT OF
MOTION FOR SUMMARY DECISION**

1. On December 6, 1993, Richard Bott II ("Bott") filed a Motion for Summary Decision. Bott seeks post-hearing summary decision in his favor of all of the issues in the above-captioned proceeding¹. Bott's motion appends Proposed Findings of Fact and

¹ Permission for the filing of the Motion was granted by Order, FCC 93M-686, released October 29, 1993.

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Conclusions of Law. The Mass Media Bureau supports Bott's motion for the reasons stated therein. In addition, we submit the following comments.

2. The Hearing Designation Order and Notice of Opportunity for Hearing, 8 FCC Rcd 4074, 4075 (1993) (hereinafter "HDO") pointed out that, in the 1987 proceeding which resulted in the award of the construction permit for KCVI to Bott, Bott made an unqualified integration pledge. The record in the instant proceeding makes clear that, from the time Bott made his integration proposal until he decided to sell the construction permit, Bott intended to fulfill his integration pledge. Tr. 180. The evidence corroborates Bott's earlier testimony in this regard. Beginning as early as 1987, Bott took numerous steps in preparation for building and operating his proposed station and for moving to Blackfoot, Idaho. These include visiting his proposed site (Tr. 92, 93, 95), contacting an engineer to determine how to side mount his antenna, as well as an equipment supplier (Tr. 108-09), talking to a users' group at the site (Tr. 108), selecting a call sign (Tr. 108), and looking at possible housing (Tr. 92, 93, 95). Thus, Bott's integration pledge was neither false nor qualified.

3. Bott originally chose to submit an integration proposal

for the Blackfoot facility instead of for another facility for which Bott also had an application pending. That decision was based on what he perceived as the long term profit potential of the Blackfoot station; on his view that, because it would serve a two market area, the Blackfoot station would be more complex to run; and on his thinking that the area would be a nice place to live. Tr. 85, 150. Bott developed these opinions after studying the area beginning as early as 1985. Tr. 120, 144-45, 152.

4. The record evidence also corroborates Bott's 1987 testimony that he had not then decided on a format for the station. Tr. 87-88, 109, 145-46. Conversely, there is no evidence that Bott selected a format before the summer of 1991. Tr. 87-88, 90, 91. Bott does not appear to have taken any steps before 1991 to implement a particular format and he did not contact any program sources. Tr. 110. Indeed, the evidence shows that the process of selecting a format, which began in 1991 took several months. Tr. 91, 109.

5. The HDO poses the question of why the format decision became critical later, culminating in Bott's decision to sell. HDO at 4076. Bott has effectively answered that question. The state of the economy when the construction permit was finally

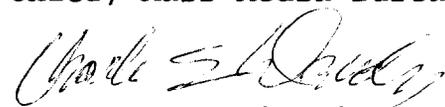
granted convinced him that a commercial religious format was the only one that made sense for him. One reason was that such a format did not rely upon spot advertising, but on longer term time brokerage agreements. Tr. 110-12, 118. Another reason was that, because Bott was familiar with the format and had a lot of contacts in that business, that format would have been less risky for him. Tr. 112, 118.

6. The HDO, at 4076, also questions Bott's conclusion that he could not compete with a station in nearby Chubbuck, Idaho planning the same format, when Bott's proposed coverage was greater. The evidence establishes that Bott knew, from the time when he first learned about the other station's format in September, 1991, that the station was planning to increase its power. Tr. 113-14. Bott also knew that the Chubbuck station would cover the same markets that Bott was targeting. Tr. 115-17, 119. Bott was familiar with the location of the other station's transmitter and suspected that the coverage would be greater than predicted. Tr. 114-15. Moreover, with the station launching the format first, it would have sold blocks of time on a long term basis to the same producers that Bott wanted to schedule. Tr. 169. Even after Bott realized all of this, he continued to prepare to build his own station, hoping that the

economy would get better and/or the other station's power increase would not happen. Tr. 118-19, 176.

7. In sum, the Bureau agrees that the issues should be resolved in Bott's favor and the above-captioned assignment application should be granted.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 9th day of December, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Motion for Summary Decision"** to:

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