

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In re Applications of)
RIVERTOWN COMMUNICATIONS CO. INC.)
SAMPLE BROADCASTING COMPANY, L.P.)
For Construction Permit)
for a new FM Station on)
Channel 282C3 in Eldon, Iowa)

MM Docket No. 92-316
File No. BPH-911008ME
File No. BPH-911010MA

To: The Review Board

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CONTINGENT EXCEPTIONS AND BRIEF
OF SAMPLE BROADCASTING COMPANY, L.P.

Respectfully Submitted,

By John S. Neely
Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

Its Attorney

December 10, 1993

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SUMMARY

Sample Broadcasting Company, L.P., ("Sample") excepts on a contingent basis to the Initial Decision of Administrative Law Judge John M. Frysiak, FCC 93D-21, released November 10, 1993. Sample agrees that it is fully qualified to become a permittee at Eldon, Iowa, and that its application is comparatively superior to that of Rivertown Communications Company, Inc. However, Sample excepts to certain interlocutory decisions of the ALJ and to certain conclusions of law in the ID.

First, Sample respectfully submits that it was error for the ALJ to deny the request for addition of a Section 73.1650(b) issue and a financial issue against Rivertown. With the support of an affidavit based on personal knowledge, Sample made a prima facie showing that David Brown, a Rivertown principal, implemented a purposeful scheme to reduce the output power of station KMCD(FM) Fairfield, Iowa, in violation of the station's broadcast license and the Commission's rules in order to deceive a station licensee. In addition, on the basis of documents produced by Rivertown, Sample demonstrated that Rivertown was not financially qualified to be a permittee when so certified by David Brown, and that he made misrepresentations in this regard to the Commission.

Next, Sample shows that the ID's award of integration credit to Rivertown for its 45% voting shareholder, Ellen Bowen, is an impermissible comparative upgrade because Rivertown did not describe or reveal her proposed duties prior to the amendment-as-

of-right deadline. Her claimed integration pledge is further suspect on the basis that she the duties she proposed tardily are not managerial or policy making, she has had a desultory relationship with the applicant throughout the proceeding, and her husband, David Bowen, has a mutual ownership stake in Rivertown which will affect any integration credit she may receive.

Exceptions are respectfully taken to the ID's conclusion Rivertown warrants no diversification demerit for David Brown's untimely pledge to divest a cognizable broadcast media interest. In addition, the ID awarded an incorrect comparative preference to Rivertown for broadcast experience.

In sum, Sample is the superior applicant in this proceeding. However, several decisions were incorrectly decided in Rivertown's favor and should be reversed to leave a record which reflects current Commission law and precedent.

CONTINGENT EXCEPTIONS OF SAMPLE BROADCASTING COMPANY, L.P.

Sample Broadcasting Company, L.P. ("Sample"), by its attorney, and pursuant to Section 1.276 of the Commission's rules, hereby submits its contingent exceptions to the Initial Decision ("ID") of Administrative Law Judge John M. Frysiak, ("ALJ") released November 10, 1993, (FCC 93D-21).

I. STATEMENT OF THE CASE

This proceeding involves the mutually exclusive applications of Sample and Rivertown Communications Company, Inc., ("Rivertown"), each seeking a construction permit for a new FM station on Channel 282C3 at Eldon, Iowa. Following a trial-type hearing on the standard comparative issues designated by the Mass Media Bureau and on basic qualification issues added against Sample, (FCC 93M-124, released March 26, 1993) the ALJ issued an ID granting Sample's application and denying Rivertown's. The ID resolved the basic issues in Sample's favor, found that neither applicant merited a diversification demerit and awarded both applicants 100% integration credit. It found Sample's qualitative enhancements (including a minority enhancement credit, short term local residence/civic activities, broadcast experience and auxiliary power) were superior to those of Rivertown (including long term local residence and superior broadcast experience).

Sample agrees with and supports the grant of its application. However, should the Review Board revisit the ID, Sample excepts to several interlocutory decisions of the ALJ,

and to certain of the ID's conclusions of law.

II. QUESTIONS OF LAW PRESENTED

1. Whether the ALJ's denial of Sample's petition to specify a Section 73.1650(b) issue and a financial qualifications issue against Rivertown (FCC 93M-123, released March 26, 1993) was correct.

2. Whether the ID's award of integration credit for Rivertown's 45% voting shareholder, Ellen Bowen, was correct. If so, whether the ID's determination that Ellen Bowen's husband did not have an equity interest in Rivertown was correct.

3. Whether the ID correctly found that Rivertown merited no diversification demerit.

4. Whether Rivertown merits "substantial preference for the broadcast experience of its principals."

III. BRIEF AND ARGUMENT

1. Whether the ALJ's denial of Sample's petition to specify a Section 73.1650(b) issue and a financial qualifications issue against Rivertown (FCC 93M-123, released March 26, 1993) was correct.

On February 22, 1993, Sample petitioned to enlarge issues against Rivertown on the basis that its principal, David Brown, orchestrated and implemented a premeditated plan to reduce operating parameters of FM station KIIK Fairfield, Iowa, significantly below licensed values in violation of Section 73.1650(b) of the rules without Commission approval in

order to deceive principals of the KIIK licensee. Also, the petition sought a financial issue on the basis that David Brown did not have reasonable assurance of financing when he so certified in Rivertown's application.

Section 73.1560(b) Violation Issue

Section 73.1560(b) of the rules establishes that operating power and mode tolerances for FM stations with output power "more than 10 watts must be maintained as near as practicable to the authorized transmitter power and may not be less than 90% ... of the authorized power."

In mid-1988, Brown was the general manager of FM station KMCD (now KIIK) Fairfield, Iowa. He wanted the licensee to move the KMCD transmitter closer to Ottumwa, Iowa, a community with a growing population, about 25 miles from Fairfield. One of the owners was to visit KMCD and Brown believed that demonstrating to him that KMCD had a poor signal in Ottumwa would show the necessity to approve the funds required for a site change. Brown planned to give the owner a driving tour to listen to the KMCD signal in the Ottumwa area.

Brown enlisted the assistance of Jeff Hansen, then a staff engineer at KMCD. Brown told Hansen that KMCD was not making enough money from the advertising revenue in its current coverage area to meet expenses, and that their jobs could be at risk if KMCD could not tap into the increased revenue available from serving the Ottumwa market. On the day of the owner's visit, Brown directed Hansen to go to the

transmitter building and reduce the transmitter power output from its normal level of 3500 watts to 500 watts. In order to create the illusion that the station was operating at full power, Hansen recalibrated the remote control monitor. Brown remained at the studio to confirm that the remote monitor displayed normal readings after the power reduction and recalibration was completed.

To frustrate the owners from inspecting the transmitter itself, Brown instructed Hansen to padlock the transmitter building and take the keys. After the conclusion of the tour around Ottumwa, Hansen returned the station to full licensed power. This occurred about four to five hours after the power was reduced. Mr. Hansen certified to these facts from personal knowledge under penalty of perjury in his statement attached to Sample's Petition to Enlarge Issues.

Brown's premeditated scheme was contrary to the KMCD license and violates Section 73.1560 of the Commission's rules. His willingness to direct and assist those under his supervision to reduce a station's E.R.P. to values far below those permitted by the Commission in order to deceive a principal of a licensee calls into question his basic qualifications to be a Commission licensee.

It is axiomatic that the Commission's licensing scheme relies on the ability of all licensees and permittees to follow the rules in good faith. "[A]ny violation of any provision of the Act, or of our Rules or Policy, [is] possibly

predictive of future conduct and, thus, as possibly raising concerns about the licensee's future truthfulness and reliability... ." Policy Regarding Character Qualifications in Broadcast Licensing 102 FCC 2d 1179 (1986).

From Mr. Hansen's personal knowledge, it is clear that Brown deliberately caused the station to violate the terms of its license and the Commission's rules. Brown demonstrated complete disregard for Commission rules. As a result, Rivertown is unqualified to become a Commission licensee. See, e.g., Modesto Broadcast Group, FCC 92D-37, released June 5, 1992 (ALJ 1992).

The ALJ denied the requested issue on the basis that such an investigation should be invoked against the licensee of KIIK, not David Brown, and that the issue is subsumed within an investigation of Brown's broadcast experience. This ruling was in error; the prima facie evidence is that the licensee was the unwitting victim of Brown's deception. This raises substantial and material questions regarding Brown's willingness to purposefully disregard Commission rules and must be examined in the crucible of a hearing. Astroline Communications Limited Partnership v. FCC, 857 F.2d 1556, (D.C. Cir. 1988); 47 U.S.C. Section 309(e).

Financial Certification Issue

The Rivertown application was filed on the June 1989 version of FCC Form 301. In Section III thereof, Rivertown proposes to rely on loans in the amounts of \$10,000 from David

Brown, \$15,000 from David Bowen and \$240,000 from John Pritchard to meet its \$265,000 proposed cost of constructing and operating its station for three months without revenue.

To prove reasonable assurance of financial qualifications at the time of certification, an applicant must show that prior to certification 1) it engaged in serious and reasonable efforts to ascertain predictable construction and operations costs, and 2) it must provide reliable evidence of net liquid assets to meet those costs. (emphasis added) Northhampton Media Associates, 4 FCC Rcd 5517 (1989).

Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990), holds that reasonable assurance will be found only where "the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (e.g., payment period, interest rates, collateral requirements, and other basic terms). Short of these ordinary fundamentals, it would be difficult to infer 'reasonable assurance' from a 'committed source.'"

As its financial sources are individuals relying on their personal assets, Rivertown was required to have current (i.e. within 90 days of the date of filing) balance sheets or financial statements from Mr. Bowen, Mr. Brown, and Mr. Pritchard showing 1) all liabilities and current and liquid assets sufficient to meet current liabilities; 2) financial ability to comply with the terms of the loan agreement; and, 3) net income, after federal income tax, received for the past

two years.

According to Brown's September 30, 1991, balance sheet, his liquid assets consisted of \$752 in checking and \$52 in savings. His liabilities of \$1,300 exceeded his assets. (See, Attachment B to Rivertown's March 9, 1993, Opposition to Petition to Enlarge Issues) Rivertown averred that Brown supplied about \$8,500 to the applicant during the pendency of the application; however, this contribution does not demonstrate that such funds were available to him at the time of certification. It is clear that Rivertown had no assurance of any funds from David Brown when it certified its finances in October 1991. It is axiomatic that an applicant may not certify its financial qualifications and then set out to obtain financing. Pepper Schultz, 103 FCC 2d 1052, 1058-1059 (Rev. Bd. 1986), Aspen FM, Inc., 6 FCC Rcd 1602, ¶ 13 (1991).

By letter of August 26, 1991, David Bowen agreed to loan up to \$15,000 to Rivertown and specified the interest rate and when repayments are to commence. He omitted mention of collateral from this letter. Financing letters lacking mention of collateral are facially deficient in most cases. A.P. Walter, Jr., 6 FCC Rcd 875 (Rev. Bd. 1991). In addition, David Bowen supplied no reliable financial ability information to Brown. Merely, Mrs. Bowen "assured Mr. Brown that she and her husband would have no difficulty making such a loan from their immediately available funds." (Rivertown opposition, page 9) Such blanket statements to a person certifying an

applicant's finances do not demonstrate an availability of funds. The instructions to Form 301 mandate the submission of adequate information from each lender. Mere oral assurance of the availability of funds is insufficient. See, e.g., Texas Communications Limited Partnership, 7 FCC Rcd 3186 (1992); Short Broadcasting Co., Inc., 8 FCC Rcd 5574 (Rev. Bd. 1993).

In its March 9, 1993, Opposition, Rivertown asserted that there would be no collateral for the David Bowen loan. Had that been the understanding at the time the application was filed, the letter would have so stated. As the loan letter from David Bowen fails to mention collateral requirements, Brown could not have had a "present firm commitment" from Mr. Bowen to make the loan. Peter Joseph Devlin and Patricia Eve Devlin, 7 FCC Rcd 2499 (Rev. Bd. 1992) rev. denied, 7 FCC Rcd 6846 (1992). The Commission may not take for granted that collateral was discussed between the parties. There is no basis to believe that Rivertown or David Brown can or will meet all contractual requirements to David Bowen and there is no basis to believe that Mr. Bowen is a "committed lending source." His funds may not be recognized by the Commission. Rivertown's argument that Mr. Pritchard had taken all available collateral for his loan, so that no collateral remained, is unpersuasive and inaccurate. Mr. Bowen could have required a stock pledge and a junior lien behind Mr. Pritchard on the accounts receivable and physical assets, for example.

In a July 10, 1991, letter to David Brown, John Pritchard

stated he will loan up to \$240,000 to David Brown, personally, for use in constructing and operating an Eldon radio station. Mr. Pritchard's balance sheet as of June 30, 1991, was attached. No information on Mr. Pritchard's after-tax income for the two-year period preceding the filing of the application, a necessary Commission requirement, was supplied.

By the terms of his letter, Mr. Pritchard's sole commitment was to make a loan directly to David Brown. There was no contemporaneous showing from July 1991, that Rivertown would receive these funds, either directly from Pritchard or from Brown, such is a fatal flaw for the applicant must have assurance of the funds, not one of its principals. In Sunshine Broadcasting, Inc., 6 FCC Rcd 5891 (Rev. Bd. 1991), a corporate applicant was found not financially qualified at the time it filed its application. That a principal had adequate personal resources was held insufficient to give the applicant reasonable assurance of financing. Also, in REM Malloy Broadcasting, 6 FCC Rcd 5843 (1991), financial issues were added against two applicants. One was relying on a bank letter addressed not to the applicant, but to one of its principals. The other was relying on a bank letter addressed to a corporation when, in fact, the applicant was a partnership. The lack of any loan commitment from either David Brown or John Pritchard to Rivertown, the corporate applicant, clearly brings the instant case within the scope of these holdings.

In reply, Rivertown asserted that Brown and Pritchard had a mutual understanding that the loan would be made to the company, rather than to Brown personally, and that language in the loan letter requiring Brown's personal guarantee¹ would otherwise be a redundancy. Rivertown's post hoc temporizing does not suffice. The Commission requires all financial arrangements to be fully detailed at time of certification. When Pritchard wrote his letter he could not have had Rivertown in mind, for it was not incorporated until August 1991. Moreover, had Brown contemplated an entity other than a sole proprietorship, Mr. Pritchard's letter would have so indicated.

There is no writing contemporaneous with Rivertown's financial certification to indicate that Pritchard was willing to lend money to a company owned only 55% by Brown. Once Rivertown was created on August 21, 1991, there arose an obligation to get a letter from Mr. Pritchard stating that his loan would be made to that company. Accordingly, Rivertown failed to demonstrate that Mr. Pritchard's loan commitment, as of the date Brown certified its application, was to the corporation. The Commission may not read into the plain language of an offer something that is not there; a loan offer to Mr. Brown is not a loan offer to Rivertown.

¹ Rivertown has produced no contemporaneous written evidence that Brown consented to this personal guarantee. In addition, given the minimal liquidity shown on Brown's balance sheet, this guarantee is meaningless.

Rivertown concedes that it did not have information on Pritchard's net income after taxes at the time of its certification. However, it states that such information is not required because Pritchard's liquid assets were more than four times the amount he proposed to loan to David Brown. It speculates that this information is required only when a lender's balance sheet does not demonstrate sufficient net liquid assets to make the loan, but offers no basis for this assertion. Rivertown is clearly incorrect; the Commission requires every lender to provide income information. There is no exception found in Commission law or policy. Rivertown cited no authority for the proposition that an applicant may choose to ignore a specific requirement of Commission policy and yet be financially qualified. Had the Commission not found that a lender's income was important, it would not have imposed the requirement that it be disclosed to the applicant as part of the financial certification process.

Rivertown asserted that its estimate of \$265,000 for construction and first three months operation is not accurate, that it includes a "cushion" of over \$28,000 and, therefore, it needs only the funds from Pritchard to be financially qualified. Rivertown's post hoc description of its budgeting must be rejected. The instructions for Section III, Question 2, of Form 301 clearly call for the applicant to supply the sum of its construction and operating expenses, as itemized. Any "cushion" would appear as an amount of available funds in

excess of the amount indicated in response to Question 2.

An applicant's responses to questions on the application form constitute material representations and are presumed to be meaningful. Rivertown now claims that it deliberately put an incorrect number into its application. It did not explain to the Commission that its estimated costs included a "cushion" until its financial qualifications were called into question. It has not amended its application to supply the "correct" figure.²

Included among the documents exchanged by Rivertown was a draft of the original FCC application which Brown sent by facsimile to its counsel on September 23, 1991. The cover sheet and draft Section III were appended as Attachment 1 to Sample's Petition to Enlarge. On that draft, Rivertown indicated that only \$240,000 would be required to construct and operate the station for three months, and that Mr. Pritchard would be providing the sum of \$215,000! Brown and Bowen were to contribute \$10,000 and \$15,000 respectively.

The draft Section III contains handwritten notes added by Rivertown's counsel when he reviewed the draft. These notes show that counsel was aware of the requirement that each of the financial commitments be supported by a financial statement and letter of commitment. (See Sample's March 19, 1993,

² See, KR Partners, 8 FCC Rcd 1748 (Hearing Designation Order, 1993) which states that a good cause showing is required to amend the estimated construction and operating budget after conclusion of the amendment-as-of-right period.

Reply to Opposition to Petition to Enlarge Issues) It must be presumed that counsel communicated such requirements to Brown.

Disclosures on the draft application raise serious questions about Rivertown's candor in its opposition. Why was Brown submitting a figure of \$215,000 from Mr. Pritchard on September 23 when he allegedly received a letter stating the loan amount as \$240,000 in July? It appears that the letter from Mr. Pritchard was not written in July, as Rivertown asserts, but much later? The date of Mr. Pritchard's letter is important, for it goes to the efficacy of Rivertown's argument that the form of the applicant was not yet determined when Mr. Pritchard wrote his commitment letter to Brown. As noted above, Rivertown was incorporated on August 21, yet Brown was seemingly unaware of the amount of Mr. Pritchard's loan more than a month later.³

The draft budget also refutes Rivertown's assertion that it did not require a balance sheet from David Bowen before filing its application. Counsel's notes indicate that Brown was aware of the need for financial statements from each financier prior to the filing of the application. Rivertown has not explained why Brown chose to ignore a requirement of

³ The hand written notes supplied in Rivertown's opposition indicate a loan amount of \$240,000 from Mr. Pritchard. However, it is clear that these notes were created on or after September 30, 1991, for they also indicate the amount of money put in by each financing source as of that date. Accordingly, they shed no light on the question of whether Mr. Pritchard wrote his letter before or after Rivertown was incorporated.

which he was aware. The documents fully demonstrate the existence of significant problems with Rivertown's financial posture at the time of filing.

The ALJ denied the requested issue upon a determination that Rivertown had committed funds available to it in the amount of \$265,000. This is error because, as shown, Rivertown did not have reasonable assurance of funds from any source when it filed its application. Pritchard was not committed to lend any money to Rivertown. Furthermore, he did not provide his income statement. Other than an ineffective blanket statement, the Bowens provided no financial information to Brown and Mr. Bowen's letter failed to specify collateral for the proposed loan. Brown's balance sheet is insufficient to demonstrate assurance of any funds to Rivertown.

Rivertown's financial certification was inaccurate when it was made. Rivertown has not demonstrated reasonable assurance of funds to meet its estimate of construction and operating costs to this date. Accordingly, a prima facie conclusion must be drawn that Rivertown lacks reasonable assurance of any of the funds on which it initially relied, and on which it continues to rely for its financial certification. Sample's Petition to Enlarge Issues against Rivertown should have been granted.

2. Whether the ID's award of integration credit for Rivertown's 45% voting shareholder, Ellen Bowen, was correct.

If so, whether the ID's determination that Ellen Bowen's husband did not have an equity interest in Rivertown was correct.

At paragraph 101, the ID awarded full integration credit to Ellen Bowen. This conclusion is in error. The record as a whole fails to establish that she will work at the radio station in a managerial capacity.

Rivertown proposes Ellen Bowen as its business manager. (Rivertown Ex. 3). The Commission recognizes a "business manager" as a position meriting integration credit, however, the title is irrelevant when the evidence demonstrates that the individual will have no managerial duties. Integration credit depends on the proposed duties as supported by the record. Sarasota-Charlotte Broadcasting Corp. v. FCC 976 F. 2d 1493; 71 RR 2d 660 (DC Cir. 1992). The applicant has the burden to prove its integration proposal. Bradley, Hand and Triplett, 89 FCC 2d 657 (Rev. Bd. 1982). In order to sustain this burden, Rivertown must show that Ms. Bowen will play a meaningful role in management and carry out policy making and supervisory functions.

The Commission has ruled that if "an applicant fails to disclose its integration proposal by the amendment-as-of-right date, it will receive no credit for integration in the comparative hearing." A uniform cut-off date permits parties in comparative cases "to identify the relative strengths and weaknesses in the integration proposals" and "eliminates in-

tegration gamesmanship" such as improving one's comparative position beyond the relevant date. Revision of Form 301, 4 FCC Rcd 3853, ¶¶ 56-58 (1989). Moreover, the "submission of a standard integration statement after designation for hearing does not give rise to an opportunity to upgrade any previously submitted integration proposal." Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 3403, n. 3 (1991).

Rivertown's application on the amendment-as-of-right date stated that "Ellen Bowen will work full-time, a minimum of 40 hours per week, assuming duties as Business Manager of the Station." Other than the title of Business Manager, Rivertown failed to describe the proposed position or its duties as required by the instructions to Form 301. (See Exhibit 1 to Sample's Proposed Findings of Fact and Conclusions of Law) Only upon filing its post-designation integration statement did Rivertown mention the duties Ellen Bowen would have at the radio station. Commission policy precludes recognition of the late-filed job description, as it is an impermissible comparative upgrade.

In addition, Ellen Bowen's post-designation integration statement and written direct testimony state that her "principal responsibilities will include overseeing billing, collections, and accounts payable, and coordinating sales and traffic." These duties fail to reflect any policy making responsibilities. Under cross-examination at hearing, in

contradiction to her written testimony, she testified that she will perform the same functions at the Eldon station that she performed at Stations KMCD/KIIK Fairfield, Iowa, in addition to doing possibly the accounts payable. (Hearing Transcript ("TR") 64-65) According to Rivertown Exhibit 3, her duties at KMCD/KIIK consisted of bookkeeper, receptionist, invoicing clerk, office manager, traffic manager, and network coordinator. They are primarily clerical, definitely non-managerial activities which do not merit integration credit. Bradley, Hand and Triplett, supra. The record evidence demonstrates that Bowen will not set policy, nor will she oversee, hire or fire any employees. Clearly, she will have no meaningful role in station management. Utah Television Associates Limited Partnership, 102 FCC 2d 1470, 1478-1479 (Rev. Bd. 1985).

The conclusion that Ms. Bowen will be a mere employee at the Eldon station is further supported by the fact that she had no material involvement in the preparation, filing or prosecution of Rivertown's application. She has had no dealings with Rivertown's Iowa counsel, David Miller, with regard to the application. (TR 47). Bowen did not review any rough drafts of Rivertown's Articles of Incorporation before they were filed with the Iowa Secretary of State. (TR 48). Ms. Bowen never spoke with Rivertown's consulting broadcast engineer about the construction permit application. The first time that Bowen spoke with Rivertown's communications counsel, Donald Ward, was the day before her deposition in April 1993.

(TR 49).

Ms. Bowen had no discussion with John Pritchard about his financing arrangements with Rivertown. (TR 50). Bowen did not see the Pritchard loan agreement at the time it was signed in 1991 and, at the time of her deposition on April 2, 1993, she did not know whether money advanced by Mr. Pritchard was to be a gift or a loan; she could only assume that it would be for a loan. (TR 56-58). The only money that Ms. Bowen has advanced to Rivertown is \$45 in payment for her stock; she is not personally responsible to repay any loans made to Rivertown. (TR 58-59).

Ms. Bowen provided no numbers for inclusion in Rivertown's construction and operating budget. (TR 62). She did not see Rivertown's proposed tower site until about one month prior to the hearing, does not know its size and never spoke with its owner. (TR 63). Bowen did not participate in establishing Rivertown's public inspection file or in making the newspaper publications concerning Rivertown's application. (TR 64). Ellen Bowen's only input to the application has been conversations with her fellow principal, David Brown, writing checks and making deposits to the Rivertown checking account. (TR 59). Ms. Bowen's limited involvement in the application supports denial of integration credit. Nugget Broadcasting Company, 8 FCC Rcd 1414 (Rev. Bd. 1993), and see, Atlantic City Community Broadcasting, Inc., 6 FCC Rcd 925 (Rev. Bd. 1991) *rev'd on other grounds*, 8 FCC Rcd 4520 (1993) (Principal was

found not to have a bona fide role in the applicant when she deferred in the selection of the engineer and attorney; had no role in locating the transmitter site or preparing the budget or the application; and her only independent action was compilation of the EEO program).

The ID credits Ellen Bowen's integration on the basis that her proposal and activities "are not significantly different from those found by the Review Board to warrant credit in Harry S. McMurray, 8 FCC Rcd 3168, 3171 (Rev. Bd. 1993)." However, McMurray is distinguishable. In McMurray, while Mrs. Gunkle did not "take the lead" in the applicant, she was awarded full integration credit because she had sufficient activity in the application process, was part of a husband and wife business "team" and there was no doubt as to the adequacy of her timely described managerial/policy-making duties at the proposed station. Ellen Bowen, however, will have no duties worthy of integration credit and has shown only desultory activity and connection to Rivertown's application. Rivertown has not sustained its burden of proof and must be denied integration credit for Ellen Bowen.

In its Proposed Findings of Fact and Conclusions of Law, Sample argued that David Bowen, Ellen Bowen's husband, has a mutual ownership stake in his wife's voting stock in Rivertown. At paragraphs 99 and 100, the ID concluded that the record did not support such a finding.

In Richard P. Bott, II, 4 FCC Rcd 4924, 4929-30 (Rev. Bd.