

Before the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. <u>93-264</u>
)	
FRANK B. DUROSS)	File No. BPH-920512MC
)	
KENNETH F. ROSER, JR.)	File No. BPH-920513MI
)	
KEVIN O'KANE)	File No. BPH-920514MK
)	
For a Construction Permit for)	
a New FM Station on Channel 250A,)	
at Whitesboro, New York)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**SUPPLEMENT TO MOTION TO DISMISS
MOTION TO ENLARGE ISSUES AGAINST O'KANE**

Frank B. DuRoss ("DuRoss"), by and through counsel, hereby submits a Supplement to his "Motion To Dismiss Motion To Enlarge Issues Against O'Kane" filed December 8, 1993. In support whereof, the following is shown:

1. In his Motion To Dismiss, Mr. DuRoss asked the Commission to dismiss the Motion To Enlarge Issues that he had filed against Kevin O'Kane ("O'Kane") seeking the addition of financial and misrepresentation issues. DuRoss noted that the parties had reached a settlement that, if granted, would result in the dismissal of O'Kane's application with prejudice. Given this fact, Mr. DuRoss noted that the addition of special issues against O'Kane was no longer necessary and that the Motion To Enlarge had been rendered moot.

2. Mr. DuRoss has recently received additional

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information that would further support the dismissal of his Motion To Enlarge. Attached is the Declaration of Kevin O'Kane,¹ wherein he details the steps he took to verify his financial qualifications prior to filing his Whitesboro application. Based upon this information, it appears that neither a misrepresentation issue nor a forfeiture were appropriate in this case. Given this fact, and the fact that the additional basic financial issue will be rendered moot by the dismissal of Mr. O'Kane's application, further consideration of the Motion To Enlarge Issues is no longer warranted in this case. Therefore, it is respectfully requested that, upon a grant of the DuRoss/O'Kane Settlement Agreement and the dismissal of Mr. O'Kane's application, the pending "Motion To Enlarge Issues Against O'Kane" be dismissed.

Respectfully submitted,

FRANK B. DUROSS

By: 

Arthur V. Belendiuk
Shaun A. Maher

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

December 16, 1993

¹ Attached is the facsimile copy of Mr. O'Kane's Declaration. The original of this document will be supplied upon its receipt.

DECLARATION

Kevin O'Kane hereby declares and affirms as follows:

1. I am an applicant for a new FM station at Whitesboro, NY.
2. I am aware of the motion to enlarge issues filed against me by Frank B. DuRoss, seeking issues as to whether I am financially qualified and whether I misrepresented my financial qualifications in my application for Whitesboro.
3. In response to the allegations raised, I did not misrepresent my financial qualifications to the FCC.
4. As stated in the application (FCC Form 301, p. 6, attached as Ex. 1, to the motion to enlarge issues), I estimated that my construction and operations costs for the station would be \$77,562. To meet this requirement, I obtained a commitment from my father for a loan of up to \$100,000.00. Since this amount would cover my entire costs and provide a cushion, I believed I was financially qualified.
5. In the application I indicated that I was also a source of financing in the amount of \$50,000.00. While I had no need to list myself as a source of financing, I did so because of my commitment to divest of my 37.5% interest in television station WFXV-TV, Utica, New York. One of the other stockholders in WFXV-TV had made a firm offer to purchase my interest under terms which would include an initial cash payment in excess of \$50,000.00. Since I knew that I would be able to get at least \$50,000.00 in cash for the sale of my interest, I listed it on the application. However, I was not relying on that amount for my financial certification as evidenced by the fact that I ob-

tained a commitment from my father to finance the entire amount with a substantial cushion.

6. With respect to the loan from my father, I was provided a financial statement which listed liquid assets of \$600,000.00 (and a residence valued at \$240,000.00) - with no liabilities. It is alleged that my certification of financial qualifications was not justified because I did not produce any documents to support the financial statement. Attached hereto is a copy of my fathers' current Merrill Lynch statement, showing marketable securities with a value of \$147,668.00. While not a list of all of my father's holdings, this statement alone demonstrates sufficient liquid assets to cover the loan. It was my understanding from counsel that I did not have to produce documentation to prove that the financial statement was accurate. However, this does not mean that my reliance on my father's financial statement was unjustified. I am very familiar with my father's financial situation. My father loaned Mohawk Valley Broadcasting, Inc. (licensee of WFXV-TV in which I have an ownership interest) \$72,000.00. There is no question in my mind that my father could and would lend me the money required to build the radio station as evidenced by the fact that he has loaned similar amounts to the television station in which I have an interest.

7. An assertion was also made that because the \$72,000.00 loaned by my father to the television station did not show up on either of our financial statements, the financial statements are suspect. This is not true. The loan was to Mohawk Valley Broadcasting, Inc. and not to me. Therefore, there was no reason for the loan to show up on my financial statement. My father's

failure to include the note due on his financial statement had no bearing on his ability to make the loan.

8. With respect to the assertion that my financial qualifications are suspect because of a pending television and LPTV application, the fact is that those applications have no bearing on my ability to finance the radio station. With respect to the application of Mohawk Valley Broadcasting, Inc. for a new television station at Ilion, New York, I am simply a minority stockholder in the applicant. I have no personal responsibility to finance that application, and I did not execute a financial certification in connection with that application. That leaves the question of the funding of one additional LPTV station. Since I am already the licensee of four LPTV stations, my ability to construct is a given. The funding for that station is independent of the funding for the radio station and simply has no bearing on my financial qualifications here. I have funding for both stations.

9. In conclusion, my financial certification in connection with this application was based on the loan commitment made by my father. I have personal knowledge of my father's ability to make the loan, and he has actually made a similar loan in the past. This was the basis for my certification of financial qualifications, which was made in good faith and certainly without any intent to deceive the Commission.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 16th day of December, 1993.



Kevin O'Kane

Merrill Lynch

Central Securities Management Account

Account No. 107-50712 Telephone No. 402-65-5591 Page 2 of 4 Statement Period 10/30/93 TO 11/26/93

ROGER J O'LAKE AND
MIRIAM E O'LAKE TIC

Holdings

Investment Description	Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annualized Income	GAAP
STOCKS							
ATLANTIC ENERGY INC N J	ATE	400	22.125	\$8,850	6.96	\$616	
QUALITY GAS ELEC	QGE	200	25.250	\$5,050	5.86	\$295	
ENVIRONMENTAL TM EDISON	ENE	200	27.875	\$5,575	5.73	\$319	
QUALITY DISNEY COMPANY DEL	DIS	500	30.875	\$15,437	.64	\$124	
QUAL GROUP INC	QPL	200	36.625	\$7,325	6.77	\$495	
GLAND HALDRES PLC SPONS ADM	GLX	200	19.250	\$3,850	3.77	\$145	
GLOBAL INDUSTRIES INC	IND	20	7.375	\$147			
QUINCY INC	QUIN	200	34.500	\$6,900	3.24	\$224	
SEW ST E & CS COMPANY	SEW	300	30.250	\$9,075	7.27	\$660	
SYNTHETIC ELEC PAR CORP	PEW	200	25.375	\$5,075	6.46	\$328	
QUALR MANAGED HALDRES CORP	RM	200	6.625	\$1,325			
AMERAMERICA CORP	TA	104	55.375	\$5,759	3.61	\$208	
QUALITY DIXIE STORES	WIN	442	55.250	\$24,420	2.60	\$635	
SUBTOTAL				\$102,788		\$4,951	

TRUSTS
 TRUAL FUNDS & UNIT INVEST TRUSTS
 COLUMBIA FEDERAL
 SECURITIES FUND CLASS A 4000 11.220 \$44,880 7.32 \$3,285

TOTALS FOR PRICED INVESTMENTS \$107,668.00 \$7,316

Priced Portfolio \$107,668.00

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Merrill Lynch, Pierce, Fenner & Smith Inc.

CERTIFICATE OF SERVICE

I, Lori Paige DiLullo, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 16th day of December, 1993, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

The Honorable Joseph P. Gonzalez (*)
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Room 221
Washington, DC 20554

James Shook, Esq. (*)
Hearing Branch
Federal Communications Commission
2025 M Street, N.W.
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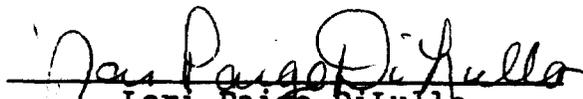
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(*): By Hand Delivery

(#): By Facsimile on December 16, 1993 and First Class Mail


Lori Paige DiLullo