

JAN 28 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

AURIO A. MATOS

LLOYD SANTIAGO-SANTOS AND
LOURDES RODRIGUES-BONET

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

) MM DOCKET NO. 93-89

) File No. BPH-911114MS

) File No. BPH-911115MP

To: The Review Board

MASS MEDIA BUREAU'S MOTION TO

REOPEN THE RECORD AND ENLARGE THE ISSUES

1. The Mass Media Bureau hereby requests the Review Board to reopen the record and, pursuant to § 1.229 of the Commission's Rules, enlarge the scope of this proceeding by adding reporting (§ 1.65) and transmitter site issues against Aureo A. Matos ("Matos"). In support whereof the following is shown.

2. This case is presently before the Review Board on exceptions to the *Initial Decision of Administrative Law Judge Joseph P. Gonzalez*, 8 FCC Rcd 7920 (ALJ, 1993) ("*I.D.*"). The *I.D.* granted the Matos application over that of challenger Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Bonet") after concluding that Matos was superior to Bonet on the basis of coverage (areas and populations served) and past broadcast experience. *I.D.*, at ¶¶ 18-19.

3. As demonstrated more fully below, the Bureau's request to reopen the record is

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supported by events which have taken place since the I.D. was released. Furthermore, the events are decisionally significant. Consequently, good cause exists to reopen the record to receive evidence on the issues requested herein. See, Shirley Marchant, 66 RR 2d 1537 (Rev. Bd. 1989).

4. In support of the Bureau's request for addition of issues, there are attached hereto two documents. The first document, Exhibit 1, consists of a letter to Matos, dated December 13, 1993, from the Puerto Rico office of the United States Department of the Interior, Fish and Wildlife Service. The correspondence informed Matos of a "definitive decision" not to allow Matos to use his proposed transmitter site because of the proximity of the site to endangered sea turtles and plant species. The proposed transmitter site is located on a National Wildlife Refuge.

5. The second document upon which the Bureau's instant request is based, Exhibit 2, consists of a recent letter, dated January 20, "1993" (sic), from Scott Cinnamon, Esq. (Matos' counsel), to Audrey P. Rasmussen, Esq. (Bonet's counsel). The letter's stated purpose was to transmit a copy of "a document" pursuant to a "continuing document production obligation." The "document" referenced in the transmittal letter was the Fish and Wildlife correspondence described above. The January 20th correspondence indicates that Mr. Cinnamon directed a copy of the transmittal letter to the Presiding Judge *without* enclosing a copy of the Fish and Wildlife correspondence.

6. Section 1.65 of the Commission's Rules requires applicants to report to the Commission, within 30 days, any substantial and significant changes in information previously furnished. Based on the Fish and Wildlife determination, it is beyond question that Matos has been without reasonable assurance of the availability of his transmitter site

since December 13, 1993. Matos personally learned of this determination upon receipt of the December 13, 1993, Fish and Wildlife letter. Furthermore, Bureau counsel, who also received a copy of the letter directly from the Fish and Wildlife Service, advised Mr. Cinnamon by telephone of the determination and transmitted to him by facsimile a copy of the Fish and Wildlife correspondence on December 22, 1993.¹ Nevertheless, Matos has not reported the loss of his transmitter site to the Commission.

7. Although Mr. Cinnamon apparently directed a copy of his January 20th transmittal letter to the Presiding Judge, it is clear that the Presiding Judge, having released his I.D., no longer has jurisdiction over this case. Furthermore, even if Mr. Cinnamon inadvertently served his transmittal letter on the Presiding Judge rather than on the Review Board, the letter, standing alone, does not reveal anything whatsoever about the substance of the "document" to which it makes reference. Consequently, the copy of Mr. Cinnamon's transmittal letter which was directed to the Presiding Judge cannot, under any circumstance, be construed as an attempt to report a material change to the Commission pursuant to § 1.65 of the Commission Rules.²

8. Given the decision in Bechtel v. FCC, No. 92-1378 (D.C. Cir., released December 17, 1993), it could well be that the sole legitimate basis on which Matos will prevail in this proceeding is his proposed superior coverage. However, having now lost his transmitter site, the basis for awarding him the construction permit would no longer exist.

¹ Attached hereto as Exhibit 3 is a facsimile report indicating that a transmission took place from the FCC to the law offices of Brown, Nietert & Kaufman (Telephone No. 9-457-0126) at 12:57 p.m. on December 22, 1993.

² Nor can the fact that the Bureau, a party in this proceeding, received a copy of the Fish and Wildlife letter directly from the Fish and Wildlife Service relieve Matos of his obligation to timely report the loss of his transmitter site to the Commission.

9. The Bureau submits that Matos' failure to report the loss of his transmitter site raises substantial and material questions about his basic qualifications to be a Commission licensee. The facts set forth above establish a *prima facie* showing that the unreported information is of decisional significance and the subject of intentional concealment. See, GAF Broadcasting Company, Inc., 8 FCC Rcd 8202 (Rev. Bd. 1993); *citing*, Goodlettsville Broadcasting Co., Inc., 8 FCC Rcd 5178, 5181 (1993); Merrimack Valley Broadcasting, 99 FCC 2d 680, 683, n. 9, (1984). Moreover, Matos apparently has no transmitter site.

10. Based on the foregoing, the Bureau requests that the following issues be added in this proceeding:

- (a) To determine whether Matos violated Section 1.65 of the Commission's Rules by failing to timely report the loss of his transmitter site, and, if so, the effect thereof on his qualifications to be a Commission licensee.
- (b) To determine whether Matos has reasonable assurance of the availability of his proposed transmitter site, and, if not, the effect thereof on his qualifications to be a Commission licensee.

11. In the event the Board adds the foregoing issues, the Bureau requests Matos to produce the documents set forth in Exhibit 4, which is a Request for Production of

Documents, pursuant to § 1.229(e) of the Commission's Rules.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziejcz
Chief, Hearing Branch



Gary P. Schonman
Attorney
Mass Media Bureau

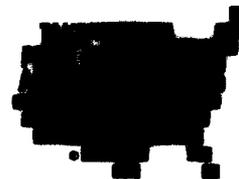
Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

January 28, 1994

EXHIBIT 1



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Caribbean Islands National Wildlife Refuge
P.O. Box 510, Carr. 301, Km. 5.1
Boqueron, Puerto Rico 00622

December 13, 1993

Aureo A. Matos
Apartado 7
Moca, PR 00676

Dear Mr. Matos:

We received your letter of December 9, 1993 informing us of the FCC's decision to grant you a construction permit for establishment of a new radio station in Culebra, PR. In this same letter you requested a Special Use Permit from the U.S. Fish and Wildlife Service for use of the existing tower on our property.

As you are aware this tower is located on a National Wildlife Refuge which has a mandate for protection of the natural resources on these lands. The present tower is considered an incompatible use because of its vicinity to an endangered plant species and the negative effect that the tower lights have on the orientation of endangered sea turtles nesting on a beach below the tower. Since this tower is inconsistent with the refuge goals we are working towards its elimination. I am sorry to inform you that we have made a definitive decision not to grant you a Special Use Permit for use of this tower, not even on a temporary basis.

Sincerely,

Shaw Davis
Project Leader

cc: T. Tallevast, Culebra NWR
G. Schonman, FCC

EXHIBIT 2

LAW OFFICES
BROWN NIETERT & KAUFMAN, CHARTERED
SUITE 660
1920 N STREET, N.W.
WASHINGTON, D.C. 20036

TEL (202) 887-0600
FAX (202) 457-0126

January 20, 1993

Audrey P. Rasmussen, Esq.
David L. Hill, Esq.
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

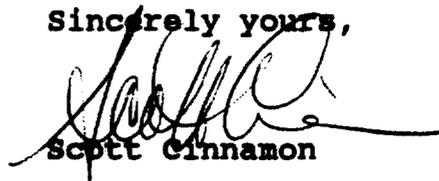
In re: MM Docket No. 93-89
Culebra, PR
Supplemental Document Production

Dear Counselors:

On behalf of Aurio A. Matos, and pursuant to Section 1.325 of the Commission's Rules, I have enclosed a copy of a document which, under the continuing document production obligation imposed on applicants, should have been produced on January 13, 1994. However, do to a personal family emergency, undersigned counsel was hurriedly called out of town on January 7, 1994 and did not return to full duty until January 18, 1994. Settlement negotiations, resulting in a verbal agreement, have also been underway since counsel's return. Thus, this letter is being filed as soon as practicable after the expiration of the 30 day period.

If there are any questions concerning this matter, please advise the undersigned. I regret any inconvenience the necessary tardiness of this letter might have caused.

Sincerely yours,



Scott Cinnamon

cc w/enc.: Gary Schonman, Esq.
Aurio A. Matos
cc w/o enc.: Hon. Joseph P. Gonzalez

EXHIBIT 3

 *** ACTIVITY REPORT ***

ACTY#	MODE	CONNECTION TEL	CONNECTION ID	START TIME	USAGE T.	PAGES	RESULT
*7904	AUTO RX	ECM 203 373 0046	ECM	12/22 10:59	00'38	1	OK
*7905	TX	G3 93013442050	FCC LAB	12/22 12:07	00'59	1	NG
							1 stop
*7906	TX	G3 93013442050	FCC LAB	12/22 12:10	00'36	1	NG
							1 stop
*7907	TX	G3 93013442050	FCC LAB	12/22 12:13	07'30	13	OK
*7908	AUTO RX	CHT 301 344 2050	FCC LAB	12/22 12:21	06'54	11	OK
7909	TX	G3 93013442050	FCC LAB	12/22 12:30	09'54	19	OK
7910	TX	G3 94570128	G3	12/22 12:57	00'37	1	OK
7911	TX	G3 93013442050	FCC LAB	12/22 13:14	01'02	2	OK
7912	AUTO RX	G3 01 261 10 26	G3	12/22 13:50	04'07	6	OK
7913	MANUAL TX	G3 202 632 0160	FOB OBC	12/22 13:55	08'49	8	OK
7914	AUTO RX	G3 0000000	G3	12/22 14:05	02'07	1	OK
7915	TX	G3 914088949375	G3	12/22 14:18	01'26	2	OK
7916	TX	G3 92675901	G3	12/22 14:46	02'33	5	OK
7917	TX	G3 94330200	G3	12/22 14:50	03'02	5	OK
7918	TX	G3 92674106	G3	12/22 14:54	02'32	5	OK
7919	TX	G3 97036960798	G3	12/22 14:57	03'11	5	OK
7920	TX	G3 97173371541	LICENSING FCC	12/22 15:02	02'17	5	OK
7921	TX	G3 901141227305785	G3	12/22 15:08	00'34	1	OK
7922	AUTO RX	G3	G3	12/22 15:21	00'51	1	OK
7923	AUTO RX	G3	G3	12/22 15:39	00'54	1	OK
7924	MANUAL TX	G3 202 647 7407	STATE DEPT - CIP	12/22 15:41	01'19	2	OK
7925	MANUAL TX	G3 202 377 4396	G3	12/22 15:43	01'22	2	OK
7926	TX	G3 912063482633	G3	12/22 15:46	02'28	4	OK
7927	MANUAL TX	G3 301 948 2067	G3	12/22 15:50	01'49	3	OK
7928	AUTO RX	ECM 2022675901	ECM	12/22 16:11	12'04	12	NG
							12
7929	AUTO RX	ECM 2022675901	ECM	12/22 16:29	02'02	3	OK
7930	AUTO RX	ECM 49 6131 185613	ECM	12/23 03:58	00'41	1	OK
7931	TX	G3 6535402	G3	12/23 07:41	01'48	2	OK
7932	TX	G3 97033584757	G3	12/23 08:34	01'24	2	OK
7933	AUTO RX	G3	G3	12/23 08:51	00'49	1	OK
7934	AUTO RX	G3	G3	12/23 08:56	00'48	1	OK
7935	AUTO RX	ECM 202 647 7407	STATE DEPT - CIP	12/23 09:12	05'28	7	OK
7936	MEMORY RX	G3 6095208953	G3	12/23 09:49	01'35	2	OK
7937	MEMORY RX	G3 313 872 7528	G3	12/23 09:57	00'46	1	OK
7938	MEMORY RX	CHT 202 632 5171	COMM. DUGGAN	12/23 10:00	00'47	2	OK
7939	TX	G3 93013442050	FCC LAB	12/23 11:03	04'10	6	OK
7940	AUTO RX	CHT 301 344 2050	FCC LAB	12/23 11:12	03'12	3	OK
7941	AUTO RX	ECM 9529871	DGRR/DOS	12/23 11:18	00'42	1	OK
7942	AUTO RX	ECM 716 687 3366	ECM	12/23 11:20	03'56	5	OK
7943	AUTO RX	ECM	ECM	12/23 12:10	00'49	2	OK

EXHIBIT 4

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

In the Matter of)	MM DOCKET NO. 93-299
)	
AURIO A. MATOS)	File No. BPH-911114MS
)	
LLOYD SANTIAGOS-SANTOS AND)	
LOURDES RODRIGUEZ-BONET)	File No. BPH-911115MP
)	
For a Construction Permit for a)	
New FM Station on Channel 293A at)	
Culebra, Puerto Rico)	
)	
To: Aurio A. Matos		

MASS MEDIA BUREAU'S REQUEST
FOR PRODUCTION OF DOCUMENTS

The Mass Media Bureau, pursuant to Section 1.325 of the Commission's Rules, hereby requests that Aurio A. Matos ("Matos") produce the following documents for inspection and copying at the offices of the Hearing Branch, Enforcement Division, Mass Media Bureau, 2025 M Street, N.W., Suite 7212, Washington, D.C., within ten (10) days.

Definitions and Instructions

a. "Matos" means Aurio A. Matos, any predecessor entity, subsidiary or affiliated company, and their present and former stockholders, directors, officers, partners, employees, agents (including legal counsel), consultants or other persons acting on behalf of Aurio A. Matos.

b. "Document" means handwritten, printed, typed, computerized or visually or aurally reproduced material of any kind, and means the original (or duplicate original) and any non-identical copies thereof (whether different from the original because of notes made on or attached to such copy or otherwise), drafts or amendments thereof, including but not limited to, all writings, correspondence, memoranda (including memoranda of oral conversations), minutes, resolutions, agendas, notices, diaries, notes (including notes of meetings), papers, calendars, lists, records of telephone conversations, instructions, guidelines, affidavits, receipts, promissory notes, agreements, contracts or any other documentary materials of any nature whatsoever including computer files, in the possession, custody, or control of Matos.

c. "Relate to," "relating to," "regarding," and "in regard to" mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or in any way is pertinent to the specified subject, including documents concerning the preparation of other documents.

d. "Person" or "persons" includes natural persons, corporations, partnerships, associations, and other legal entities, and governments or governmental bodies, commissions, boards, agencies, or entities.

e. "And" means and/or.

f. "Or" means and/or.

g. "Transmitted" means mailed, delivered, expressed, faxed, carried, or otherwise sent or caused to be sent from one location to another.

- h. References to the masculine include references to the feminine.
- i. References to the singular also include the plural, and *vice versa*.
- j. Each document produced should be identified by the number of the document request to which it is responsive.
- k. If any document which exists or existed is currently unavailable, explain why it is not currently available.
1. This request is continuing in character, requiring supplemental responses if further or different documents are obtained during the pendency of this proceeding.

Documents Requested

1. All documents relating to conversations between Matos and representatives of the U.S. Fish and Wildlife Service since November 1, 1991.
2. All documents prepared since November 1, 1991, relating to Matos' request(s) (informal or formal) for a Special Use Permit from the U.S. Fish and Wildlife Service.
3. All documents relating to the actions of Matos with regard to the decision of the U.S. Fish and Wildlife Service not to grant Matos a Special Use Permit.
4. All documents relating to the availability of Matos' proposed transmitter site since December 13, 1993.

5. All documents relating to Matos's search, since December 13, 1993, for a new transmitter site.

6. All documents relating to a decision by Matos to inform or not inform the Commission, Review Board, or Presiding Judge of the determination by the U.S Fish and Wildlife Service not to grant Matos a Special Use Permit.

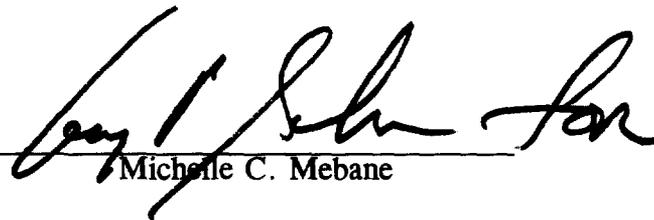
The Bureau believes the requested documents may contain relevant information regarding the Section 1.65 and transmitter site issues specified in this proceeding or are reasonably calculated to lead to the discovery of admissible evidence. See Section 1.311(b) of the Commission's Rules.

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 28th day of January 1994, sent by regular First Class United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Motion to Reopen the Record and Enlarge the Issues" to:

Scott C. Cinnamon, Esq.
Brown, Nietert & Kaufman
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036

Audrey P. Rasmussen, Esq.
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20036


Michelle C. Mebane