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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of

MM Docket No. 93-300

STEPHEN O. MEREDITH

) File No. BPH-920430MD

AL HAZELTON

) File No. BPH-920430ME

For Construction Permit for a
New FM Station on Channel
243C1 in Audubon, Iowa

To: The Honorable John M. Frysiak
Administrative Law Judge

PETITION TO ENLARGE ISSUES

Al Hazelton ("Hazelton"), by his attorneys and pursuant to Section 1.229 of the Commission's Rules, hereby petitions to enlarge the issues in connection with the application of Stephen O. Meredith ("Meredith"). In support thereof, Hazelton states as follows:

1. This Petition is timely filed. Pursuant to Section 1.229(b), petitions to enlarge issues premised on newly discovered material must be filed within fifteen (15) days of discovery. On February 3, 1994, Hazelton received a copy of the "Objection to Supplemental Request for Documents" ("Objection"), that Meredith served on January 31, 1994. The Objection contains information that Hazelton will show herein provides a basis for designation of a hearing issue as to whether he engaged in lack of candor or misrepresentation in connection with discovery in this proceeding.

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The instant Motion is being filed within the 15-day period following receipt of the Objection.

2. Even were Section 1.229(b) not to be applicable herein, the issue being requested in this Petition must be still be added. Section 1.229(c) provides that matters of "probable decisional significance" or "public interest importance" warrant consideration in the hearing process even on an untimely basis. The evidence presented herein, involving Meredith's failure to provide full disclosure in discovery, fully warrants designation of a hearing issue on the basis of Section 1.229(c). Lee Optical and Associated Cos. Retirement and Pension Fund Trust, 60 RR 2d 460, 462 (Rev. Bd. 1986).

3. Lee Optical teaches that there shall be full and complete disclosure during the discovery phase of the hearing. As the Board ruled (60 RR 2d at 463):

The fundamental concept underlying the discovery process is that prior to trial every party is entitled to the disclosure of all relevant information in the possession of any person unless the information is privileged. Discovery is intended to prevent just the sort of surprise during the hearing that occurred here....The submission of a misleading or untruthful response to a discovery request is fully as serious as an untruthful response made directly to the Commission....The Commission has recently emphasized that an applicant's truthfulness in its dealings with the Commission is a matter of prime concern....

The issue presented herein is whether Meredith fully disclosed information in response to a discovery request.

4. Section 1.325(c)(2) of the Commission's Rules provides that each party to a comparative hearing must submit a Standardized

Integration Statement. Section 1.325(c)(2)(iv) is clearly drawn and requires the applicant to describe:

All other media interests held by the persons identified under paragraph (c)(2)(ii), of this section;

On January 10, 1994, Meredith filed with the Commission an "Integration and Diversification Statement" (Exhibit A hereto).

Under the heading "Diversification," Meredith stated:

Mr. Meredith has no cognizable¹ or attributable interest in any medium of mass communication.

5. Hazelton took Meredith's disclaimer of any mass medium on its face. However, by sheer coincidence, counsel for Hazelton had a concern over whether there might be undisclosed media interests. In a balance sheet appended to Meredith's Standard Document Production, also made on January 10, 1994 (Exhibit B), was the statement "TA Investments."

6. Counsel for Hazelton recalled that during the mid-1980s, he had participated in the filing of declaratory ruling request dealing with limitations on limited partnership holdings by aliens. A reconsideration request in that proceeding had been filed by an entity with the name of TA Associates ("TA"). Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, As Amended, 61 RR 2d 298, 302 (1986). TA was identified by the

¹ Hazelton is uncertain as to what the term cognizable means in response to the discovery requirement. The dictionary defines the word "cognizable" as "capable of being known" or "capable of being judicially heard and determined." Webster's Ninth New Collegiate Dictionary (1983). Presumably, no cognizable interest has the same meaning as no interest.

Commission in that proceeding as a "general partnership composed entirely of United States citizens...that...holds investments in a variety of companies, including firms in broadcasting, cable television and cellular radio." Id. These investments include equity securities consisting of "convertible, nonvoting stock which 'give [TA Associates] the right, in certain cases, to obtain majority control of the communications companies in which [it] invests.'" Id. Based on this possible connection, Hazelton, on January 21, 1994, filed a Supplemental Request for Documents, seeking documents dealing with TA investments in mass media entities held by Meredith.

7. Meredith submitted an Objection to Supplemental Request for Documents (Exhibit C), wherein he opposed the production of any documents dealing with TA. While the language is cryptic, it appears that Meredith does not deny that certain of his TA investments are in the mass media. Rather, he claims that there is no need to provide any evidentiary information on these interests as they are "non-attributable." This argument is without merit.

8. In the first place, Meredith should not be the arbiter of what form of mass media interests he has. As Lee Optical teaches, discovery is intended to lead to the production of evidence relevant to the comparative issues and the Commission, not Meredith, should decide the impact of Meredith's mass media interests. Moreover, while the matter of attribution is relevant to such factors as multiple ownership and integration, it is simply not relevant in the diversification criterion, which is at issue

herein. The Commission has recognized that diversification is a separate matter and is predicated on the "objective of maximum diffusion" as enunciated in the Policy Statement on Comparative Broadcast Hearings. Doylan Forney, 68 RR 2d 366, 373 (1990). As a result, all mass media interests are to be considered.

9. In fact, convertible securities, such as those held by TA, have been considered by the Commission and determined specifically to be relevant to the diversification analysis.² The Commission reasoned in Doylan Forney, supra:

Thus, if an applicant in a comparative case has convertible securities entitling him to acquire capital stock in a licensee of one or more existing stations serving distant markets, the likelihood that the applicant will convert those interests into stock in other stations would be relevant to diversification, even if the applicant could exercise his conversion rights without violating the multiple ownership rules. (footnote omitted).

10. It is clear from this analysis that under the diversification criterion all mass media interests must be considered. Meredith apparently holds mass media interests and these interests should have been disclosed in response to discovery. The failure to do so requires, in the face of an explicit discovery direction to do so, consideration in the context of a hearing. Lee Optical and Associated Cos. Retirement and Pension Fund Trust, supra.

² In a submission made on February 16, 1994, Meredith has identified his interests as "warrants." In that warrants are convertible into equity securities upon their exercise, Hazelton submits that they fall into the category of convertible securities.

11. Pursuant to Section 1.229(e) of the Commission's Rules, Hazelton requests that the Presiding Judge order the production of the following documents:

A. Any and all documents dealing with mass media interests held by Stephen O. Meredith, in his individual capacity or as a trustee or beneficiary of a trust.

B. Any and all documents dealing with the preparation of the Diversification response to Meredith's Integration and Diversification Statement.

Consistent with this document request, Hazelton asks that the Presiding Judge require Meredith to comply with the procedures of Section 1.325(a)(2) of the Commission's Rules.

11. As regards discovery, Hazelton would intend to take the depositions of Stephen O. Meredith and a General Partner of TA Associates responsible for its mass media investments.

WHEREFORE, it is respectfully requested that the following hearing issues be designated:

A. To determine whether Stephen O. Meredith made misrepresentations or was lacking in candor with respect to his response to Section 1.325(c)(2)(iv) of the Commission's Rules and, if so, the effect thereof on Stephen O. Meredith's qualifications to be a Commission licensee.

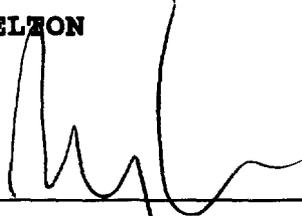
B. To determine whether, in light of the evidence adduced under the foregoing issues, Stephen O. Meredith possesses

the requisite qualifications to be a Commission licensee.

Respectfully submitted,

AL HAZELTON

By: _____


Barry A. Friedman
Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036
(202) 822-8250

Dated: February 18, 1994

EXHIBIT A

Before the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 93-300
)	
STEPHEN O. MEREDITH)	File No. BPH-920430MD
)	
AL HAZELTON)	File No. BPH-920430ME
)	
For a Construction Permit for)	
a New FM Station on Channel 243C1)	
at Audubon, Iowa)	
To: Honorable John M. Frysiak		
Administrative Law Judge		

INTEGRATION AND DIVERSIFICATION STATEMENT

Stephen O. Meredith ("Meredith"), an individual applicant in the above-captioned proceeding, pursuant to §1.325(c)(2) of the Commission's Rules (47 C.F.R. §1.325(c)(2)), hereby submits his "Integration and Diversification Statement".

Ownership Structure

Mr. Meredith is an individual applicant.

Diversification

Mr. Meredith has no cognizable or attributable interest in any medium of mass communications.

Integration

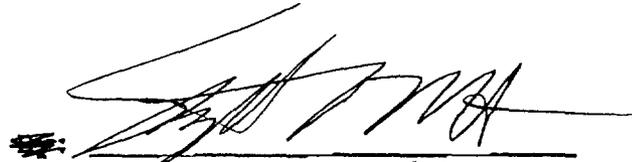
Mr. Meredith does not propose to be integrated into the management of the Audubon station but will exercise that degree of control of supervision necessary of a Commission licensee.

Auxiliary Power

Mr. Meredith will claim credit for the installation of auxiliary power generators at both the studio and transmitter.

Executed this 7th day of January, 1994.

STEPHEN O. MEREDITH



Stephen O. Meredith

lp/andiben/01-10.txt

CERTIFICATE OF SERVICE

I, Lori Paige DiLullo, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 10th day of January, 1994, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

Honorable John M. Frysiak (*)
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 223
Washington, DC 20554

Robert Zauner, Esq. (*)
Hearing Branch
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, DC 20554

Barry A. Friedman, Esq. (*)
Semmes, Bowen & Semmes
1025 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20036
Counsel for Al Hazelton

(*): By Hand Delivery

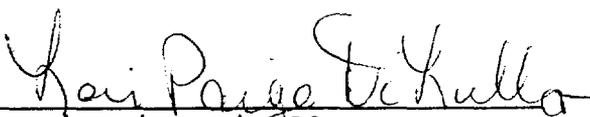

Lori Paige DiLullo

EXHIBIT B

Stephen O. Meredith Balance Sheet
As of 3/31/92

Selected Accounts
1/26/92

Page 1

Acct	3/31/92 Balance

ASSETS	
Cash and Bank Accounts	
Checking-BayBank	13,107.53
Savings-BayBank	42,737.43

Total Cash and Bank Accounts	55,844.96
Other Assets	
Other Invests.	298,488.00
Pensions, etc.	432,047.70
Personal Prop.	109,500.00
Real Estate	510,000.00
TA Investments	71,080.11

Total Other Assets	1,421,115.81

TOTAL ASSETS	1,476,960.77
	=====
LIABILITIES & EQUITY	
LIABILITIES	
Other Liabilities	
Credit Line-BayBank Line of Credit	0.00
Mortgage Debt	229,600.00
Other Debt	10,873.00

Total Other Liabilities	240,473.00

TOTAL LIABILITIES	240,473.00
EQUITY	1,236,487.77

TOTAL LIABILITIES & EQUITY	1,476,960.77
	=====

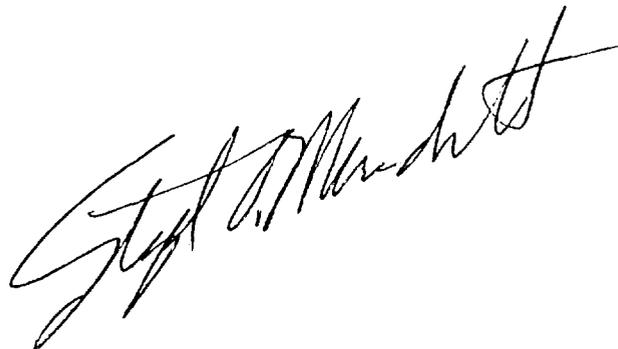


EXHIBIT C

Before the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of) MM DOCKET NO. 93-300
STEPHEN O. MEREDITH) File No. BPH-920430MD
AL HAZELTON) File No. BPH-920430ME
For a Construction Permit for)
a New FM Station on Channel 243C1)
at Audubon, Iowa)

To: Al Hazelton

OBJECTION TO SUPPLEMENTAL REQUEST FOR DOCUMENTS

Stephen O. Meredith ("Meredith"), by and through counsel, and pursuant to §1.325(a)(2) of the Commission's Rules, hereby submits his Objection to the "Supplemental Request For Documents" ("Request") filed upon him by Al Hazelton ("Hazelton") in the above-captioned proceeding. Meredith objects to Hazelton's request for the following reasons:¹

¹ Meredith objects to Hazelton's Request on timeliness grounds. Hazelton submitted his Request on January 21, 1994. Pursuant to §1.325(c)(3) of the Commission's Rules and the Presiding Judge's Order Prior to Prehearing Conference, FCC 93M-772, released December 29, 1993, all requests for supplemental document production were to have been made within ten days of the date for standardized document production (January 10, 1994) or by January 20, 1994. Hazelton argues that January 21, 1994 is the tenth day in this case because the FCC was closed on January 20, 1994. However, Hazelton's reliance on §1.4(d) and §1.4(e)(1) of the rules is misplaced. Hazelton was not required to file his Request with the Commission, therefore, the fact that the FCC was closed should have had no effect on Hazelton's ability to submit a timely request for additional documents. Furthermore, the U.S. Postal system was operating and Hazelton could have served his request by mail. Therefore, since it was submitted late, Meredith objects to Hazelton's Request on timeliness grounds.

Request 1: TA's Investments

1. Meredith objects to the production of those documents sought under Request #1. Hazelton is seeking documents concerning a company called "TA Associates" ("TA"). TA provides venture capital to various companies. Only some of these companies have ownership interests in mass media (as defined in FCC Form 301).. TA's mass media investments are non-voting investments. TA occasionally permits Meredith to make parallel non-voting investments in selected companies. As a result, Meredith holds non-cognizable, non-attributable interests in some of TA's investments. Each of Meredith's investments represent a non-voting interest of less than one percent of the company.

2. In Request #1, Hazelton seeks documents "having to deal with investments by Stephen O. Meredith in TA or its affiliates, including but not limited to, TA Communications Partners." Meredith objects to this Request because it is overly broad, since Hazelton is seeking documents that pertain to TA's investments that may not involve mass media companies. Furthermore, since none of Meredith's investments have resulted in his holding cognizable or attributable mass media interests, these documents are not relevant to the issues in this proceeding. Finally, Meredith provides legal representation for TA and, therefore, the documents in his possession would be protected by the attorney-client privilege. For these reasons, Meredith objects to the production of these documents.

Request #2: TA's Ownership Interests

3. Meredith objects further to the production of those documents sought under Request #2, "all documents having to do with the ownership of mass media interests...by TA Associates...." This Request is overly-broad since Meredith does not have an interest in every TA investment in a media company. Moreover, as noted above, none of Meredith's investments in TA have resulted in his having a cognizable or attributable interest in any mass media entity. Because of this fact, the existence of Meredith's TA investments will have no effect on his diversification credit in this proceeding. The documents sought under Request #2 are therefore not reasonably calculated to lead to the disclosure of evidence that would be admissible under the Commission's diversification criterion and Meredith objects to their production.

Request #3: Saga Communications, Inc.

4. Meredith has never held any type of equity interest in Saga. Therefore, the documents requested do not exist.

Request #4: Bank Checks

5. Finally, Hazelton requests that Meredith produce copies of all of the bank checks he has used to pay his application expenses. Meredith made a similar request of Hazelton in his Supplemental Document Request submitted on January 20, 1994. However, the difference in this case is that Hazelton is proposing integration and Meredith is not. An inquiry into whether Hazelton has been actively involved in the prosecution of

his application is appropriate in this case, since he has also pledged to be actively involved in the management of his proposed station. Therefore, the production of Hazelton's bank checks may lead to evidence that would be admissible at hearing under this line of inquiry.

6. On the other hand, Meredith has not made a pledge of integration in this proceeding and, therefore, a similar inquiry in his case would not be appropriate. There is no other justifiable reason to support the production of these documents other than for the purpose of initiating a fishing expedition into Meredith's financial qualifications, which are not at issue in this proceeding. Meredith, therefore, objects to the production of those documents outlined in Request #4.

Respectfully submitted,

STEPHEN O. MEREDITH

By: 

Gary S. Smithwick
Shaun A. Maher

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
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January 31, 1994

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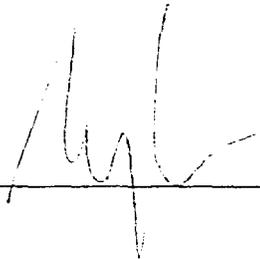
CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 4th day of February, 1994, served a copy of the foregoing, "Motion to Compel," on the following parties by first-class mail, postage prepaid:

Hon. John M. Frysiak *
Administrative Law Judge
Federal Communications Commission
Room 223
2000 L Street, N.W.
Washington, D.C. 20554

Robert Zauner, Esq.
Hearing Branch
Mass Media Bureau
Federal Communications Commission
Room 7212
2025 M Street, N.W.
Washington, D.C. 20554

Gary Smithwick, Esq.
Smithwick & Belenduik
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036



* By Hand

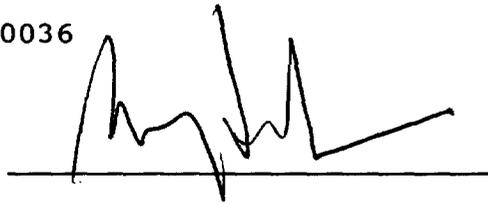
CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 18th day of February, 1994, served a copy of the foregoing, "Petition to Enlarge Issues," on the following parties by first-class mail, postage prepaid:

Hon. John M. Frysiak *
Administrative Law Judge
Federal Communications Commission
Room 223
2000 L Street, N.W.
Washington, D.C. 20554

Robert Zauner, Esq.
Hearing Branch
Mass Media Bureau
Federal Communications Commission
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2025 M Street, N.W.
Washington, D.C. 20554

Gary Smithwick, Esq.
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Washington, D.C. 20036

A handwritten signature in black ink, appearing to be "Barry A. Friedman", written over a horizontal line.

* By Hand