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

FCC MAIL SECTION

FEB 25 2/22/94 DEC 94M-99  
40987

In re Applications	)	MM Docket No. 93-241V
	)	
DARRELL BRYAN	)	File No. BPH-920109MA
	)	
SBH PROPERTIES, INC.	)	File No. BPH-920123MD
	)	
For Construction Permit for a	)	
New FM Station on Channel 276A	)	
in Tusculum, Tennessee	)	

O R D E R

Issued: February 23, 1994 ; Released: February 25, 1994

Under consideration is an Opposition to Witness Notification, filed February 22, 1994, by SBH Properties, Inc. ("SBH").

SBH opposes Darrell Bryan's ("Bryan") witness notification on the grounds that Bryan has failed to make the required showing of need for cross-examination.

Bryan wants to cross-examine William H. Seaver regarding matters relevant under the standard comparative criteria. However, Bryan has not identified a single fact that Seaver's testimony is intended to establish. Consequently Bryan has failed to meet the test of Section 1.248 as well as the Commission's intent as expressed in Proposals to Reform the Comparative Hearing Process, 6 FCC 157, 162 (1991). Mr. Seaver need not appear for examination.

Bryan also seeks to cross-examine Paul Hite, a non-voting stockholder, as to the deposition testimony where he stated that he presumed that he had veto power over costs and could veto any expenditure. Mr. Hite's deposition testimony has a hearing on whether SBH would be entitled to integration credit, but such inquiry may no longer be relevant, inasmuch as the integration of ownership criteria has been eliminated. The Court of Appeals in Susan M. Bechtel v. FCC, Case No. 92-1978, decided December 17, 1993, explicitly precluded the Commission from continuing to utilize the integration of ownership into management criterion. The Commission failed to seek rehearing in that case. However, the Commission could yet elect to petition the Supreme Court for a writ of certiorari, which would have to be filed on or before March 17, 1994.

At the present time the only issue to be determined at hearing herein is the comparative issue. It would appear that in order to make the most efficient use of resources, it would be best if the hearing were postponed until such time as the relevance of the proposed testimony can be determined.

Accordingly, IT IS ORDERED that the hearing in the above-captioned proceeding, scheduled for March 1, 1994, IS POSTPONED until further notice.

FEDERAL COMMUNICATIONS COMMISSION

*John M. Frysiak*  
John M. Frysiak  
Administrative Law Judge