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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of)	MM DOCKET NO. 93-87
)	
RAYMOND W. CLANTON)	File No. BPH-911216MC
)	
LOREN F. SELZNICK)	File No. BPH-911216MD
)	
)	
For Construction Permit for a)	
New FM Station on channel 279A)	
in El Rio, California)	

To: Honorable John M. Frysiak
Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON THE ADDED ISSUES**

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March 4, 1994

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SUMMARY

The issues added against Loren F. Selznick should be resolved in her favor.

Her 1991 financial certification was not false. Ms. Selznick reasonably relied upon the oral commitment of her good friend and law firm colleague, Mr. Joseph Dailey, to loan her El Rio FM project up to \$360,070, the total amount of her estimated cost of construction/initial operation. Her 1991 certification was based upon (i) her review of the FCC Form 301 Instructions, (ii) her discussions with then-communications counsel Peter Tannenwald, (iii) her oral loan commitment from Mr. Dailey and (iv) her item-by-item review of Mr. Dailey's November 1991 financial statement. Ms. Selznick had the required "documentation" of Mr. Dailey's net liquid assets "on hand" at the time that she certified.

There is absolutely no evidence in this record that Ms. Selznick misrepresented her financial qualifications at the time she signed her Form 301 application.

Finally, Ms. Selznick is financially qualified at present. Her Revised Amendment should be accepted. There is "good cause" for its acceptance and other public interest factors support the acceptance of her Revised Amendment.

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
PROPOSED FINDINGS OF FACT	2
I. The 1991 Financial Certification Issues	2
II. The Present Financial Qualifications Issue	9
PROPOSED CONCLUSIONS OF LAW	14
I. The 1991 Financial Certification Issues	14
A. <u>Selznick's Initial Financial</u> <u>Qualifications</u>	14
1. "Documentation" of Dailey's 1991 Loan Commitment	16
2. Oral Assurance of Dailey's Proposed Loan	18
3. Selznick's Knowledge of Dailey's Financial Status	19
4. Dailey's Net Liquid Assets	21
B. <u>The Misrepresentation Issue/Forfeiture</u> <u>Proceeding</u>	22
II. PRESENT FINANCIAL QUALIFICATIONS	24
CONCLUSION	29

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON THE ADDED ISSUES

Pursuant to Order, FCC 94M-28 (ALJ), released January 21, 1994, Loren F. Selznick ("Selznick") submits these Proposed Findings of Fact and Conclusions of Law on the issues added against Selznick in the M.O. & O., FCC 93M-625, released September 30, 1993.

Preliminary Statement

1. These Proposed Findings/Conclusions address only the issues added against Selznick and the related "forfeiture proceeding." (See M.O. & O., supra.) Because the Court's recent decision in Bechtel II has invalidated the FCC's "integration" calculus for awarding new broadcast licenses, the Presiding Judge has deferred indefinitely the filing of Proposed Findings/Conclusions on the comparative aspect of this proceeding.

2. Selznick's sole competitor, Raymond Clanton ("Clanton"), filed a "Motion for Summary Decision and Denial of Application" on December 23, 1993.

3. Selznick filed a Motion to Delete Forfeiture Proceeding on January 4, 1994.

4. Selznick filed an Opposition and Countermotion for Summary Decision on January 6, 1994.

5. On January 12, 1994, a hearing on the added issues against Selznick was held in Washington, DC, at which Ms. Selznick testified in person.

6. On January 19, 1994, Clanton filed an Opposition to Countermotion for Summary Decision.

7. On February 4, 1994, the Presiding Judge denied Clanton's Motion for Summary Decision. See M.O. & O., FCC 94M-56, released February 4, 1994.

PROPOSED FINDINGS OF FACT

I. THE 1991 FINANCIAL CERTIFICATION ISSUES

8. As early as 1985, Ms. Selznick began to consider quitting her practice of law and resuming her radio career. Selznick Exhibit 4 at ¶ 1. ^{1/} In 1985, she attended an NAB radio convention in Dallas. Id. By the time that she had joined the Manhattan law firm of Breed Abbott & Morgan in 1987, Ms. Selznick had even visited an FM station that was for sale; but she was insufficiently satisfied with that opportunity to make an offer. Id. In the spring of 1991, Ms. Selznick again began to consider quitting her practice of law and resuming her radio career. Id. at ¶ 2. She had previously held numerous positions at radio station WVBR-FM, Ithaca, New York. Selznick Exhibit 2 at ¶ B(3)(b).

^{1/} On March 3, 1994, Selznick filed a "Motion to Reopen for Renumbering of Exhibit" for the purpose of renumbering the Selznick exhibits so as to avoid having two Exhibit 4's. All references herein to Selznick Exhibit 4 concern the exhibit entitled "1991 Financial Certification Issue," which was received into evidence at the January 12, 1994 hearing session. See Tr. 39.

9. Ms. Selznick traveled to California in May of 1991. Selznick Exhibit 4 at ¶ 3. During that trip, she spent time at the California home of her law firm colleague Joseph Dailey, who had moved earlier that year from New York City to Anaheim, California. Id. She had practiced law with Dailey since joining her present law firm in 1987; she has continued to practice law with Dailey even after his move to California and speaks with him on almost a daily basis. Id. She considers Dailey to be a member of her extended family. Id.

10. When Ms. Selznick discussed with Mr. Dailey in 1991 her interest in buying a radio station, he told her about his previous interest in that business and cautioned her generally about overpaying for any station. Id.

11. During the summer of 1991, Ms. Selznick spoke with several media brokers whose names she had read in Broadcasting magazine. Selznick Exhibit 4 at ¶ 4. In late summer 1991, she returned to California to attend an NAB radio convention. Id. She again spent time at Dailey's home in Anaheim and visited several radio stations that had been located by a media broker. Id. She ultimately made an offer for an AM-FM combo but the offer was not accepted. Selznick Exhibit 4 at ¶ 5.

12. When Ms. Selznick returned to New York, she became aware of the El Rio filing opportunity. Id. at ¶ 6. She discussed this FM opportunity with several friends and law firm colleagues. Id. When Ms. Selznick first mentioned the El Rio filing opportunity to Dailey, he told her that acquiring the

license and building a station was a great idea. Id. As she continued to consider the El Rio project, another law firm colleague -- Derrick Cephas -- told her that one of his radio investment companies might be interested in providing financing for the El Rio station. Id. In a November 1991 phone conversation about El Rio, Ms. Selznick expressed concern about not having a final commitment from Mr. Cephas, whereupon Mr. Dailey expressed to Ms. Selznick his willingness to loan her whatever funds she needed. Id.; Clanton Exhibit 2 at 44-6.

13. Early on in the process, Ms. Selznick developed a \$360,070 budget for construction and initial operation of the FM station. Tr. 87-8.

14. In late November or early December 1991, Ms. Selznick told Mr. Dailey -- in one of their almost daily phone conversations -- that she had completed a cost budget for the El Rio FM station, totalling slightly more than \$350,000, and she asked if he was still interested in loaning the needed funds. Selznick Exhibit 4 at ¶ 7. She was assured by Dailey that he would loan the funds. Id. She then informed him that, as her proposed lender, he would have to have approximately \$360,000 in "net liquid assets." Id. Mr. Dailey immediately pulled up his current balance sheet on his computer and, with Ms. Selznick on the phone from New York, they orally reviewed his balance sheet item by item. Id. They concluded that, under generally accepted accounting principles, his cash, his partnership profits due and his partnership inventory interest would be more than sufficient

to meet the FCC's requirements. Id.; Tr. 102-3. Based on her review of Mr. Dailey's financial statement, Ms. Selznick concluded that he had "substantially more" than \$360,070 in net liquid assets. They specifically discussed when his partnership profits would be received. Tr. 101.

15. A copy of Mr. Dailey's "Financial Statement," dated as of November 30, 1991, lists "cash" of \$218,000, partnership profits receivable totalling \$230,864 and partnership inventory interest of \$150,368. Selznick Exhibit 4 at Appendix A. The same November 30, 1991 Financial Statement shows Mr. Dailey's total assets to be \$2,939,232, total liabilities to be \$1,019,970 and his net worth to be \$1,919,262. Id.

16. Based on Ms. Selznick's review of the Form 301 Instructions, her discussions with then-communications counsel Peter Tannenwald, her oral loan commitment from Mr. Dailey and her item-by-item review of Mr. Dailey's financial statement, Ms. Selznick certified as to her financial qualifications in the Form 301 application which she signed on December 13, 1991 and which was filed on December 16, 1991. Selznick Exhibit 4 at ¶¶ 7-8. She interpreted the Form 301 Instructions as not requiring a written loan commitment from Mr. Dailey. Tr. 75. She had received a copy of the Form 301 and its Instructions from her counsel and she read them prior to signing her application. Tr. 79-80. Ms. Selznick had "on hand," at the time that she filed her 1991 application, a document that showed Mr. Dailey's net liquid assets because the Financial Statement on Mr. Dailey's

computer was "readily available" to her. Tr. 82-3. Ms. Selznick often accesses Mr. Dailey's computer in New York. Tr. 84-5.

17. Ms. Selznick understood from the outset that Mr. Dailey's loan would be based on "standard commercial terms for start-up businesses." Selznick Exhibit 4 at ¶ 8. She has understood from the outset that such loans would mean a 60-month note, an interest rate of several points above prime and that the loan would be secured by the station's assets and personally guaranteed by her. Id.

18. Mr. Dailey testified under oath in this case that, prior to December 13, 1991, he could and would loan \$360,070 to Ms. Selznick for the El Rio FM project. See Selznick Exhibit 4 at Appendix B, p. 56 ("No, I didn't express an interest; I told her that I would.") Mr. Dailey testified under oath that, about the third week in November 1991, he volunteered to loan Ms. Selznick the money for her El Rio project because he thought it was "a great deal." Id. at 57. Mr. Dailey testified that, during a second conversation shortly thereafter, Ms. Selznick asked for confirmation and he said, "Absolutely, this is a very good deal." Id. at 57-8. Mr. Dailey explained that the economics of the deal were good because "the market was pricing these [FM] stations substantially higher than their cost." Id. at 58. Mr. Dailey confirmed that the cost of Ms. Selznick's proposed station was in the "range" of \$350,000-\$360,000. Id. He testified that he may have seen Ms. Selznick's budget for the El Rio station on a fall 1991 trip to New York. Clanton Exhibit 2 at

31. He stated that she had told him how the budget "was broken down." Id.

19. When Mr. Dailey was asked by opposing counsel whether he had a "firm intention" in 1991 to make a loan to Ms. Selznick, he replied:

"I'm not sure what you mean...I gave an unconditional commitment to finance the money and to lend her the money, and there was no discussion of future conditions."

Id. at 65. He further testified that he was going to do "what was necessary to assist Loren [Selznick] in this project" because of the "basic economics" of it. Id. at 66.

20. When Mr. Dailey was asked by opposing counsel whether he had given "reasonable assurance" to Ms. Selznick in 1991, he replied that he had told Ms. Selznick, "I'll give you the financing." Id. at 81-2. He testified that it really wasn't "reasonable" assurance, "it was flat assurance." Id. at 81.

21. Mr. Dailey testified that Ms. Selznick informed him in 1991 that he did not have to provide a written commitment letter to her but he understood from her that he would have to provide copy of his November 1991 balance sheet in the future. Clanton Exhibit 2 at 52. Mr. Dailey told her she could have it anytime she needed it. Id.

22. Mr. Dailey also testified that, when Ms. Selznick informed him that he needed to have "net liquid assets" to cover his commitment, he brought up his balance sheet on his computer screen and they went over "item-by-item" what would be considered liquid. Clanton Exhibit 2 at 52-3. Mr. Dailey explained that he

and Ms. Selznick concluded from their item-by-item review that he had "over \$500,000" in net liquid assets from his available cash, his partnership profits due and his partnership inventory interest due. Id. at 53.

23. Mr. Dailey confirmed that he provided a copy of his November 1991 financial statement to Ms. Selznick in August 1993, in connection with the FCC comparative proceeding. Id. at 53-5.

24. When shown Ms. Selznick's exact cost figure of \$360,070 by Mr. Clanton's counsel, Mr. Dailey testified that he was "sure" that was the number that he and Ms. Selznick had spoken of in 1991, when he agreed to provide her financing. Clanton Exhibit 2 at 80.

25. Mr. Dailey also testified that reasonable commercial terms are implicit in his commitment to loan funds to Ms. Selznick. Id. at 89. The loan would be "about 4-5 percent above prime...a lien on the station's hard assets, a five-year term and a personal guarantee." Id. at 89. Mr. Dailey stated that, despite his personal friendship with Ms. Selznick, it would be a "standard loan," on the same terms that she might obtain from a bank. Id.

26. Mr. Dailey testified that his November 1991 financial statement was in a computer file under the label "91-11-30". Id. at 92. He believes that it was probably prepared in December 1991. Id. Mr. Dailey's monthly mortgage payment on his \$1.3 million home, purchased in January 1991, is \$6,000. Id. at 95.

II. THE PRESENT FINANCIAL QUALIFICATIONS ISSUE

27. When Ms. Selznick estimated in 1991 that her FM station's costs would total \$360,070, she had contemplated constructing a large FM station that would accommodate 24-hour "live" service, would utilize all new equipment and would have the substantial operating expenses generated by a large-station operation. Selznick Exhibit 5 at ¶ 1.

28. Approximately two weeks before the August 9, 1993 collapse of lengthy settlement talks with opponent Raymond Clanton, Ms. Selznick began to restudy the viability of constructing and initially operating a new FM station at El Rio, CA. Selznick Exhibit 5 at ¶ 2. Indeed, during the settlement talks with Mr. Clanton, Ms. Selznick had realized that her original cost estimate was unreasonably high. Id. In their settlement talks, Ms. Selznick and Mr. Clanton had discussed the need in today's more competitive FM environment to operate a more "lean" FM station at El Rio. Id.

29. After discussions with four radio brokers and media consultants last summer, Ms. Selznick concluded that her 1991 cost estimate, premised on her proposal to buy 100% new equipment and to operate on a 24 hour "live" basis, was unreasonably high. Id. Having been persuaded that she would never spend \$360,070 to construct her proposed El Rio station, she amended her applica-

tion to report this change and to update her cost estimate. Id.

30. Ms. Selznick's initial Rule 1.65(a) updating Amendment, filed on August 30, 1993 was denied by the Presiding Judge. See M.O. & O., FCC 93M-583, released September 13, 1993. The Judge concluded that Ms. Selznick had neither sufficiently proved her initial financial qualification nor established that she currently has available to her the total of \$109,460 to meet her revised estimate of costs. Id.

31. Ms. Selznick's revised construction budget totals \$79,460. Selznick Exhibit 5 at ¶ 3 and Appendix C. Her revised budget for first three months' operating costs is \$30,000. Id. Ms. Selznick's revised budget totals \$109,460. Id. Because Ms. Selznick intends to draw no salary for the first three months of operations and because she will both use a contract engineer and rely on satellite-fed music programming, she believes her expenses for the first three months may be no higher than \$10,000 per month. Selznick Exhibit 5 at ¶ 3. Mr. Cephas, who had experience in constructing an FM station, advised Ms. Selznick during their October 30, 1991 phone conversation that she could put the El Rio FM station on the air for a total of \$100,000. Tr. 140-1. Broker Cliff Gill, who had experience in constructing FM stations, also advised her in 1993 that she could do it for \$100,000. Tr. 142-3; 151. Broker Brett Miller told Ms. Selznick in a July 1993 phone conversation that she could put her El Rio station on the air for \$40,000 or less and that her total costs

could total less than \$100,000. Tr. 144-5. Ms. Selznick made these calls to brokers after settlement talks with Mr. Clanton broke down in 1993. Tr. 148-9. She called them to see if the FM license for El Rio was still "worth pursuing." Id. The question of her cost budget came up in these conversations in the context of her overall investment/expected return. Id. Having concluded from these calls that the start-up value of the proposed El Rio FM station was likely to be as little as \$250,000 and that the FM station could be constructed/initially operated for as little as \$100,000, Ms. Selznick realized that -- due to changed circumstances -- her budget, or any applicant's "real world" budget for this station, would have to be much less than her original budget of \$360,070 in order to be viable. Tr. 152-3.

32. To meet her \$109,460 revised cost estimate, Ms. Selznick is relying principally on her own net liquid assets and for up to \$40,000 to be loaned by Mr. Dailey. Selznick Exhibit 5 at ¶ 4. The loan from Mr. Dailey would be under the same terms as discussed in Selznick Exhibit 4, supra. Id. Ms. Selznick testified that Mr. Dailey had confirmed to her that he would loan up to \$40,000 for the FM station if she so requests. Id.

33. Ms. Selznick's net liquid assets have increased substantially since her application was filed in December 1991. Selznick Exhibit 5 at ¶ 5. As of December 1993, Ms. Selznick's net liquid assets totaled at least \$100,700. Selznick Exhibit 5 at ¶ 5 and Appendix D (liquidity analysis). The two real estate parcels (apartments) included as part of her net liquid assets

are each based upon current appraisals. Selznick Exhibit 5 at Appendices E and F. Because Ms. Selznick proposes to sell and handle closings for the two apartments herself, she will not incur any closing costs or brokerage fees. Selznick Exhibit 5 at ¶ 5. No taxes on the sales will be due because there will be no gain on the sale of either apartment. Id.

34. The loan of \$40,000 from Mr. Dailey is available to Ms. Selznick in case she needs it to meet her budget or in case she chooses not to invest all of her own assets in the construction/initial operation of the El Rio FM station. Selznick Exhibit 5 at ¶ 6.

35. Mr. Dailey testified at his deposition that Ms. Selznick told him in the summer of 1993 that she was amending her application and would need only a \$40,000 loan commitment from him. Selznick Exhibit 5 at Appendix B, page 66 (deposition transcript). He stated that Ms. Selznick told him that, based on conversations she had with several brokers, she would need closer to \$100,000 to construct and operate a viable FM station at El Rio. Id. Mr. Dailey testified that he said, "Fine. You got it." Id. He stated that, whereas he had previously committed to loaning her much more money, he certainly could loan her \$40,000 or "what was necessary to assist Loren [Selznick] in this project...[because of] the basic economics of it." Id. Ms. Selznick understands that Mr. Dailey's present commitment to loan up to \$40,000 would be under the same collateral and personal guaranty terms as his prior commitment to loan up to \$360,070. Tr.

129. Mr. Dailey confirmed in writing his present commitment to loan up to \$40,000 on two occasions during this proceeding. See Clanton Exhibit 2 at 73; see also "Opposition of Selznick to Petition to Enlarge," filed September 16, 1993, at Appendix A (Sworn Declaration of Joseph Dailey).

36. Ms. Selznick testified that her 1993 salary at the New York law firm was \$128,000. Tr. 62. She also testified that her retirement accounts were slightly higher than the figures stated in her August 1993 amendment. Tr. 65.

37. Ms. Selznick testified that her Bank Street tenant had informed her that she was interested in buying that apartment. Tr. 73. Ms. Selznick would advertise her apartments for sale the same way that she bought and rented one of them, through ads and other notices. Tr. 71-2.

38. Ms. Selznick relied upon the California brokerage firm of Miller & Associates in concluding that most of the El Rio station's equipment could be purchased "used." Tr. 106. Ms. Selznick also knows that there is a good market for "used" transmitters. Tr. 134. Because Mr. Miller lives near the proposed FM station's service area and is familiar with the rental market in Ventura County, California, she relied on his advice that she could obtain up to six months free studio rent with a long-term lease. Tr. 108-9. She intends to sign such a long-term studio lease. Tr. 137.

PROPOSED CONCLUSIONS OF LAW

I. THE 1991 FINANCIAL CERTIFICATION ISSUES

A. Selznick's Initial Financial Qualifications

39. The FCC's governing statute requires that the Commission grant licenses in the public interest only to applicants who meet the FCC's regulations as to, inter alia, financial qualifications. See 47 USC § 308(b).

40. The FCC has established regulations that require any applicant for a new FM station to submit a completed and executed Form 301 application. See 47 CFR §§ 73.3500, 73.3511. Section III of the FCC's Form 301 application requires an applicant to "certify" as to its financial qualifications.

41. The Commission, however, requires only that an applicant certify that it has "reasonable assurance" of its financial qualifications, not that it has a legally binding loan commitment. See Form 301 at Instructions, Section III. Indeed, the FCC recently noted that the statute does not require the Commission to "ensure" the financial qualifications of an applicant. See Univision Holdings, Inc., 7 FCC Rcd 6672, 6681 at note 38 (1992).

42. Ms. Selznick signed her Form 301 application (June 1989 edition) on December 13, 1991 and it was filed with the FCC on December 16, 1991. Section III of the 1989 edition of Form 301 contained the following certification as to the applicant's financial qualifications:

1. "The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue."

Id. Ms. Selznick's December 16, 1991 Form 301 application answered "yes" to that certification. Id. at page 6. Her application also stated that the funds necessary "to construct and operate the requested facility for three months" totaled \$360,070. Id. Her application named the "source" of funds as "Joseph P. Dailey" of Anaheim, California. Id.

43. In 1991, Ms. Selznick's FCC legal counsel sent the Form 301 application, and its accompanying Instructions, to Ms. Selznick and she read them prior to filing her application. Tr. 79. Ms. Selznick interpreted the Form 301 Instructions as not requiring that she obtain written documentation of her loan commitment from Mr. Dailey prior to signing the Form 301 application. Tr. 75. Ms. Selznick signed the Form 301 application, containing the financial certification, following (i) her review of the Form 301 Instructions, (ii) her discussions with then-communications-counsel Peter Tannenwald, (iii) her oral loan commitment from Mr. Dailey and (iv) her "item-by-item" review of Mr. Dailey's November 1991 financial statement. See Proposed Findings, supra, at ¶ 16.

44. In response to a motion to enlarge filed by Mr. Clanton, the Presiding Judge added, inter alia, a false financial certification issue against Selznick. See M.O. & O, FCC 93M-625, released September 30, 1993. The Judge's specification of a false financial certification issue against Selznick was based on the following subsidiary findings by the ALJ: (a) that Selznick allegedly was required to have but did not have "in" hand any documentation of available funding from Mr. Dailey at the time she filed her application, (b) that Selznick was required to have but did not have "even oral assurance" of the terms of the loan from Mr. Dailey, (c) that Selznick was required to but may not have "viewed Dailey's...financial statement on her law firm's computer prior to filing her application" and (d) that Dailey did not have adequate "liquid assets" to make the \$360,070 loan. Id. at ¶ 3.

45. The evidence adduced at hearing refutes each of the foregoing four assertions and, accordingly, requires that the false financial certification issue be resolved in favor of Selznick.

1. "Documentation" of Dailey's 1991 Loan Commitment

46. Clanton asserts that Ms. Selznick was required to have documentation "in" hand of Mr. Dailey's loan commitment prior to the time that she certified her financial qualifications in

December 1991, citing Revision of Form 301, 4 FCC Rcd 3853 (1989). Clanton misreads that Commission decision.

47. In Revision of Form 301, supra, the FCC amended Section III of the Form 301 application in order to strengthen its financial certification requirements. Id. at 3859 ¶ 42. Thus, applicants henceforth would be required not merely to "certify" as to their financial qualifications but also (i) to state the total funds estimated for construction/initial operation and (ii) to name each source of funds. Id. The FCC expressly denied, however, that it was "returning" to its pre-1981 requirement that an applicant submit underlying documentation of either its cost estimates or its funding sources. Id. at 3859 ¶ 43. With respect to having "on hand" ^{2/} certain information and documentation at the time that the applicant submits its application, the FCC added to the Form 301 Instructions specific guidance as to what documentation is needed. Id. at ¶ 43 and note 68. With respect to the documentation needed to be "on hand" from a committed source, the revised Instructions expressly distinguished between a "person" who is identified as a committed source of funds and a "financial institution" that is identified as a committed source of funds; for the former, the applicant is required to have "on hand" a financial statement showing, inter alia, net liquid assets and, for the latter, the applicant is required to have on

^{2/} The Commission expressly uses the term "on hand" not "in hand" in describing the applicant's obligation. Revision of Form 301, 4 FCC Rcd 3853, 3859 ¶ 43 ("documentation on hand").

hand "the document by which the institution ...has agreed to provide the loan." Id. at 3864 (Appendix).

48. Ms. Selznick's committed source of funds in 1991 was a "person," Mr. Dailey, not a "financial institution." At the time that Ms. Selznick certified as to her financial qualification, she had "on hand" the documentation required by the Form 301 Instructions, as amended by Revision to Form 301, supra. See Proposed Findings, supra, at ¶¶ 14-16. ^{3/}

2. Oral Assurance of Dailey's Proposed Loan

49. Clanton also asserts that Selznick was required to have but did not have even oral assurance of the terms of the proposed loan from Mr. Dailey. ^{4/} Clanton misconceives both the facts and the law with respect to this matter.

50. First, the FCC's precedents make clear that an applicant may lawfully base its financial qualifications on an "oral" commitment from a lender. See Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989), recon. denied, 5 FCC Rcd 3075 (1990),

^{3/} Moreover, the FCC does not insist in all cases that an applicant have contemporaneous documentation of its financial qualifications before it certifies. See Emission De Radio Balmas-eda, Inc., 8 FCC Rcd 4335, 4336 ¶ 5 (1993); see also Sunbelt Limited Partnership, 8 FCC Rcd 7036 n.4 (1993).

^{4/} Of course, Mr. Clanton does not question the fact that Ms. Selznick obtained an oral commitment from Mr. Dailey for the \$360,070 loan itself, prior to her certification. Nor could he reasonably do so. See Proposed Findings, supra, at ¶¶ 14,18-20,24.

aff'd, 941 F.2d 1214 (D.C. Cir. 1991); Susan S. Mulkey, 4 FCC Rcd 5520, 5522 ¶ 14 (1989), recon. denied, 5 FCC Rcd 3075 (1990). Moreover, the Commission has found an applicant to be financially qualified even where the applicant did not discuss all of the terms of a loan with the lender. See A.P. Walter, Jr., 6 FCC Rcd 875, 877-8 ¶ 16 (Rev. Bd. 1991); Colonial Communications, Inc., 5 FCC Rcd 1967, 1968 ¶4 (Rev. Bd. 1990), recon. denied, 5 FCC Rcd 3797 (1990), aff'd, 6 FCC Rcd 2296 (1991). Indeed, the Commission has found an applicant to be financially qualified even where the record contained no evidence that the applicant discussed any of the terms with a lender who gave an oral loan commitment to the applicant. See Pleasant Hope Broadcasting Co., L.P., 6 FCC Rcd 6553, 6555-6 (Rev. Bd. 1991). Accordingly, Selznick cannot lawfully be disqualified here on the basis that she and Mr. Dailey did not discuss in 1991 all of the terms that would apply to his loan. Cf. Sumter Radio Partners, 7 FCC Rcd 2573, 2576 ¶ 14 (Rev. Bd. 1992) (where the totality of the surrounding circumstances otherwise supports a plausible inference of "reasonable assurance," the absence of an understanding as to all of the terms of a proposed loan is not fatal); compare Short Broadcasting Co., Inc., 8 FCC Rcd 5574, 5576-7 (Rev. Bd. 1993).

51. In any event, Ms. Selznick and Mr. Dailey did have an understanding as to the terms of his proposed loan at the time

that Ms. Selznick signed her 1991 El Rio application. See Proposed Findings, supra, at ¶¶ 17,25. ^{5/}

3. Selznick's Knowledge of Dailey's Financial Status

52. Clanton further asserts that Ms. Selznick was required to have "viewed" Mr. Dailey's current financial statement at the time that she signed her El Rio application. Once again, Clanton misconceives both the pertinent law and the facts.

53. The FCC's precedents require that, where an applicant is relying on the net liquid assets of another person for its financial qualifications, the applicant must have personally reviewed that person's financial statement or otherwise have first-hand knowledge that the person has sufficient "net liquid assets" to make the proposed loan. See Port Huron Family Radio, Inc., 5 FCC Rcd 4562 ¶ 2 (1990).

54. Ms. Selznick reviewed Mr. Dailey's financial statement "item by item" prior to signing her El Rio application on December 13, 1991. During a late November 1991 phone conversation in which Ms. Selznick informed Mr. Dailey that he would need to have approximately \$360,000 in net liquid assets, Mr. Dailey pulled up

^{5/} Ms. Selznick's relationship with Mr. Dailey (see Proposed Findings, supra, at ¶¶ 9,11,and 25) is akin to that of the "personally and favorably" known borrower in Multi-State Communications, Inc. v. FCC, 590 F.2d 1117, 1119-20 (D.C. Cir. 1978).

his current financial statement on his computer and, with Ms. Selznick on the phone, they orally reviewed his financial statement "item by item." See Proposed Findings, supra, at ¶ 14. They concluded that, under generally accepted accounting principles, Mr. Dailey's cash, his partnership profits receivable and his partnership inventory interest receivable, would be more than sufficient to meet his loan obligation to Ms. Selznick's El Rio FM project. Id. Mr. Dailey corroborated Ms. Selznick's testimony regarding their "item-by-item" review of his financial statement. See Proposed Findings, supra, at ¶ 22. Thus, the evidence is clear that, prior to signing her application on December 13, 1991, Ms. Selznick had not only discussed with Mr. Dailey his ability to make the proposed \$360,070 loan, she had reviewed his financial statement "item by item." ^{6/} The evidence thus compels a finding that Ms. Selznick had first-hand knowledge of Mr. Dailey's ability to fund her project before she so certified. See Northampton Media Associates, supra, 4 FCC Rcd at 5518 ¶¶ 7-8. Compare Aspen FM, Inc., 6 FCC Rcd 1602, 1603 ¶ 8 (applicant never reviewed financial statement of lender, who was not known to her personally); Texas Communications Limited Partnership, 7 FCC Rcd 3186, 3187 ¶ 7 (1992) (general partner who certified as

^{6/} The FCC could not and does not require that an applicant physically "view" a lender's financial statement prior to certification. Such a requirement would, inter alia, violate federal law prohibiting discrimination against sightless persons. The FCC's focus in these matters is on the applicant's first-hand "knowledge," prior to certification, about its lender's ability to make the proposed loan, not on the manner in which that knowledge was obtained.

to financial qualifications neither reviewed lender's financial statement nor knew him personally).

4. Dailey's Net Liquid Assets

55. Finally, Clanton asserts that Mr. Dailey did not have sufficient net liquid assets to make a \$360,070 loan to her when she filed her El Rio application on December 16, 1994. Clanton is plainly mistaken.

56. A copy of Mr. Dailey's November 30, 1991 financial statement reveals that he had both (i) net liquid assets of at least \$360,070 and (ii) a total net worth several times the proposed loan amount at the time of Ms. Selznick's 1991 financial certification. See Proposed Findings at ¶ 15.

57. Specifically, he had over \$598,000 in cash and short-term receivables. Id.^{1/} That was plainly sufficient to validate his commitment to loan \$360,070. See Port Huron Family Radio, Inc., supra, 5 FCC Rcd at 4563.

58. Moreover, Mr. Dailey had a total net worth of nearly \$2 million as of November 30, 1991. Id. Under established FCC precedent, the ratio of Mr. Dailey's \$2 million net worth to the \$360,070 proposed loan also was sufficient to establish Ms. Selznick's financial qualifications. See, e.g., Port Huron Family

^{1/} Even if Mr. Dailey's receivables were to be reduced by 25% (see Kaiser Broadcasting Corporation, 62 FCC 2d 246), the receivables would still total \$285,924 and, when added to his cash on hand of \$218,000, would far exceed Selznick's \$360,070 cost budget.