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BEFORE THE
Federal Communications Commission
Washington, DC 20554

MAR 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re applications of)	MM Docket No. <u>93-241</u>
)	
DARRELL BRYAN)	File No. BPH-920109MA
)	
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
For a Construction Permit)	
for a New FM Station on)	
Channel 276A (107.3 MHz))	
in Tusculum, Tennessee)	

To: The Hon. John M. Frysiaak
Administrative Law Judge

**OPPOSITION TO SECOND PETITION TO
ENLARGE ISSUES**

Darrell Bryan, by his attorneys, hereby opposes the Second Petition to Enlarge Issues filed by SBH Properties, Inc. In support of this opposition, the following is shown:

I. PRELIMINARY STATEMENT

1. In its petition, SBH requests the addition of five issues. It seeks three issues related to financial qualifications, i.e., whether Bryan is financial qualified at present, whether Bryan was financially qualified when he certified, and whether Bryan's certification was false. SBH also seeks an issue to determine whether Bryan obstructed discovery by failing to produce documents, and an issue based on the results of the foregoing issues. The requested issues are discussed below.

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II. THE REQUEST BY SBH FOR FINANCIAL ISSUES IS UNTIMELY

2. Section 1.229(b) of the Commission's Rules requires that motions to enlarge "which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party". SBH has not met this standard. The Commission has clearly stated that "motions for modification of issues which are based on new facts or newly discovered facts must be filed within 15 days after such facts are known or could reasonably have been known to the moving party." *Adjudicatory Re-Regulation Proposals*, 58 FCC 2d 865, 874, revised on other grounds, 59 FCC 2d 1255 (1976). The Commission has held that this requirement must be strictly enforced. *Great lakes Broadcasting, Inc.*, 6 FCC Rcd 4331, 4333 (1991).

3. SBH asks for financial issues to explore the reasonableness of Darrell Bryan's estimates for construction and operating costs, and whether he had a reasonable assurance of the availability of funds from a committed source. The only reference to the issue of timeliness by SBH is the statement in footnote 1 that the petition is being filed within 15 days of the receipt by counsel of the transcript of the deposition testimony. However, the SBH petition is not based on any revelations concerning financing at deposition. On the contrary, All of the facts underlying the petition have been available to SBH since September 1993; SBH sets out no facts that were not at its disposal at that time. The petition is addressed to the Greene County Bank letter which SBH alleges is deficient on its face, and, to the Bryan budget for construction costs which it alleges are too low. The Seaver declaration concerning the budget states that he has "reviewed the estimated construction costs prepared by Darrell Bryan", and he asserts that the budget underestimated construction and equipment costs. There is no reason why SBH could not

made these arguments earlier because the first Greene County Bank letter dated December 12, 1991 and the Bryan budget listing construction and operating expenses were furnished to SBH under document production on September 13, 1993. Further, the second Greene County Bank letter was furnished to SBH on September 22, 1993. Thus, the SBH request for financial issues was filed almost five months after it had all of the documents on which the financial arguments in the petition are based. *See HS Communications, Inc.* 71 RR 2d 961, 968 (Rev. Bd. 1992) (request for addition of financial issue based on alleged lack of independent investigation of costs held untimely). The petition is untimely and should be dismissed.

III. THERE IS NO BASIS FOR THE REQUESTED FINANCIAL QUALIFICATION ISSUES

4. An applicant for a broadcast station must be able to certify that it has "reasonable assurance" of "sufficient net liquid assets on hand or sufficient funds available from committed sources to construct and operate the requested facilities for three months without revenue" before its application may be granted. FCC Form 301, Section III; *Financial Qualifications Aural Broadcast Applicants*, 69 FCC 2d 407 (1978); *Scioto Broadcasters*, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). In order to have "reasonable assurance" of financial qualifications at the time of certification, the applicant (1) must have engaged in serious and reasonable efforts to ascertain predictable construction and operation costs, and (2) must have sufficient net liquid assets on hand, or committed sources of funds to construct and operate for the three months without revenue.

5. In the attached declaration of Darrell Bryan (Attachment I), he sets forth the steps that he followed prior to certification. He explains that he formulated a construction and operating budget with the assistance of counsel. He had discussions with counsel and reviewed equipment

catalogs that he had on hand to ascertain certain equipment costs, and he contacted Hall Electronics of Charlottesville, Virginia, by telephone and obtained from them price quotes for various items of equipment. Mr. Bryan also prepared an operating budget and based his operating cost estimates on his experience in the ownership and management of WSMG in the same market as the proposed station. Mr. Bryan estimated the cost of equipment and construction at \$98,489.00 and the cost of three months operation at \$37,993.88 - a grand total of \$136,482.88. He decided to seek a bank loan of \$175,000.00 which would provide a cushion of \$38,517.12. Mr. Bryan went to see the President of Greene County Bank which had financed his acquisition of WSMG. He requested a commitment for the needed funds and the bank provided a loan commitment letter in the amount of \$175,000.00.

6. SBH criticizes the steps followed by Bryan in ascertaining construction costs, and, asserts that the costs have been under-estimated. SBH also asserts that the bank letter is deficient because it is not sufficiently detailed and complete. SBH asserts that because Bryan did not obtain quotes in writing and did not have any written equipment agreement, he could not be sure that the proposed equipment at the proposed prices was actually available.

7. However, an applicant's cost estimates will be credited as long as they are not "so far below average or beyond a range of reasonableness ...". *Kaye - Smith Enterprises*, 98 FCC 2d 675, 677 (Rev. Bd. 1984). In addition, as stated in Mr. Bryan's attached declaration, he has obtained a new written estimate from Hall Electronics for new equipment, except for two designated used items, which is only a little more than 5% higher than the total December 1991 estimate. The current Hall equipment estimate demonstrates the reasonableness of Mr. Bryan's original estimates which are now more than two years old.

8. SBH has submitted a sales proposal from Continental Electronics and based on that proposal asserts that Bryan has under-estimated by at least \$57,596.00. However, as Mr. Bryan points out in his declaration, the proposal includes a transmitter cost of \$47,000 versus the Hall estimate of \$17,200 which is explainable by the fact that the Continental proposal calls for an 11 kilowatt transmitter which is not necessary. SBH asserts that the antenna sketch in the Bryan application shows a proposal for a two-Bay antenna. This contention is ridiculous. As shown in the declaration from the consulting engineer attached to the Bryan declaration, use of an 11 kilowatt transmitter is "overkill"; he discusses various antenna power combinations which are available to Bryan and points out that the application form does not even ask for the number of bays for a proposed antenna. The normal procedure is that when a permit is issued, an applicant will ask his engineer to do an optimization study to determine the best antenna/power combination. After construction is completed, the details are provided to the Commission in the Form 302 license application.

9. The Continental proposal provided by SBH also includes a cost of \$26,996.00 for a 300 foot tower; Bryan has a current price quote for a new tower from American Aviation, Inc. of Greeneville for \$16,000. Thus, the Continental proposal submitted by SBH adds over \$40,000 on the cost of transmitter and tower alone. Mr. Bryan points out that the new estimate for an antenna is \$5,995 versus his 1991 estimate of \$4,500, that the new estimate for a stereo generator is \$9,200 versus his 1991 estimate of \$9,000, that the new estimate for a used STL package and antenna is \$6,395 versus his original estimate of \$6,000. Mr. Bryan states that he is confident that his construction estimates were and still are reasonable. He also lists various construction expense items which he estimated on the high side. For example, the budget had an estimate of

\$5,000 for a transmitter building, but, Mr. Bryan has a current estimate from American Aviation, Inc. to construct the building with all electrical circuits and air conditioning for \$3,800. The budget included two loan payments of \$1,934.44 based on the terms in the bank letter: loan principal of \$175,000 payable over 15 years at 1.5% over prime, but based on the current lower prime interest rate, the monthly payments would now be \$1,723.29. Clearly, the type of nitpicking attack made by SBH serves no purpose. In view of the SBH challenge to the Bryan expenses, it is noteworthy that the Bryan budget included a total operating expense for three months of \$37,993.88 while the SBH budget total for three months operating expenses was \$26,444.96, \$11,556.92 lower than the Bryan estimate.

10. On the question of the availability of sufficient funds, SBH states (para. 22) that the letter from Greene County Bank "is deficient inasmuch as it fails to provide the type of information specifically required by the Commission". SBH discusses the reference to a pledge of stock as being a problem asserting that it is a collateral requirement that Bryan could not meet when he filed. SBH also makes the strange assertion (para. 23) that "neither of the letters from Greene County bank specify any repayment terms". Contrary to the SBH assertions, the December 12, 1991 Greene County Bank letter contains all of the factors discussed in *Scioto Broadcasters, supra*. Specifically, the letter: (1) identifies the borrower, i.e., Darrell Bryan; (2) indicates the amount of the loan, i.e., \$175,000; (3) identifies the specific use of the proceeds, i.e., "for the purpose of constructing and operating a new FM radio station in Tusculum, Tennessee"; (4) specifies a repayment term and particular interest rate, i.e., Prime plus 1.50% over 15 years; and (5) identifies specific conditions, i.e., lien on acquired assets and stock pledge if Bryan incorporates. Furthermore, the bank's original commitment was reaffirmed by its September 9,

1993 letter in which it clarified that a stock pledge is only operative in the event Bryan incorporates. The SBH argument about the stock pledge embodies a subtle fallacy, i.e., that the bank would not have issued the letter without a pledge of stock. The September 9, 1993 letter puts the stock pledge language in perspective and makes it clear that the language was intended to cover possible future incorporation by Bryan.

11. SBH argues that the terms of repayment have not been discussed with the bank, basing this claim on Mr. Bryan's deposition testimony. SBH mistakenly refers to page 14 of that testimony; however, the testimony on this point which actually appears on pages 15-16 (copies attached as Attachment II) makes it clear that Mr. Bryan was talking about arranging for a 30-day deferral on the start of payments so that payments would not begin until the second month. He did not testify that no repayment terms had been reached. In view of the clear terms in the letter, the SBH argument is specious.

12. SBH cites several cases for the proposition that failure to reasonably ascertain costs of construction and operation requires addition of financial issues, and that there is a requirement to show the continued availability of used equipment. A review of the facts in the cited cases reveals that the facts in those cases cannot be compared with the facts here and that SBH's interpretation of the Commission's standard on the continued availability of used equipment contradicts not only Commission precedent, but also common sense. SBH cites *United Broadcasting Co.*, 93 FCC 2d 482 (1983) and claims that *United* holds that "reliance upon used equipment, without an adequate showing that such equipment continued to be available, render[s] estimates 'unrealistically low'." *Id.* at 509. This is blatant misstatement of the case. The estimate was found to be unrealistically low due to the fact that it did not reflect "costs for the

proposed six-bay antenna, possible legal fees, acquisition of a transmitter site, program origination equipment to replace the used equipment proposed in [the] application...and a realistic rental for the studio location." *Id.* at 509. The applicant in *United* had estimated \$26,050 as the total cost for construction and three month's operation with only \$12,700 allocated for construction costs and \$13,350 for three month's operating expenses. There is no mention of an "adequate showing of continued availability" as suggested by SBH.

13. SBH's flawed interpretation concerning the showing required on equipment availability is also evident in its reliance on *Chapman Radio and Television Co.*, 7 FCC 2d 557, 558-59 (1967), which it claims (Para. 16) holds that "financial issues were added in part due to failure to demonstrate availability of used equipment." Although the movant in that case made such an argument, the Review Board enlarged the issues making no reference to this argument. The Board broadened an existing financial issue to explore construction costs because major items such as loan repayment for a full year had been entirely omitted. 7 FCC 2d at 559. Thus, the precedents relied upon by SBH do not represent the principles stated by SBH.

14. SBH also cites *Wayne County Broadcasting Corp.*, 26 FCC 2d 52 (1970) and *William S. Daugherty, III*, 4 FCC Rcd 2605 (Rev. Bd. 1989). In *Wayne County*, an issue was added because the applicant estimated total construction and operating costs for a full year at \$64,596 of which \$40,000 was one year's working capital. The total cost of equipment was set at \$5,750 based on the bare claim that good used equipment was available. In *Daugherty*, issues were added by the Board because a principal of an applicant testified that the various costs and the budget had been formulated after the application was filed. The Board stated that "absent any pre-certification calculation of construction and initial costs, it would have been impossible for

Rockcastle to have ascertained the amount of funds necessary to construct and operate". 4 FCC Rcd at 2605-2606. SBH cites *Erwin O'Connor Broadcasting Co.*, 51 FCC 2d 1114 (1975), where the applicant had proposed "no cost" for important items by claiming that he would transport the tower himself using a U-Haul trailer despite the fact that "the tower is composed of seven 10-foot sections and one five foot section", and install the tower on the roof himself without any cost for needed roof reinforcement. He also proposed to remodel and rewire the studio building himself, and, install the transmission line and antenna himself. 51 FCC 2d at 1118-1119. The Board found the "no cost" estimates to be totally unrealistic.

15. It is clear that the fact patterns in the cited cases are totally different from the fact pattern here. It is clear that Bryan took reasonable steps to ascertain the costs of equipment and construction, and operating costs. He obtained reasonable assurance from a bank with which he had a prior business relationship, and: the letter from the bank contains all of the required factors.

16. SBH's misinterpretation of equipment availability is also evidenced by its argument that Bryan had no "price quotes for used equipment in writing and had no agreement with any supplier to provide any used equipment" (para. 16 of SBH's Second Petition to Enlarge). Availability of used equipment does not refer to a particular *piece* of equipment, rather it refers to a particular *type* of equipment. Addressing the issue of unavailability in *Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011 (Rev. Bd. 1969), the Review Board referred to items which are "so esoteric as to be unavailable." *Id.* at 1021 (*emphasis added*). Thus, availability of used equipment must be interpreted to mean obtaining a particular type of equipment and not necessarily a particular unit.

17. Any other interpretation would yield absurd results: an equipment supplier would be

significantly more than that which has been held sufficient by the Commission. *See HS Communications, Inc. supra* (applicant relied on discussion with her father who was a broadcast investor); *The Baltimore Radio Show, Inc.* 4 FCC Rcd 6433, 6443 para. 27 (Rev. Bd. 1989) (no remand where budget provided orally by applicant's counsel) *review denied*, 5 FCC Rcd 3712 (1990). Thus, without offering specific facts that Bryan did not engage in reasonable efforts to ascertain costs, SBH has failed to sustain its burden of making a *prima facie* case for addition of financial issues.

**V. THERE IS NO BASIS FOR ADDITION OF
THE OBSTRUCTION OF DISCOVERY ISSUE**

21. In its petition, SBH asserts that Bryan failed to comply with document production by failing to produce documents relating to his civic activities and broadcast experience. SBH states that Bryan acknowledged at deposition that he had documents for almost every civic activity and each broadcast position, but had failed to produce them.

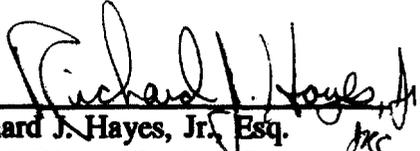
22. The same argument with regard to civic activities was made by SBH in its pleading entitled "Request for Ruling" in which it requested that the Presiding Judge issue a ruling that Bryan could not claim credit for most of his civic activities because he had failed to produce documents. In an opposition, Bryan provided deposition transcript excerpts which made it clear that the only "documents" relating to civic activities that Mr. Bryan had not produced were framed certificates and plaques. It was also pointed out that it is absurd to allege that Bryan was withholding documents that would further support his involvement in civic activities. In an Order, released February 25, 1994, the Presiding Judge denied the SBH Request for Ruling pointing out that Bryan is not required to produce framed certificates and plaques. Further, in his attached declaration, Mr Bryan states that he has again reviewed his files and he does not

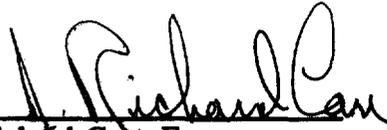
have any business cards, clippings or pictures that relate to his past broadcast jobs. The requested abuse of discovery issue should not be added.

Wherefore, in view of the foregoing, the SBH "Second Petition to Enlarge Issues" should be denied.

Respectfully submitted,

DARRELL BRYAN

By: 
Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, VA 22553

By: 
J. Richard Carr, Esq.
P.O. Box 70725
Chevy Chase, MD 20813-0725

His Attorneys

March 14, 1994

required to forego a sale to a cash-in-hand customer in favor of a commitment of sale which may not materialize for years, if ever (*i.e.* an applicant who fails to obtain the grant of the license).

18. It is well established in Commission policy that omissions in construction and operation estimates are not fatal to an applicant's certification. This basic tenet is rooted in the *Revision of Form 301*, 50 RR 2d 381 (1981). "It is our experience that a proposed station is rarely effectuated exactly as itemized in section III. In that event, stringent itemization requirements do not appear relevant." This reflects the realization that stations are rarely constructed in precisely the manner in which they are proposed, and that as a result, the omission of any particular item will not render the integrity of the proposal questionable.

IV. SBH HAS FAILED TO SUSTAIN ITS BURDEN IN SUPPORT OF ADDITION OF THE FINANCIAL ISSUES

19. As set out by *Northampton Media Associates*, 4 FCC Rcd 5517, 5518-19 (1989), *recon. denied*, 5 FCC Rcd 3075 (1990), if a financial issue is to be designated against an applicant, that party is required to adduce probative evidence that he engaged in "serious and reasonable efforts to ascertain predictable construction and operating costs". *Id.* In seeking such an issue, the movant has the burden of showing the likelihood that the party did not engage in serious and reasonable efforts "with facts that support its position". *HS Communications, Inc.* 71 RR 2d 961, 969 (Rev. Bd. 1992). *See also Sec. 1.229(c)* (motion must contain specific allegations of fact sufficient to support the requested action).

20. SBH makes no attempt to sustain this burden. In fact, SBH acknowledges that Bryan undertook the requisite level of effort in preparing his budget by reviewing equipment catalogs, contacting dealers, and discussing the budget with counsel, throughout the process relying on his expertise from his own broadcast experience (*See SBH Petition*, para. 4). This effort is

ATTACHMENT I

DECLARATION OF DARRELL BRYAN

1. At the time my application for the new Tusculum FM station was being prepared, I was told by my attorney that I would have to prepare a budget setting forth the costs of equipment and the operating costs for three months without revenue. My attorney sent me a rough draft of a sample equipment list for my review and for me to provide cost figures. We had several telephone discussions about various cost figures. My attorney then put the budget in final form. The process I followed for compiling cost figures is as follows:

2. As to estimating equipment costs, I am the owner and operator of an AM station and had access to equipment catalogs from various suppliers. I also had purchased equipment in the past for my AM station. I checked several catalogues for certain equipment prices, but primarily dealt with Hall Electronics which is located in Charlottesville, Virginia. I contacted them by telephone and they provided me with costs based primarily on new equipment although they recommended a few used items. They informed me that they maintained an inventory of used equipment and also had access to equipment from other equipment dealers. I included used cost figures in the budget, obtained from Hall Electronics, for a STL - Studio/Transmitter Link, a Scala antenna, and an ITC Delta Recorder. I did not request a quotation in writing from Hall Electronics because I was aware that the actual purchase would take place at some unknown point in the future. I discussed the figures with my attorney to see how they compared with other proposals with which he had been involved. We both concluded that the figures were reasonable.

3. SBH has supplied an equipment proposal from Continental Electronics Corporation and based on that proposal argues that I have underestimated the costs of construction by at least \$57,596. The Continental sales proposal shows a new 11 kilowatt transmitter will cost \$47,000, that a 300 foot tower will cost \$26,996, that a antenna (2-Bay) will cost \$4700. The Continental proposal assumes an 11 kilowatt transmitter and a two-bay antenna. The use of a two-bay antenna by SBH is based on the antenna sketch. However, the depiction of two bays by the engineer is not determinative because antenna sketches are not drawn to scale; my budget assumed a 6-Bay antenna on the recommendation of counsel, but the final determination would be made by the consulting engineer. Attached hereto as Attachment A is a declaration from Owl Engineering which prepared the engineering for my application. In the declaration, the engineer points out that the FCC Form 301 does not request that the number of antenna bays be specified, that the antenna sketch is not to scale, and that a proposal to use an 11 kilowatt transmitter is "overkill".

4. The total cost for construction which I estimated in December 1991 was \$98,489.00. I recently requested a written updated cost estimate from Hall Electronics for each item on my budget. The new estimate provides a total of \$103,991.00 which is only a little over 5% higher than my December 1991 estimate. Attached hereto as Attachment B is the new quotation from Hall Electronics dated March 2, 1994 showing that I can purchase a new transmitter for \$17,200 (my estimate was \$16,000), a new antenna for \$5,995 (my estimate was \$4,500), new generator for \$9,200 (my estimate was \$9,000 for one new unit-I had one on hand), used STL package and antenna for \$6,395 (my estimate was \$6,000). I also contacted American Aviation, Inc. which is located in Greeneville and obtained a new estimate of \$16,000 for a new 300 foot tower

including installation (Attachment C). It appears that I did omit the modulation monitor from my budget but the additional cost claimed by SBH of \$1,790 plus \$850 for RF amplifier is well within my surplus funds.

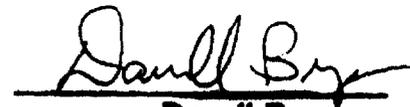
5. In addition, when I was compiling cost figures, I was aware that the cost of some specific items might be different in the future when acquisition of the equipment actually begins, and so, on some of the construction cost items, such as the cost of a transmitter building, I estimated on the high side. For example, I used a cost of \$5,000 for a transmitter building; I now have a obtained a new estimate from American Aviation, Inc. for a building complete with electrical circuits and air conditioning for \$3,800 (copy attached as Attachment D). There is no doubt that I can build the proposed station at a figure quite close to my original figure; however, As a result of FM station upgrades, there are a lot of good used transmitters and other items of used equipment now available which would enable me to construct for less than originally estimated.

6. On the operating expenses, I prepared an itemization of expenses for each of the first three months. I based my cost estimates for salaries and other expenses on my experience in actually operating my AM station in the market and on discussions with my attorney. I am confident that I can operate the proposed station within the three month cost in my operating budget. SBH claims that I should have included a payment on the bank loan for the first month I included two month's payments of \$1,934.44 each based on the terms in the bank letter: \$175,000 at 1.5 over prime for 15 years; at current prime rates, the payments would be \$1,723.29. The inclusion of an additional payment fits within my available funds. When I had finally come up with the final estimates for my budget which totaled \$136,482.88., I included

a cushion of \$38,517.12.

7. I went to see Mr. Stan Puckett, President of Greene County Bank, for the purpose of obtaining a commitment from the bank for \$175,000. I have been a longtime customer of the bank which financed my purchase of my AM station, and the bank is familiar with my assets. Mr. Puckett provided a commitment letter for \$175,000. The letter specifies a term of 15 years with the interest rate at Prime plus 1.50%. The letter also calls for a lien on all "acquired assets", and refers to a pledge of all stock. My understanding of the stock pledge language was that such a pledge would be required if I incorporated to operate the Tusculum station. The September 9, 1993 letter from the bank affirms that understanding.

8. On production of documents, I searched my files at the time I was asked to provide documents, and I produced everything that I had except for framed plaques and certificates on my civic activities. I do not have any old business cards or other documents pertaining to my past broadcast jobs. At deposition, I stated that I probably have a newspaper clipping somewhere or some pictures, but, I have searched again and do not have any clippings or pictures.


Darrell Bryan

ATTACHMENT A



CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
DARRELL BRYAN
CHANNEL 276A TUSCULUM, TN**

March 11, 1994



CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
DARRELL BRYAN
CHANNEL 276A TUSCULUM, TN**

This statement was prepared on behalf of Darrell Bryan (hereafter Bryan) in support of response to a motion to enlarge issues. The purpose of this statement is to determine the transmitter power output requirements for Bryan's proposed facility for channel 276 at Tusculum, Tennessee.

In the declaration of William H. Seaver, a statement is made that Bryan's application "reflects that he will operate with a effective radiated power of 6.0 kilowatts, utilizing a 2 bay antenna" (underline added). No where in the application is a 2 bay antenna specified or required to be specified. Review of Engineering Exhibit E-2 reveals that a distance of 4.4 meters (14.4 feet) exists from the antenna center of radiation to the top of the tower (excluding the lighting). This distance will allow an antenna up to 4 bays to be mounted on the tower. It is worth noting at this time that Engineering Exhibit E-2 depicts a 2 bay antenna side mounted on the tower. This exhibit is a generic sketch of the relevant heights of the proposal and in no way restricts Bryan to a 2 bay antenna. It is noted on the exhibit that it is not to scale.



CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
DARRELL BRYAN
CHANNEL 276A TUSCULUM, TN**

To achieve the 6.0 kilowatts Effective Radiated Power (ERP), multiple combinations of transmitters, antennas and transmission line can be utilized. To arrive at ERP, the transmitter power output (TPO) is multiplied by the transmission line efficiency and the antenna gain. For ease of calculation, it will be assumed for this analysis that 300 feet of 1/8" transmission line with an efficiency of 86.5 percent will be used for all configurations. Below is a table showing several different combinations available to achieve 6.0 kilowatts.

<u>Transmitter Power Output</u> <u>(Kilowatts)</u>	<u>Antenna</u> <u>(Bays)(Gain)</u>	<u>Line Efficiency</u> <u>(%)</u>	<u>ERP</u> <u>(Kilowatts)</u>
15.43	(1)(0.4611)	86.5	6.0
6.956	(2)(0.9971)	86.5	6.0
4.449	(3)(1.5588)	86.5	6.0
3.251	(4)(2.1332)	86.5	6.0

As can be seen from the data above, a transmitter capable of 4.449 kilowatts output with a 3 bay antenna could be utilized. A 5 kilowatt transmitter would be used for this configuration. Alternatively, a transmitter capable of 3.251 kilowatts output with a 4 bay antenna could be utilized. A 3.5 kilowatt transmitter would be used for this configuration. Based on multitudinous facilities designed by this firm, the 3 and 4 bay configurations referenced above are by far the most common configurations. The suggestion by Mr. Seaver that a 2 bay antenna be used with an 11 kilowatt transmitter running at 6.956 kilowatts output is "overkill".



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1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
DARRELL BRYAN
CHANNEL 276A TUSCULUM, TN**

CONCLUSIONS

- 1) A 5 kilowatt transmitter could be utilized with a 3 bay antenna to achieve 6 kilowatts ERP.
- 2) A 3.5 kilowatt transmitter could be utilized with a 4 bay antenna to achieve 6 kilowatts ERP.
- 3) It is not necessary for Bryan to purchase an 11 kilowatt transmitter.

**ENGINEERING STATEMENT ON BEHALF OF
 DARRELL BRYAN
 CHANNEL 276A TUSCULUM, TN**

AFFIDAVIT

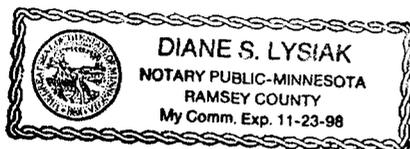
RAMSEY COUNTY)
)
 STATE OF MINNESOTA) ss:

Garrett G. Lysiak, being first duly sworn, says that he is president of Owl Engineering, Inc., consulting communications engineers with offices in Arden Hills, Minnesota; that his qualifications as an expert in communications engineering are a matter of record with the Federal Communications Commission; that the foregoing exhibit was prepared by him and under his direction; and that the statements contained therein are true of his own personal knowledge except those stated to information and belief and, as to those statements, verily believes them to be true and correct.



Garrett G. Lysiak
 Garrett G. Lysiak, P.E.

Subscribed and sworn to before me this date March 11, 1994



Diane S. Lysiak
 Diane S. Lysiak
 Notary Public

My commission expires November 23, 1998

ATTACHMENT B



Broadcast Equipment & Supplies

Wednesday, March 02, 1994

Darrell Bryan
WBMG
942 Snapp Ferry Road
PO BOX 727
GREENVILLE, TN 37744

Dear Darrell:

It was good to hear from you today about the new station. I will be glad to verify the information we discussed. The prices will be current and applicable for 30 days. The tower and installation, building and its furniture should be done locally.

Table with 3 columns: Quantity, Description, and Price. Items include Transmitter w/ exciter, antenna, feedline, generator, console, processor, play cart, audio carts, turntable, pre-amp, mic & amp, composite system, parabolic antennas, transmission line, remote package, monitor, recorder, automation package, distribution amp, and equipment rack. Total price is \$103,991.

Please fax or call me if questions arise. I will be glad to assist you at any time.

Sincerely,

Rick Johnson (handwritten signature)