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Before the
FCC MAIL SECTION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC 94M-250
41522

In re Applications of ~~DISPATCHED BY~~) 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)

ORDER

Issued: April 12, 1994 ; Released: April 13, 1994

This case has been assigned to the undersigned as Settlement Judge. See Order FCC 94M-161, released March 18, 1994. It has been emphasized to the parties that this case will be frozen for the duration of a post-Bechtel¹ rulemaking on comparative criteria which could effect the ultimate winner in this case. The rulemaking will be of indeterminate duration. Therefore, settlement is in the interests of the parties as well as being in the Commission's and the public's interests since as soon as this case is resolved there will be a new FM broadcast facility in El Rio and litigation resources will no longer be utilized.

By Settlement Conference Memorandum dated March 23, 1994, counsel for the parties were instructed to consult their clients and to confer informally on settlement and to then advise the Settlement Judge of a convenient date for a conference. Counsel for Raymond W. Clanton advised the Settlement Judge by telephone call of April 7, 1994, and by letter dated April 8, 1994, that the parties and their counsel believe that settlement discussions should be deferred pending a ruling by the Presiding Judge on qualifying financial issues that are pending against Loren F. Selznick which recently have been fully briefed and which are now awaiting an initial decision.²

The Settlement Judge agrees that settlement discussions may be deferred pending the Presiding Judge's initial ruling. However, as has been made clear to counsel, there will be no further delays of settlement negotiations pending any appeal taken to the Review Board or to the Commission. Therefore, within

¹ Bechtel v. F.C.C., 10 F.3d 875 (D.C.Cir. 1993).

² The Commission's freeze order provides for the continued litigation of qualifying issues. See Public Notice FCC 94-41, released February 25, 1994 (during the freeze, aspects of hearing proceedings not involving comparative analysis will not be suspended).

10 business days of the release of the Presiding Judge's ruling on the qualifying issues, counsel shall confer with their clients on settlement terms. Counsel shall immediately thereafter meet among themselves, or with the parties, to determine terms that may be negotiated and to agree upon a suggested date for a first meeting of counsel with the Settlement Judge. Within 20 business days of the Presiding Judge's ruling, the parties are to be informed by their respective counsel, in writing with a copy to the Settlement Judge, of the proposed date for the first conference and of the Presiding Judge's invitation to any party to attend the conference.

The parties and their counsel are advised that they may individually or collectively contact the Settlement Judge at any time concerning settlement and that the ex parte rules will not apply. However, the Settlement Judge will not hear a party without participation and representation of that party's counsel.

Submissions to the Settlement Judge will be treated in confidence unless a disclosure could effect harm to the public health and welfare, or prevent a manifest injustice, or reveal a violation of law. Administrative Dispute Resolution Act 5 U.S.C.A. §584.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

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