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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In re Applications of)	MM DOCKET NO. <u>93-89</u>
)	
AURIO A. MATOS)	File No. BPH-911114MS
)	
LLOYD SANTIAGO-SANTOS AND)	
LOURDES RODRIGUES-BONET)	File No. BPH-911115MP
)	
For a Construction Permit for a)	
New FM Station on Channel 293A at)	
Culebra, Puerto Rico)	

To: The Review Board

**MASS MEDIA BUREAU'S COMMENTS ON
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

1. On March 8, 1994, Aurio A. Matos (" Matos") and Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santiago & Rodriguez") filed a Joint Request for Approval of Settlement Agreement ("Joint Request"). The Mass Media Bureau submits the following comments.¹

2. The Joint Request is accompanied by a settlement agreement which contemplates the dismissal of the Santiago & Rodriguez application and the grant of the Matos application. In consideration for the dismissal of the Santiago & Rodriguez application, Matos proposes

¹ These comments are timely filed. See the Bureau's letter to the Board, filed on March 21, 1994, advising that comments would be filed after receipt from Santiago & Rodriguez of supplemental materials to the settlement agreement.

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to pay Santiago & Rodriguez the sum of \$50,000. Additionally, upon the grant of the construction permit, Matos proposes to hire Mr. Santiago and Ms. Rodriguez as part-time consultants.

3. Santiago & Rodriguez state that the proposed settlement amount is less than their legitimate and prudent expenses incurred in preparing, filing, and prosecuting their application and the rulemaking proceeding that precipitated the allotment of Channel 293A at Culebra, Puerto Rico. In support, Santiago & Rodriguez have submitted to Bureau counsel documentation of their expenses, including invoices and declarations by their attorneys and consulting engineers.² The documents indicate that Santiago & Rodriguez had legitimate and prudent expenses totalling \$50,716.98. Santiago & Rodriguez have also provided to Bureau counsel draft copies of their proposed consulting agreements with Matos.³ The unexecuted drafts state that Matos will pay Mr. Santiago and Ms. Rodriguez at the rate of \$12,500 each per year for a period of two years.

4. Both applicants state that the settlement will serve the public interest by hastening the inauguration of a new FM service at Culebra. The applicants also declare under penalty

² These materials were submitted to Bureau counsel on April 12, 1994. It is not clear from the accompanying transmittal letter, however, whether the supporting documents were properly filed with the Commission and made a part of this docketed proceeding.

³ The materials were submitted to Bureau counsel on April 22, 1994. It is evident from the transmittal letter which accompanied the draft consulting agreements that the documents were not filed with the Commission, have not been made a part of this docketed proceeding, and are not before the Board for consideration.

of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement. Furthermore, the applicants acknowledge the pendency of the Bureau's January 28, 1994, Motion to Reopen the Record and Enlarge Issues against Matos as well as Matos' February 7, 1994, Petition for Leave to Amend his application. The settlement agreement specifically states that consummation is conditioned upon the denial of the Bureau's Motion and the grant of Matos' Petition.

5. The Bureau submits that the settlement agreement is not grantable in its present form. As noted above, consummation of the settlement agreement is conditioned, in part, upon the grant of Matos' February 7, 1994, Petition for Leave to Amend. In that amendment, Matos submitted a new technical proposal. However, in a subsequent Petition for Leave to Amend, filed April 14, 1994, Matos reported that the Federal Aviation Administration had rejected his proposal, and he stated an intention to further amend his application again at some later date. It is apparent, therefore, that Matos no longer intends to rely on his February 7, 1994, proposal. Since consummation of the settlement agreement is expressly conditioned upon acceptance of an amendment which Matos has no intention of prosecuting and, in any event, is no longer viable, the settlement agreement cannot be granted unless the provision containing the condition is excised or revamped.

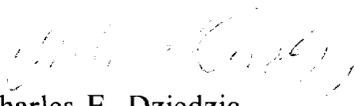
6. The settlement agreement is not grantable for another compelling reason. The agreement contemplates the grant of Matos' application. However, Matos' application is not grantable for the simple reason that Matos does not have a viable transmitter site. The

proposal that Matos submitted in his February 7, 1994, Petition for Leave to Amend was rejected by the FAA as hazardous to air navigation, and Matos has not even petitioned the Board to amend his application to specify a new technical proposal. Consequently, either the provision that requires the grant of Matos' application should be expunged from the settlement agreement, or the settlement agreement must be denied.

7. The Bureau also objects to the provision in the settlement agreement relating to Matos' intention to hire Mr. Santiago and Ms. Rodriguez as consultants. The settlement agreement provides that Matos will pay Mr. Santiago and Ms. Rodriguez at the rate of \$12,500 each per year for a period of two years for their services. The problem, however, is that no consulting agreements exist among the parties. None has been filed with the Commission, and the only ancillary agreements that apparently exist are merely *unexecuted drafts* of consulting agreements which the applicants informally provided to Bureau counsel. Indeed, in the absence of any binding agreements, the Board is unable to conclude that the proposed consulting arrangement -- through which Santiago & Rodriguez would reap an additional \$50,000 over and above their legitimate and prudent expenses -- is not a sham designed to skirt the Commission's limitation on reimbursable expenses. Consequently, the relevant provision in the settlement agreement must be expunged or the settlement agreement cannot be approved.

8. Based on the foregoing, the Bureau submits that the Joint Request is not grantable at this time and must be denied.

Respectfully submitted,
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Chief, Mass Media Bureau



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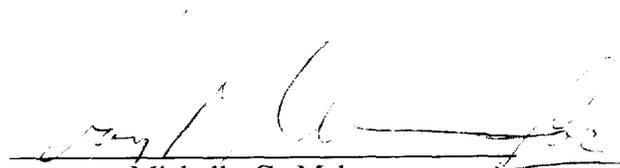
April 28, 1994

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 28th day of April 1994, sent by regular First Class United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement" to:

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