

1 MR. CARR: And, on page four, Your Honor, last
2 sentence, second paragraph -- second full paragraph. Again,
3 it's, "I had been advised by Bill Hoisington that the price
4 quoted was below cost." I'm not sure what it adds to the
5 record.

6 MR. BRADY: I'm not. I'm sorry, I'm not -- I've
7 lost you -- if you can.

8 JUDGE FRYSIK: I'd like to find that last sentence.

9 MR. CARR: Page four, second paragraph, last
10 sentence. "I had been advised by Bill Hoisington that the
11 price quoted was below cost."

12 MR. BRADY: That's -- I have no objection.

13 JUDGE FRYSIK: Strike the last sentence of the
14 second paragraph on page four.

15 MR. CARR: And finally, Your Honor, on page six, the
16 last page, that -- the first sentence, "I spoke by telephone
17 with Wilfred Bone of Harris who indicated --

18 MR. BRADY: Page six?

19 MR. CARR: "Who indicated that the ITC Delta
20 Recorder/Reproducer, is no longer manufactured." Which would
21 be the same objection.

22 MR. BRADY: What -- what is that, I'm not --

23 MR. CARR: I'm sorry. It SBH 5, page six.

24 MR. BRADY: Yeah -- I'm -- I need to know what the
25 objection is, Your Honor. That's my question.

1 JUDGE FRYSIAK: What's the objection?

2 MR. CARR: Well, again, it's a -- a hearsay
3 objection, Your Honor.

4 MR. BRADY: Well, your Honor.

5 JUDGE FRYSIAK: What is your objection?

6 MR. CARR: That he -- we don't have -- well, let me
7 just say this. Let me withdraw that one, Your Honor, I don't
8 mind that it stays in. That's fine.

9 JUDGE FRYSIAK: Well, the problem that I have is
10 what is the reference? Is it the reference to the initial
11 construction costs or is it a reference to the updated
12 construction costs?

13 MR. BRADY: Well, this is a reference to contact
14 made with a vendor regarding a particular item that was listed
15 originally by Mr. Bryan and which was no longer available.
16 That -- I think it's just, you know, I would assume, he could
17 ask the witness, but I believe it's there to indicate why that
18 item -- price is not listed for the item which Mr. Bryan
19 originally proposed.

20 JUDGE FRYSIAK: All right. There is no objection to
21 it, so it will remain. Any other objections?

22 MR. CARR: No, Your Honor.

23 JUDGE FRYSIAK: All right. Without -- I'll receive
24 5 as amended.

25 (Whereupon, the document referred to

1 as SBH Exhibit Number 5 was received
2 into evidence.)

3 MR. BRADY: And, Mr. Seaver's available, Your Honor.

4 JUDGE FRYSIAK: By the way, your admissions --

5 MR. BRADY: I'm working on them

6 JUDGE FRYSIAK: They've been received without
7 objection. Has it not?

8 MR. BRADY: Yes, Your Honor.

9 MR. CARR: Yes, Your Honor.

10 MR. BRADY: I neglected, Your Honor, to number the
11 pages before I had it copied, so I'm doing it by hand. I'll
12 have the copy to you before I leave today.

13 JUDGE FRYSIAK: Before you sit down, let me take
14 your oath, sir.

15 Whereupon,

16 WILLIAM H. SEAVER
17 having first been duly sworn, was called as a witness herein
18 and was examined and testified as follows:

19 JUDGE FRYSIAK: All right, sir, for the record.
20 Have a seat and for the record please state your full name and
21 address.

22 MR. SEAVER: William Seaver. 3815 Old Jones Borough
23 Highway, Jones Borough, Tennessee.

24 JUDGE FRYSIAK: All right. Okay, Mr. Brady -- or
25 your cross examination?

1 MR. CARR: Yes.

2 CROSS EXAMINATION

3 BY MR. CARR:

4 Q Mr. Seaver, just by way of background, am I correct
5 that you do not have an engineering background?

6 A Not -- I never have held a first class license. I
7 was in the Signal Corp in the Army. And, I have always been
8 very -- very close to engineering, but no, I do not repair
9 transmitters and do not consider myself to be a practicing
10 engineer.

11 Q And, I take it you don't have an engineering degree?

12 A No, I don't.

13 Q And, you've never worked at a station as an
14 engineer?

15 A No.

16 Q Now, in your testimony, you state that you obtained
17 various equipment price quotations, which was the phrase you
18 used to refer to them. Now -- and you've got price quotations
19 in attachments A, B, C, D, E from Harris, Continental and RF
20 Specialties. Is that correct?

21 A Yes.

22 Q Now, when you obtained this "complete equipment
23 price quotation" did you telephone or did you write to those
24 companies to get that quote?

25 A In the case of RF Specialties, I -- I went to their

1 office because they're located within the very, at that time,
2 a very close proximity of where I was living. In the case of
3 Continental, that was by telephone and in the case of Harris,
4 that was telephone.

5 Q Now, for Continental, do you remember which office
6 you called?

7 A Dave Housman has always been the Continental
8 representative I've worked with for over twenty five years.
9 He and I use to be with the same commercial broadcast company
10 prior to his Continental days.

11 Q Now, what did you tell him you wanted?

12 A I've got various proposals from Continental. I'm
13 not sure which one we're speaking of here at this point.

14 Q Well, let's start off with the one in attachment A,
15 which has the five kilowatt FM single tube transmitter at the
16 top.

17 A I think, basically, that would be my original phone
18 call to Dave Housman for the preparation of the initial filing
19 of our original application. If I'm correct, it has a 5 kW
20 Continental transmitter.

21 JUDGE FRYSIAK: Is this for your own use?

22 MR. SEAVER: Your Honor, I'm thinking that's what
23 I'm looking at here. If I'm looking at the correct place, Mr.
24 Carr.

25 MR. CARR: I'm looking at the, just to be sure we

1 have it correct, SBH 5, page nine.

2 MR. SEAVER: Page nine? No, I'm sorry. I was on
3 page two.

4 JUDGE FRYSIAK: Page two of A, and A being -- page
5 one being the cover.

6 MR. SEAVER: Yes, yes. All right. We're in
7 business.

8 JUDGE FRYSIAK: It's the second page but it's listed
9 as page nine on the upper right hand corner.

10 MR. BRADY: That's, Your Honor, the page nine.
11 Sequentially numbered.

12 JUDGE FRYSIAK: Yeah, but he thought he was on page
13 two and he is except that he's on the page two of the
14 attachment rather than the exhibit.

15 BY MR. CARR:

16 Q So, are you on page --

17 A Yes. I'm -- I'm looking at the date trying to
18 recall exactly -- that would not have been our original
19 application, quite obviously, with the October of '93. This
20 has -- this has basically, again, our identical proposal.
21 It's a 5 kW single tube Continental transmitter.

22 JUDGE FRYSIAK: Identical to what?

23 MR. SEAVER: Pardon me?

24 JUDGE FRYSIAK: Identical to what?

25 MR. SEAVER: Our proposal that I got from

1 Continental in January of 1992.

2 JUDGE FRYSIAK: On SBH?

3 MR. SEAVER: Yes, sir. And I think, basically, Mr.
4 Carr's question was why I had asked for this particular one.
5 I think this was just an update to -- see it has a three bay
6 antenna, it has identical equipment that I see here so far.

7 JUDGE FRYSIAK: Identical to what? What the other
8 exhibit --

9 MR. SEAVER: Yes, sir. Our original --

10 JUDGE FRYSIAK: Was it attachment B? I'm just
11 trying to track.

12 MR. SEAVER: No, sir. B would be something totally
13 different.

14 JUDGE FRYSIAK: So it's identical to attachment C?

15 MR. SEAVER: I have to find out where.

16 MR. CARR: C is the Harris.

17 MR. SEAVER: No, sir. It's identical to -- to
18 probably a proposal that's not even in here. The equipment
19 that I'm looking at here on attachment A is -- is the same
20 basic equipment that I obtained prices from Continental in
21 January of 1992, prior to filing our application.

22 JUDGE FRYSIAK: SBH?

23 MR. SEAVER: SBH. Yes, sir. And that proposal, of
24 course, was not filed, just the bottom numbers.

25 MR. CARR: Now, the -- now, the purpose of obtaining

1 | this October 1993 proposal was what? What was the purpose?

2 | MR. SEAVER: Just updating as far as pricing, any
3 | changes that basically had taken place.

4 | JUDGE FRYSIAK: Updating your own proposal?

5 | MR. SEAVER: Yes, sir. Yes, sir.

6 | BY MR. CARR:

7 | Q Now, did you -- when you asked for this proposal,
8 | did you refer back -- did you refer them back to the original
9 | proposal and say, I want that proposal updated?

10 | A They have a computer program. No, I don't recall
11 | doing that. They pretty well have a -- a computer program
12 | that has the necessary equipment for class A, 6 kW FM
13 | transmitter and it will, for the most part, crank out pretty
14 | much what's needed for the construction. Now, if you prefer
15 | to add in certain -- certain items, then they can plug those
16 | in as well.

17 | Q Now, when you -- so just to be sure I understand, I
18 | want to be sure that we have this complete. Is the number
19 | that I see right above the date, there where it's a 14910RV --
20 | is that RV -- does that stand for revision? Is that what that
21 | is? Do you know?

22 | A I have no idea.

23 | Q And you don't recall whether you told them you
24 | wanted the former proposal revised and that that's what this
25 | is?

1 A I don't recall asking for a revision. Now, if my
2 name triggered a proposal that was generated in January of '92
3 in the computer database, then possibly it came out as a
4 revision. But I don't recall that I specified.

5 Q How did you describe to them, you know, the FM
6 installation that you wanted a proposal for? What did you
7 tell them?

8 A It was a class A, just normally standard questions,
9 6,000 kW ERP, three bay antenna, which basically their 5 kW
10 transmitter would use single phase power. I also asked for a
11 tower quote and with the location of our tower, two hundred
12 and 70 feet was basically the amount of steel we needed for
13 the tower. At that stage of the game, the frequency was
14 immaterial. Those, I think, are primarily the basic questions
15 that --

16 Q And then the items which appeared on these various
17 pages, I take it these were prepared by Continental. This is
18 a complete proposal, which is part of a standard proposal
19 which they make available. Is that correct?

20 A Yes. Absolutely. I mean, I may have requested one
21 or two particular things, but the most part would have been
22 generated from Continental's computer.

23 Q Now, when you called them up, did you request any
24 information on their discount policy? What kind of discount
25 were made available?

1 A No. This proposal, basically, was earmarked as
2 budgetary. And, I don't recall a discount sheet or financial
3 request form or anything of that nature being even attached to
4 the budgetary proposal.

5 JUDGE FRYSIAK: Now, you requested this by
6 telephone?

7 MR. SEAVER: Yes, sir. Yes, sir.

8 MR. CARR: Counsel, if I may just approach, I'm just
9 going to show the witness an equipment proposal by -- from
10 Continental. It was from Mr. Mertz at his request. It's not
11 necessarily in connection with this. I just want to show him
12 this page so he'll know what I'm -- and I'll also show it to
13 counsel.

14 MR. BRADY: Yeah, yeah. Okay.

15 BY MR. CARR:

16 Q Now, I'm putting before you a equipment proposal
17 from Continental Electronics. I guess what I'm asking you --
18 on this particular page, you'll see that they have an
19 equipment summary and then they have the prices for the -- for
20 transmitting equipment antenna equipment, transmission line
21 equipment and then they have total equipment and they have a
22 price of \$91,579. Do you see that?

23 A Yes, I do.

24 Q And, then below that they have net package price,
25 \$77,800. Now, did you have any discussion like that about

1 this kind of discount that is normally made?

2 A No. Also on the front of that proposal, it's got a
3 big rubber stamp that has budgetary. And that -- that is
4 considered to be a proposal that is probably going to be
5 purchased and activated somewhere in the foreseeable future.
6 And, as Mr. Mertz testified to, a budgetary proposal may be
7 some time down the road before it ever becomes a purchase.

8 Q Now, attachment B, that's SBH, page 14, you know, is
9 the cover page, starts at page 15, which is another
10 Continental sales proposal, except this time it's for an 11
11 kilowatt transmitter. If I asked you the same questions about
12 what you asked them to give you, would the answers be the same
13 for this?

14 A No.

15 Q What did you tell them you wanted when you got this
16 proposal? Let me -- let me just make a change. Can I assume
17 that when you asked for this proposal that you told them you
18 wanted a proposal for an FM station operation, 6 kW, two
19 hundred feet, with a two bay antenna. Is that how you got
20 this one?

21 A That's correct.

22 Q Okay. Now, attachment C, and that's 5, page -- the
23 first page of information is page 21. This is the Harris
24 Allied proposal. Now, asking the same questions, would I be
25 correct in stating that you contacted Harris and told them you

1 wanted a proposal for an FM station giving a 6 kW. What other
2 information did you give them?

3 A Four bays.

4 Q Four bays. And then, they had this in their
5 computer and they put this out -- this complete proposal?

6 A That's correct.

7 Q Okay. Did you ask Harris about their discount
8 policy?

9 A No.

10 Q Okay.

11 A It was also discussed that this was budgetary and
12 that no CP had been issued for this -- construction of this
13 station.

14 Q Now, turning to attachment D, which is 5, page 27,
15 the first page is page 28. Now, I notice that this -- RF
16 specialties proposal states bill to Mr. Tim Brady. Now, does
17 that indicate that you did not request this particular
18 proposal?

19 A No, it doesn't. It just saved me the trouble of --
20 let's see, receiving a fax in Pensacola, looking at it,
21 turning right around and faxing it to Mr. Brady in Nashville.
22 And I asked RF Specialties to fax it directly to Mr. Brady.

23 Q And, when this proposal was requested, was this a
24 proposal simply to get a price for transmission line. Is that
25 what this is?

1 A That was both. Also listed on the bottom of page
2 twenty eight is --

3 Q The STL antennas.

4 A The Scala paralector 450CU STL antennas for \$630
5 each.

6 Q Was there any discussion with RF Specialties about
7 their discount policy. Any discounts if you buy the
8 equipment?

9 A Only that -- again, this is -- this is the gentleman
10 that I've known for some time. I could ask basically what his
11 costs were on certain items and he would tell me -- or he
12 would tell me the absolute bottom price that he could sell an
13 item for. And, the only terms that were ever discussed or
14 discounts were that would be cash with the order.

15 Q Are -- are you stating that these are discounted
16 prices?

17 A No. No. They're -- let me see. Let me think on
18 that question a second, here. I was asking him primarily for
19 specific items. Now, true there is some cable wave antenna --
20 or coaxial and a few small priced hanger kits. In other
21 words, this would be somewhat different than a full radio
22 station package as far as receiving discounts. This is
23 probably a list price if you could receive some discount on
24 it. I have no idea how much because it's not that big of a
25 package.

1 Q Mr. Seaver, if I could return you to the last page
2 of your -- your full testimony, the text of your testimony,
3 which is SBH 5, page six, can I direct your attention to that
4 sentence which I started to make an objection to and then
5 withdrew the objection. Where you state that Mr. Bone of
6 Harris indicated that the ITC Delta recorder/producer is no
7 longer manufactured.

8 A Correct.

9 Q Now, isn't it true that on Mr. Bryan's budget that
10 Delta recorder was shown as being a used recorder?

11 A I would have to look at it, I don't know.

12 MR. BRADY: We'll stipulate.

13 MR. CARR: Okay.

14 BY MR. CARR:

15 Q Now, in view of the testimony that we have just
16 heard, when you state, for example, that -- when you use the
17 phrase that this is what a certain item of equipment would
18 cost, am I correct in stating that that's what it would cost
19 based on these sales proposals, which you have attached?

20 A Yes.

21 Q Not necessarily a net price including a discount.
22 Isn't that correct?

23 A Well, you know, we would -- never too -- getting
24 that -- that close to placing an order, so that aspect,
25 really, with Harris, Continental, has never been even

1 | discussed.

2 | MR. CARR: I don't think I have any more questions,
3 | Your Honor.

4 | JUDGE FRYSIAK: All right. Thank you very much.
5 | Mr. Brady?

6 | MR. BRADY: I have nothing, Your Honor.

7 | JUDGE FRYSIAK: You don't have any questions?

8 | MR. BRADY: No.

9 | JUDGE FRYSIAK: Mr. Seaver, thank you very much.

10 | MR. SEAVER: Thank you, sir.

11 | JUDGE FRYSIAK: Any other rebuttal?

12 | MR. BRADY: Your Honor, I don't have anything today.
13 | I may wish to offer, at least, rebuttal, but I will first have
14 | to consult with an engineer. It would be of an engineering
15 | nature relating to the terrain question Mr. Mertz attempted to
16 | testify with respect to a map that he had never seen before
17 | and certainly didn't expect to tell us anything about the
18 | terrain in great detail and the question related to the path
19 | of the STL and so forth.

20 | JUDGE FRYSIAK: What would you rebut?

21 | MR. BRADY: The -- well, it would be offered as --
22 | it would be offered to rebut the -- the contention that the --
23 | that it could be constructed -- that the STL path could be
24 | constructed for line of sight between the transmitter to the
25 | studio location.

1 JUDGE FRYSIAK: I don't particularly know what --

2 MR. BRADY: Due to terrain obstructions.

3 MR. CARR: I'm not sure that's the state of the
4 record, Your Honor. My recollection is that Mr. Mertz
5 testified that there were other alternative steps that could
6 be taken, if there was a line of sight problem. He didn't
7 think there was one, but he talked about other alternatives.
8 I'm not sure what's being rebutted here.

9 JUDGE FRYSIAK: Yes. I -- I agree.

10 MR. BRADY: Well, Your Honor, what I would propose
11 to do is that I would -- if I wanted to do such a thing, that
12 I would file it and file a request to -- for leave and then
13 Mr. Carr can address the specifics and I can address,
14 hopefully with the transcript in hand in terms of the -- what
15 Mr. Mertz --

16 JUDGE FRYSIAK: All right. Fine. You know, as far
17 as I'm concerned, I consider what your testimony today was by
18 way of rebuttal.

19 MR. BRADY: Yes, Your Honor. I did, too.

20 JUDGE FRYSIAK: And, Mr. Mertz by way of
21 surrebuttal. But --

22 MR. BRADY: The -- the only thing I would add is
23 that the -- we were -- we did not -- until we had the
24 testimony of the witnesses today, we couldn't -- we didn't
25 know for sure what exactly we would be addressing.

1 JUDGE FRYSIAK: Well, that's the danger when you
2 offer rebuttal testimony. Then you have surrebuttal, then
3 surrebuttal upon surrebuttal and then again surrebuttal.
4 We've got to call the line some place. So, you may make your
5 motion. I certainly don't want to preclude you from making
6 your motion.

7 MR. BRADY: Thank you, Your Honor.

8 JUDGE FRYSIAK: Anything else today?

9 MR. BRADY: Nothing else today, Your Honor.

10 JUDGE FRYSIAK: Okay. I'll close the record on the
11 financial question against Darrell Bryan. Okay. Who -- to
12 set dates for proposed findings and replies. I suggest that
13 we file and that you file proposed findings September 30th.
14 Is that agreeable?

15 MR. CARR: Yes, Your Honor.

16 MR. BRADY: Yes, Your Honor.

17 JUDGE FRYSIAK: And that you file replies October
18 17th. Is that all right?

19 MR. CARR: Yes, Your Honor.

20 MR. BRADY: I believe that is, Your Honor.

21 JUDGE FRYSIAK: Okay.

22 MR. BRADY: And, Your Honor, I'll have that last
23 exhibit to you today.

24 JUDGE FRYSIAK: Thank you very much.

25 (Whereupon, at 3:11 p.m., the hearing was adjourned.)

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF DARRELL BRYAN AND SBH PROPERTIES, INC.

Name

MM DOCKET NO. 93-241

Docket No.

WASHINGTON, D.C.

Place

JULY 26, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 10 through 175, inclusive, are the true, accurate and complete transcript prepared from the reporting by Jeffrey Yeatman in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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