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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
Federal Communications Commission
Washington, DC 20554

In re applications of	)	MM Docket No. 93-241
	)	
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. Frysiak
Administrative Law Judge

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PROPOSED FINDINGS OF DARRELL BRYAN
ON FINANCIAL ISSUES

Respectfully submitted,

DARRELL BRYAN

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October 3, 1994

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SUMMARY

The record shows that Bryan engaged in "serious and reasonable efforts to ascertain predictable construction and operation costs". *Northampton Media Associates,* 4 FCC Rcd 5517, 5519 (1989). The 1991 equipment and construction cost estimates were derived from catalogs and discussions with equipment companies. The record contains unrebutted expert testimony of a consulting engineer who presented detailed equipment estimates; the highest of two estimates by the expert is only 5.35 percent higher than Bryan's 1991 estimates and demonstrates the reasonableness of Bryan's efforts. The operating cost estimates were based on Bryan's experience at WSMG(AM) in the same market as the proposed FM station. The steps taken by Bryan were clearly serious and reasonable.

After compiling the construction and operating cost totals and adding an additional surplus, Bryan contacted Greene County Bank from which he had borrowed $300,000 in 1989. He met with the bank president and requested a loan in the amount of $175,000. The bank president testified that he placed the loan request on the agenda of the Executive Committee which approved the loan. It is clear that Bryan has established that he engaged in reasonable efforts to ascertain predictable construction and operation costs, has shown the availability of funds to meet those costs, and, thus, was able to make a proper financial certification. Since Bryan was financially qualified at the time he certified in the application, his certification was not false.

The record demonstrates that Bryan can purchase the equipment and construct the proposed station at the present time. The record contains a detailed equipment estimate by the expert showing that the FM station equipment can be purchased and the station constructed

within the funds available to Bryan. The record demonstrates the bank loan is still available and that the proposed station can be constructed and operated within Bryan's available funds. Thus, it must be concluded that Bryan is presently financially qualified. Bryan has met his burden under the added financial issues.

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PROPOSED FINDINGS OF DARRELL BRYAN ON FINANCIAL ISSUES

I. PRELIMINARY STATEMENT

1. The captioned applications were designated for comparative hearing by Hearing Designation Order, released August 31, 1993, 8 FCC Rcd 6296 (Chief, Audio Services Div. 1993). The following issues were designated for Comparative hearing:

A) To determine which of the proposals would, on a comparative basis, best serve the public interest.

B) To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

2. SBH filed a Motion to Enlarge Issues Against Darrell Bryan on February 15, 1994. By Public Notice dated February 25, 1994, the Commission suspended and held in abeyance the

processing of applications and the adjudication of hearing proceedings which involve a comparative analysis.

3. By Memorandum Opinion and Order, FCC 94M-296, released April 25, 1994, the SBH motion to enlarge was granted in part and the issues in this proceeding were enlarged as follows:

To determine whether Bryan is presently financially qualified;

To determine whether Bryan was financially qualified at the time it so certified;

To determine whether Bryan's financial certification was false; and

To determine in light of the evidence adduced under the foregoing issues the effect on Bryan's basic qualifications.

4. A hearing session on the added financial issues was held on July 26, 1994 and the record on the financial issues was closed. The record was later reopened to admit two additional exhibits and again closed.

II. FINDINGS OF FACT

Preparation of the Bryan Budget

5. When the new frequency in Tusculum, Tennessee, was made available, Darrell Bryan consulted his attorney, Rick Hayes, in order to initiate an application. Mr. Hayes provided Mr. Bryan with a sample budget to use as an outline in assembling a list of construction and operating costs. The sample budget included listings of equipment and construction costs as well as operating costs for three months. Bryan Ex. 8, p. 1.

6. Mr. Bryan began his budget research by reviewing catalogs and other materials from equipment companies that he had on hand in order to obtain prices for various items of equipment. Although Mr. Bryan had several catalogs on hand, he concentrated on getting price

estimates from three companies that he had dealt with in the past: BSW, Harris and Hall Electronics. He relied extensively on the 1990 catalog from Broadcast Supply West (BSW) of Tacoma, Washington (See excerpts from catalog in Bryan Ex 8, pp.5-13); Tr. 32. The other catalogs reflected similar prices. Bryan Ex. 8, p.1.

7. After reviewing the BSW catalog and seeing prices for various items of equipment, Mr. Bryan contacted that company by telephone. The BSW catalog contains the notice: "BSW actual selling prices are routinely discounted below manufacturers suggested list prices. Additional discounts may apply depending on size of order or payment terms". Bryan Ex. 8, p. 6. The BSW catalog lists prices which are identified as "Mfg. List" and it advises customers to "call for BSW price". Bryan Ex. 8, pp. 7-13. When Mr. Bryan telephoned, he was advised by BSW that if he purchased several items of equipment, the merchandise would be discounted from 20% to 30%. This was consistent with Mr. Bryan's experience in prior dealings with BSW. BSW prices, after applying the appropriate discount, were used in the Bryan budget and included prices for a Gentner remote control, the audio console, the distribution amp, an 8 foot equipment rack, carts, an audio processor and the STL transmission line, . Bryan Ex. 8, p. 1.

8. Other than his use of the BSW budget, Bryan relied primarily on prices obtained from Hall Electronics of Charlottesville, Virginia from whom he had made prior purchases. Bryan had several phone conversations with Hall and he spoke to an engineer at Hall Electronics who gave him a price of $16,000 for the FM transmitter and a ballpark price for a 300 foot tower for which he budgeted $18,000. He also relied on Hall for his price for the main antenna and transmission line[1], in addition to incorporating their recommendation of budgeting used equipment for the

[1] Bryan testified that the $450.00 transmission line price included in his budget was a typographical error and that he believed that it should have been $3,450.00. Tr. 78-79.

STL package, a pair of parareflector antennas and an ITC Delta Recorder. In compiling his various costs, he inadvertently omitted the price for an FM modulation monitor which is currently $1,450.00. Bryan Ex. 8, p. 1; Tr. 34, 43; Bryan Ex. 9, p. 10.

9. Having been informed that exact costs for the antenna would be based on the configuration of the equipment which would be determined by an engineer prior to beginning construction, Mr. Bryan incorporated a price for a six kilowatt transmitter, and, a price for a six-bay antenna into his budget to ensure that the cost of any size antenna would be covered. The record shows that the proposed six kilowatt transmitter will work with either a 4-bay or 6-bay antenna. Bryan Ex. 9, p.3. Mr. Bryan based his price for IGM automation equipment on a brochure he had obtained from that company. Bryan Ex. 8, p. 2.

10. Mr. Bryan took into consideration that he already had on hand an extra EBS monitor, and an extra 5kw Kubota generator that were not in use. Bryan Ex. 8, p. 2; Tr. 41. He budgeted a price of $5,000 for a transmitter building to be built by a local contractor. He based his $800 cost estimate for studio furniture on a local source that could build any unit needed to hold studio equipment; that source looked at what he had in his AM studio prior to giving him a quote. Tr. 45. Bryan's estimate of $500 for office furniture took into consideration the fact that he had unused tables, desks, chairs and typewriters that could be used at the FM station which he had personally purchased and were in storage at WSMG. Tr. 46. The December 12, 1991 letter from Greene County Bank specifies that there will be a lien on all acquired assets similar to the lien on the earlier Burley Broadcasters loan. Mr. Bryan believed that the unused extra furniture at WSMG which was purchased by him personally would not be covered by the WSMG bank lien because it had never been used in the operation of WSMG; however, any of the extra furniture

or equipment that Mr. Bryan would transfer for use at the FM station would fall under the bank's new lien, and thus, the current bank lien will have no impact on the use of any of the extra equipment or furniture. SBH Ex. 7, p. 35; Bryan Ex. 8, p. 2; Tr. 45. Based on the foregoing process, Mr. Bryan arrived at an initial equipment and construction budget of approximately $99,000. Bryan Ex. 8, p. 2.

11. Mr. Bryan executed similar diligence in calculating costs involved in the operation of the station for the first 90 days. In calculating the 90-day operating costs, Mr. Bryan relied on his own experience acquired operating radio station WSMG(AM) in the same market. For example, Bryan estimated the cost for electricity and stated that any electric power that might be needed at the site during construction would most likely be provided by the installer's own generator, and power needed for equipment testing would be of short duration. Tr. 81. Similarly, Bryan calculated expenses for telephone services based on his own experience. Tr. 86, 87. He calculated his monthly telephone service costs at approximately the same rate which he was paying for these services at WSMG, while reflecting in his budget the fact that he would not receive a bill for these services within the first thirty days. He pointed out that he already has extra telephone equipment at the AM station. Tr. 86, 87. Bryan included $900 for health insurance even though his general practice is to not offer health insurance benefits during the first ninety days of employment. Tr. 88. Mr. Bryan included site purchase payments, but subsequently exercised his option and purchased the property in full. Bryan Ex. 8, p.2; He also will not have office rent payments by locating the studio at the building he owns. Tr. 97. He included two payments of $1934.44 - a total of $3868.88 - for loan repayment which included the payment of both principal and interest based on the interest rate in effect at that time. However, he has the

option of paying interest-only on the loan. If he drew the entire $175,000 at one time, three interest-only payments under the current interest rate would total only $3,559.92 or $1,186.64 per month. Bryan Ex. 6, p. 1. In sum, Bryan relied on his experience in the same market in conjunction with his independent research of current prices to arrive at a budget which he believed would cover his initial operational expenses of the FM station.

12. Mr. Bryan arrived at a total construction and operating cost of $136,482.88 and then added an additional $38,517.12 to cover any future cost increases, additional equipment, engineering or legal expenses to arrive at the total loan amount of $175,000. All of the legal and engineering expenses incurred up to July 6, 1994 have been paid. Bryan Ex. 8, pp. 2-3.

The Loan Commitment From Greene County bank

13. Mr. Bryan contacted Stan Puckett, President of Greene County Bank and set up a meeting to discuss a loan. During this meeting, they discussed the funds necessary for construction and operation for the initial 90 days, the amount that Bryan wanted to borrow, and the process required to put the station on the air. As Greene County Bank had already extended a $300,000 loan to Mr. Bryan when he purchased his AM radio station in 1989, he was an established customer of the bank and they were familiar with his finances, his operation of the AM station, and his credit history on the $300,000 loan. His financial statement and biography were already on file at the bank. SBH Ex. 7, p. 30-31. When he met with Mr. Puckett, Mr. Bryan had his budget and a proforma financial statement for the FM station, but the bank did not request that he provide them with copies. Bryan Ex. 6, p. 1; Bryan Ex. 8, pp. 2-3; Tr. 51, 54.

14. Mr. Puckett testified that he informed Mr. Bryan that repayment would be interest-only for the first year with payments being made quarterly based on a 15-year amortized

repayment at 1.5% above prime. Bryan Ex. 6, p. 1; Bryan Ex. 8, p. 3. He also stated that any decision to incorporate the station would trigger a requirement of pledge of stock. Bryan Ex. 8, p. 3. Mr. Puckett placed the Bryan loan request on the agenda of the bank's Executive Committee. Mr. Bryan next heard from Mr. Puckett on approximately December 12, 1991 when he called to inform him that the bank's Executive Committee had met and not only authorized the issuance of the December 12, 1991 letter but approved the loan to Mr. Bryan. Bryan Ex. 6, p. 2.; Bryan Ex. 8, p. 3. Mr. Bryan subsequently obtained a letter from Mr. Puckett in September 1993 confirming the continued availability of the loan and clarifying that the pledge of stock would only be required in the event of incorporation. Bryan Ex. 6, p. 2.; Bryan Ex. 8, p. 3.

15. Mr. Puckett, the bank president, testified that continued ownership of WSMG(AM) by Mr. Bryan was not of concern to the bank, and the fact that the bank has a pledge of stock of Burley Broadcasters, Inc. in connection with the 1989 loan would not bar a sale of WSMG (AM). Burley Broadcasters, Inc. is wholly owned by Mr. Bryan. Mr. Puckett stated that the proceeds of any sale would be applied to the payment of the balance on the 1989 loan. In his May 16, 1991 personal financial statement (SBH Ex. 12), Mr. Bryan valued WSMG(AM) at $500,000. In a May 24, 1994 financial statement the valuation was increased to $540,000. Mr. Bryan based the valuations on his experience in the radio business. At deposition, when asked if the bank had obtained its own appraisal, Mr. Puckett, the bank president, testified that he could not recall any situation where the bank requires an independent appraisal of assets not directly related to the loan. SBH Ex. 7, p. 30. Mr. Puckett testified that if the proceeds of a sale of WSMG(AM) did not completely retire the WSMG loan, which as of July 1, 1994 was $210,000,

any shortfall would be folded into the FM station loan and handled under the new note. SBH Ex. 7, p. 28; Bryan Ex. 6, p. 1. Since only $210,000 is owed on the AM station loan, a sale of the AM station for less than half of Mr. Bryan's valuation, would provide sufficient funds to completely retire the AM station loan. Bryan Ex. 6, p. 1. In addition to the pledge of stock, Greene County Bank currently has a lien on the equipment, furniture and fixtures used at WSMG. SBH Ex. 10. Any equipment or furniture retained by Bryan after the sale of the AM station to be used at the new FM station would fall under the new bank lien that would apply to any acquired assets under the FM loan Tr. 105-106; See December 12, 1991 commitment letter attached to SBH Ex. 7. Since legal and engineering expenses have been paid by Bryan on an ongoing basis, the full amount of the $175,000 is still available to Bryan for construction and operation. Bryan Ex. 6, p. 2; Bryan Ex. 8, p. 3. Mr. Puckett made it clear that the bank had not simply issued a letter to consider a loan at a later date but had actually approved the loan to Bryan and that "[i]n order to draw the full amount of the loan Mr. Bryan only has to come in to the bank and show that he has received a permit to build the new FM station and sign the note and the loan documents". Bryan Ex. 6, p. 2.

The Current Cost of Constructing the FM Station

16. Richard Mertz, a consulting engineer, testified on the current cost of constructing Bryan's proposed station and prepared an updated equipment cost estimate. He has been a radio engineer for over 25 years and has constructed over fifteen transmitter sites and 35 studios. Tr. 110. The equipment specifications in his estimate were determined after review of Bryan's FCC application. Bryan's original equipment budget did not provide brand names for all of the listed items of equipment. In his new estimate, Mr. Mertz provides a detailed list of equipment with

brand names. In some case, Mr. Mertz uses the equipment manufacturer originally specified by Bryan, in other cases the new estimate specifies equipment of equivalent type but from a different manufacturer, and where no brand names were included in the Bryan original estimate, Mr. Mertz has provided brand names. Additionally, the Mertz estimate specifies only new equipment even though the original Bryan estimate had specified a few used items. Mr. Mertz included in his new estimate the costs supplied by Bryan for a generator and by Walter Stone for a transmitter building and tower. Bryan Ex. 9, p. 7.

17. The Continental equipment sales proposal obtained by SBH's Mr. Seaver and submitted with the SBH motion to enlarge, included a cost for an 11 kilowatt transmitter on the assumption that a 2-bay antenna had been specified in the Bryan engineering. The part of that sales proposal with the transmitter price has been resubmitted as part of SBH Ex. 5 (SBH Ex. 5, p. 15) along with part of another Continental sales proposal which shows a price of $36,300 for a 5 kilowatt transmitter for use with a 3-bay antenna. SBH Ex. 5, p. 9. SBH Ex. 5 also contains portions of a Harris sales proposal which shows a transmitter price of $30,090 for use with a 4-bay antenna. SBH Ex. 5, p. 21.

18. Mr. Mertz responded to the argument that a 2-bay antenna had been proposed in the Bryan application by pointing out that the application contains no proposal for a 2-bay antenna. He states that it may not be concluded, based solely on the antenna sketch in the Bryan engineering, that Bryan had proposed a 2-bay antenna. He stated that the sketch is only a specification of the proposed antenna type, design, or configuration. The antenna sketch in response to Section V-B, paragraph 8, FCC Form 301 is only a visual graphic which shows specified antenna center placement and pertinent heights and information for the antenna

structure. He pointed out that there is no reference to the number of bays in the Bryan application and that the application form does not require it. Bryan Ex. 9, pp. 2-3. Mr. Mertz further explained that he would not propose a 2-bay antenna because a 2-bay antenna has a broad radiation pattern and directs excessive energy down to the ground where it is not needed, whereas the 4-bay antenna that he specified in his estimate has a fairly narrow beam, gives good coverage from the tower height, and minimizes ground reflections close to the tower. Tr. 125.

19. Mr. Mertz responded to the issue of transmitter cost by pointing out that the SBH claim for a 11 kilowatt transmitter is based on its unwarranted assertion that Bryan had proposed a 2-bay antenna in his application. On the issue of what size transmitter is needed, Mr. Mertz explained that a transmitter consists of a combination of a power amplifier and an exciter, and that he included a cost of $19,200 for a transmitter configuration consisting of a Henry power amplifier and a QEI exciter which meets the Commission requirements and is a good choice in this instance. Tr. 113-114.

20. Mr. Mertz also responded to SBH's argument that the cost of a tower is higher than estimated by Bryan by stating that the tower specified in the Continental proposal submitted by Mr. Seaver, which has a cost of $26,996, is a larger tower which in his opinion is not necessary. He pointed out that the Rohn 45G tower priced by Mr. Stone is a triangular shaped tower with an 18 inch face and tubular steel legs; the tower in the SBH proposal has a larger 24 inch face width and solid leg construction. The tower specified in the Harris proposal attached to SBH Ex. 5 which has a price of $47,500 is also a tower with 24 inch face and solid rod legs. SBH Ex. 5, p. 22. The tower proposed in the RF Specialties proposal has price of $32,000 but no manufacturer is identified and no construction details are given. SBH Ex. 5, p. 31. Mr. Mertz

stated that the larger tower specified in the SBH equipment sales proposals is not necessary. Bryan Ex. 9, p. 5.

21. The price of $16,000 for the Rohn 45G tower relied on by Mr. Mertz was supplied by American Aviation, Inc. which has been a Rohn tower distributor since 1978. Walter Stone, President of American Aviation, has been involved in tower installation for the past 34 years. Mr. Stone provided several examples of towers he has constructed including five towers for John C. Tune Airport in Nashville, Tennessee in 1985-86 which ranged in height from 75 feet to 150 feet, and which included the mounting of light and solar panels which was more complex than mounting an FM antenna. Bryan Ex. 7, p. 2. Photographs of one of the guyed towers installed by Mr. stone at the airport shows the light and solar panels. Bryan Ex. 7, pp. 5-6.

22. Mr. Stone quoted a price to Mr. Bryan for a Rohn model 45G tower of $11,500. Although this price is below the price for the 45G tower which appears in the printed Rohn dealer price list, Mr. Stone testified that as a distributor he receives a 30 percent discount from that listed dealer price, and, that he also receives a 20 percent discount from the manufacturer of the tower beacon, TWR Lighting, Inc. The cost of the Rohn 45G tower and beacon to American Aviation is $8,558 which breaks down as $7644 for the tower, $704 for the beacon, and $210 for painting, resulting in a profit of $2,942 to American Aviation, Inc. Joint Ex. 2. Although Mr. Stone believes that he could complete all of the tower installation for $2,500, he quoted a price to Bryan of $4,500 for the installation of the tower which includes base and anchor pads, tower erection, grounding and mounting of the beacon light. The additional $2,000 would cover any unforeseen costs or would be additional profit to Mr. Stone. There would be a charge of $500 for installation of the main antenna and line, and, the STL antenna and line.

The total cost of the tower to Bryan with antennas, transmission lines and beacon will be $16,500. Bryan Ex. 7, p. 2. Mr. Bryan's original estimate in 1991 was $18,000. Walter Stone testified that even if it was decided to use the next size Rohn tower, the 55G, the additional cost to Bryan would only be $2,397. Bryan Ex. 7, p. 3. American Aviation which has constructed several concrete block buildings as power vaults also furnished Bryan with a quote of $3,800 for an 8 x 12 foot concrete block building with electrical wiring and air conditioning. Bryan Ex. 7, p. 3. Mr. Bryan's original estimate was $5,000. In it's rebuttal exhibit (SBH Ex. 17), SBH points to Bryan's testimony that he now plans to use his AM studio building as the FM studio location, and submits engineering testimony that terrain between the transmitter site and the AM building create a line-of-sight problem for use of microwave STL. Mr. Bryan testified that use of telephone lines is an alternative to microwave STL, Tr. 101. Consulting engineer Richard Mertz, points out that if line-of-site hampers the use of microwave equipment, a completely acceptable alternative is use of dedicated telephone lines. He testified that use of the telephone lines as the STL would eliminate the $7,197.80 cost of the microwave STL package and that the cost of telephone installation would be $900, and monthly payments would be $737.10. Bryan Ex. 10.

23. Mr. Mertz also responded to the SBH argument that a larger coaxial cable will be needed for the Bryan transmission line by pointing out that use of 7/8 inch cable is sufficient for the Bryan proposal and complies with the rule of thumb that is normally used by engineers for determining cable size, i.e., the transmitter output power should be no greater than 80 to 85% of the average power capability of the coaxial cable. Applying this "rule" to use of 7/8 inch cable in the Bryan proposal with a 4-bay antenna results in a ratio of only 56%. Bryan Ex. 9, p. 6.

However, to show that the difference in cost between 7/8 inch cable and 1 and 5/8 inch cable is not substantial, Mr. Mertz provided one estimate relying on a 7/8 inch transmission line (Bryan Ex. 9, pp. 9 & 10) and a second estimate relying on a larger 1 and 5/8 inch transmission line (Bryan Ex. 9, pp. 11 & 12). The estimate with the 7/8 inch line totaled $101,824.56 - an increase of only 3.28% over Bryan's original estimate. Bryan Ex. 9, p. 10. The estimate with the 1 5/8 inch line totaled $104,051.97 - a difference of $2227.41 over the 7/8 inch line, and an increase of 5.35% over Bryan's original estimate. Bryan Ex. 9, p. 12.

24. Mr. Mertz also discussed other equipment included in the boilerplate Continental Electronics Corporation equipment sales proposal submitted by SBH with its motion to enlarge issues and pointed out that the proposal contains various unnecessary items which unnecessarily increase the total equipment costs. For example, a quarter wave shorting stub is included which is not needed; a 1 5/8 inch gas barrier is proposed which is used with rigid line even though there is no rigid line associated with the components in the Continental proposal; a nitrogen tank assembly was proposed to regulate the flow of nitrogen to pressurized cable even though the specified cable is "foam" dielectric which does not require pressurization. Mr. Mertz also pointed out that the Continental proposal attached to the SBH motion to enlarge does not reflect the normal discounts offered by Continental. Bryan Ex. 9, p. 4. At hearing, Mr. Seaver was shown a Continental proposal obtained by Mr. Mertz where the total list price was $91,579 and the net price after discount was $77,800 reflecting a discount of over 15 percent. Tr. 168.

25. SBH's hearing exhibit consisted of testimony of Mr. Seaver and selected pages from equipment proposals. In his written testimony, SBH's Mr. Seaver discusses various items of equipment and asserts that the prices that they will cost are the prices in the equipment sales

proposals attached to his testimony. Tr. 172. He attached excerpts from two Continental proposals (SBH Ex. 5, pp. 8-13 and pp. 14-19, as well as selected pages from a Harris proposal (SBH Ex. 5, pp.20-26) and two proposals for certain equipment from RF Specialities (Attachments D-E).

26. At the hearing, Mr. Seaver acknowledged that he has no engineering training or degree, and has never worked at a station as an engineer. Tr. 162. He testified that he requested the two Continental equipment proposals by telephone. Attachment A consists of pages 1,3,5,11 and 12 of a Continental "Broadcast Sales Proposal" which is dated 10/19/93. For Attachment A , he told Continental that he wanted a proposal for a Class A FM station operating with 6 kw power and a three bay antenna. He also asked for a tower quote. Tr. 167. Attachment B consists of pages 1-3,5,8 of a Continental "Broadcast Sales Proposal" which is dated 2/10/94. For Attachment B, Mr. Seaver requested a proposal similar to Attachment A but with a two bay antenna. Tr. 169. Attachment C consists of pages 2,4-7,and 9 of an undated Harris Allied proposal. For the Harris proposal, he requested a proposal for a Class A FM station with 6kw power utilizing a four bay antenna. Tr. 170. Mr. Seaver acknowledged that the Continental sales proposals were for the most part boilerplate proposals generated from Continental's computer (Tr. 167); the Harris proposal was generated by the Harris computer. Tr. 170. The prices in the Continental sales proposals were list prices. Tr. 157. Mr. Seaver did not ask Continental or Harris what kind of discounts were available for purchases of their equipment. Tr. 168, 170. The two RF Specialities quotes (Attachments D & E) were obtained by going to their office which is located in Florida not far from where he was living. Tr. 162-163. Attachment D consists of one quote for 1 and 5/8 inch transmission line, related gear and two STL antennas,

and, a second quote for STL transmission line and related gear. Attachment E consists of a quote for installation of a 300 foot tower; neither the tower model nor the manufacturer are identified. SBH Ex. 5, p. 31.

III. CONCLUSIONS OF LAW

27. In adding the financial issues, the Presiding Judge recited the SBH allegations and found that there were disputes about the transmitter and tower cost, about whether Bryan had proposed a 2-bay vs. 6-bay antenna, and over the use of 7/8 inch line vs. 1 5/8 inch line, and, stated that there appeared to be a significant number of costs that were underestimated by Bryan resulting in a shortage of more than $57,596. He concluded that there were sufficient questions to warrant addition of the issues. The purpose of the added financial issues was to determine whether Bryan was financially qualified at the time of his certification, whether Bryan's financial certification was false, and whether Bryan is presently financially qualified.

28. In order to be financially qualified, an applicant must have reasonable assurance of having sufficient funds to construct and then operate the station for three months. The commission has defined "reasonable assurance" for a source of funds as a "present firm intention to make a loan, future conditions permitting . . ." *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980). Reasonable assurance also requires "serious and reasonable efforts to ascertain predictable construction and operation costs". *Northampton Media Associates*, 4 FCC Rcd 5517, 5518-5519 (1989), aff'd 941 F. 2d 1214 (D.C. Cir. 1991).

29. On the question of whether sufficient funds are available to construct and operate for three months, Bryan is relying on a loan commitment from Greene County Bank. The record establishes that all of the factors discussed in *Scioto Broadcasters*, 5 FCC Rcd 5158 (Rev. Bd.

1990) are present in the Greene County Bank letter. More important, however, is the fact that this is not a case where the bank letter is standing alone and has to be examined to determine if it satisfies the "reasonable assurance" standard. Bryan's source of funds, Greene County Bank, did not just provide a letter to Bryan; the bank's president, Stan Puckett, testified that Bryan's loan request had been placed on the agenda of the bank's Executive Committee and had actually been approved prior to the issuance of the December 12, 1991 letter. Mr. Puckett testified that in order to draw the full $175,000, Bryan only has to show that he has received the FM construction permit and execute the loan documents. Furthermore, Mr. Bryan's assurance of a committed source of funds is buttressed by the fact that he has had a long-standing business relationship with Greene County Bank, and the bank is familiar with his financial situation. See *A.P. Walter, Jr.,* 68 RR 2d 1460, 1462 (Rev. Bd. 1991); *Multistate Communications, Inc. v. FCC,* 590 F. 2d 1117 (D.C. Cir. 1978). Thus, Bryan has established that $175,000 was available to him from Greene County Bank at the time that he certified and that such funds are still available.

30. In order to test Bryan's financial qualifications at the time he certified it is also necessary to determine whether Bryan engaged in serious and reasonable efforts to ascertain construction and operation costs prior to filing his application. SBH challenges the adequacy of Bryan's equipment quotes and has made assertions that Bryan has substantially underestimated what he will have to pay for the costs of a transmitter, antenna and transmission lines, and a tower. SBH also argues about a variety of lesser operational costs which SBH calculates differently.

31. Bryan has offered probative evidence that prior to certifying his qualifications in the application, he had ascertained the costs of constructing and operating the station. The record

establishes that Bryan obtained a sample budget from his attorney and studied catalogs that he had on hand at his AM station. He reviewed a catalog from an equipment company, Broadcast Supply West (BSW), which indicates in its catalog that it discounts equipment from list prices. Mr. Bryan then telephoned BSW as customers are instructed to do in the catalog and applied the discounts in arriving at a price for various items of equipment. He arrived at the price for the automation equipment from a brochure that he had received from the manufacturer, IGM. He telephoned Hall Electronics and obtained prices for the transmitter and tower. He also took their recommendation and obtained a quote from them for three items of used equipment, and, included a price for a six bay antenna since he was unsure at that time exactly how many bays would ultimately be needed. The $800 cost of studio furniture in the budget was obtained from a local source who would build what was needed; the $500 cost for office furniture took into consideration the fact that he had on hand various office furniture that could be used at the FM station. After pricing the equipment that would be needed, Mr. Bryan arrived at a total cost estimate of approximately $99,000 for equipment.

32. SBH has asserted that Bryan has underestimated his costs; SBH submitted equipment sales proposals from equipment companies in an effort to show that Bryan will have to spend considerably more. The SBH estimates are attached to a statement by Mr. William Seaver who requested them from Continental, Harris and RF Specialties. Seaver has no engineering background; he asked for proposals for a 6 kilowatt station with a 300 ft. tower utilizing 2-bay, 3-bay and 4-bay antennas. He acknowledged that the estimates were simply run off from proposals on computer.

33. While SBH argues that its higher equipment costs show that the station cannot be built within the funds available in Bryan's budget, the record contains the unrebutted testimony of Mr. Richard Mertz, a consulting engineer, and an expert on station construction, who testified that the station can be built within the Bryan budget. Mr. Mertz prepared two detailed estimates based on all new equipment at current prices. The only difference between the two estimates is that one includes the cost of a 7/8 inch transmission line and the other includes the cost of a 1 5/8 inch transmission line. The detailed estimates prepared by Mertz demonstrate that the proposed Bryan station can be built today using all new equipment for a cost ranging from only 3.28 % to 5.35 % over Bryan's 1991 estimates. Such cost increases would normally be expected as a result of inflation over a period of two and a half years.

34. In compiling operating costs, Mr. Bryan relied on his experience as the owner/operator of WSMG(AM) in the same market who is familiar with employee salaries and other radio station expenses such as electric power, telephone, etc. He compiled detailed costs for his budget including payments on the transmitter site and the loan repayment. SBH has questioned the adequacy of certain cost estimates such as providing costs for only two months electric service and providing for only two loan repayments, but Mr. Bryan testified that he had spoken to the power company and any additional cost for electric service for equipment testing prior to operation would be minor. He also stated that based on his experience, he did not anticipate having a loan payment during the first 30 days, however, he testified that three interest-only payments of $1186.44 per month would now total less than the two payments that he allocated in 1991. In addition, the payments in the budget for the site purchase and office rent are no longer necessary. Bryan's total estimate for operating costs was $37,993.88 (SBH Ex. 15)

which is more than $11,500 more than SBH allocated for its three month's operating expenses. After compiling both construction and operating costs, Mr. Bryan added a surplus of approximately $38,000 and obtained a loan approval from the bank for $175,000. If the highest equipment and construction cost presented by Mr. Mertz of $104,051.97 (Bryan Ex. 9, p.12) is added to Bryan's three month operating cost total of $37,993.88 (without deleting the site and office payments), the total cost to Bryan to construct and operate at the present time is $142,054.85, resulting in an available surplus of $32,954.15.

35. The Commission does not require that the effort by an applicant to ascertain construction and operating costs must result in a budget that is accurate to the penny. When the Commission revised Form 301 in 1981 it stated that "[i]t is our experience that a proposed operation is rarely effectuated exactly as itemized in Section III. In that event, stringent itemization requirements do not appear relevant". *Revision of Form 301*, 50 RR 2d 381, 382 (1981). The Commission does not even require that an applicant prepare a detailed written budget. In *Baltimore Radio Show*, 66 R.R. 2d 1806 (Rev. Bd. 1989), the Review Board approved the cost formulation where budget figures were formulated by the applicant in a verbal discussion over the telephone with counsel who had checked various items with experienced broadcasters and/or engineers.

36. The instant case is not one where the applicant failed to perform any meaningful assessment of the actual costs. Using catalogs and telephone contacts, Bryan prepared a detailed equipment budget, and, relying on his experience as the owner/operator of a radio station in the same market, compiled a list of operating expenses. It is clear from the record that the process

used by Bryan to arrive at construction and operating costs was reasonable. Bryan has satisfied his burden of proving the basis for, and reasonableness of the original cost estimates.

37. The primary question under the false certification issue is whether Bryan made deliberate misrepresentations regarding his financial qualifications in executing its financial certification. The record makes it clear that Bryan had taken reasonable steps to ascertain costs and that his certification was made in good faith and was not false. See *Northampton Media Associates,* 4 FCC Rcd 551, 5519 (1989).

IV. CONCLUSION

38. Bryan has met his burden of proof under the added financial issues. He has adduced probative evidence under the second issue that he was financially qualified when he certified because prior to certification, he engaged in reasonable efforts to ascertain predictable construction and operation costs, and had a reasonable assurance of the availability of funds. It is clear under the third issue that his certification was not false. Finally, the record shows that Bryan is presently financially qualified under the first issue because the loan availability is intact and the station can be constructed and operated with the funds available. In light of the facts under the foregoing financial issues, the ultimate question of Bryan's basic qualifications must be resolved in Bryan's favor.

Respectfully submitted,

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