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A hearing with respect to the forgoing issues was held on July 26, 1994 and the record was closed by Order (94M-458), released July 29, 1994.

FINDINGS OF FACT

2. Bryan filed his application on January 9, 1992, utilizing the June, 1989 version of FCC Form 301. (SBH Ex. 6, p. 2) In response to Section III., Item 1 of his Application, Bryan certified that he was financially qualified to construct and operate the proposed station for three months without revenue. (SBH Ex. 6, p. 2) In response to Section III., Item 2 of the Application, Bryan certified that his total estimated costs "necessary to construct and operate the requested facility for three months without revenue" would equal \$ 175,000.00. (SBH Ex. 6, p. 2) In response to Section III., Item 3 of the Application, Bryan certified that the only source of available funds to meet his estimated costs was a proposed loan from the Greene County Bank in the amount of \$ 175,000.00. (SBH Ex. 6, p. 2)

Bryan's Efforts In Estimating His Costs.

3. Bryan prepared a two page document, "Construction Costs" and "Operating Expenses", which reflected his itemization of estimated costs for the construction of the proposed Tusculum FM station and his estimated operating expenses during first three months. (hereafter "Itemization of Costs"). (SBH Ex. 6, pp. 2, 15-16; SBH Ex. 15) This two page Itemization of Costs represented the final version and the only written version of

Bryan's itemized estimated costs for the construction and operation of the station for three months without revenue. (SBH Ex. 6, p. 2-3) Bryan had no other documents, reflecting, supporting or relating to his cost estimates, as of January 9, 1992. (SBH Ex. 6, p. 3)

4. Bryan determined his estimated costs for construction by obtaining equipment price quotes from equipment suppliers and manufacturers, which were obtained orally, not in writing. (SBH Ex. 6, p. 3) The equipment suppliers and manufacturers who Bryan contacted to obtain equipment price quotes were Hall Electronics, Harris Corporation and Broadcast Supply West. (SBH Ex. 6, p. 3) He also reviewed catalogues and had discussion with his counsel, Richard Hayes. (Bryan Ex. 8, p. 1)

5. Bryan did not obtain a written price quotation from Broadcast West Supply ("BSW"), but relied instead upon a catalog and telephone calls. (Tr. 32) However, Bryan acknowledged that BSW would have supplied him with a written quote for all the items he was interested in, if only he had requested one. (Tr. 32) While Bryan suggested that he failed to obtain written price quotes, because they would be valid for only 30 days, he acknowledged that, had he obtained a written quote from BSW at the time he was developing his cost estimates, it would have been valid at the time he certified and filed his Application. (Tr. 40) Bryan stated that he calculated the cost of items for which he relied upon the BSW catalogue by deducting 20-30% from the catalogue price, based on his past experience of purchasing from

this company and after checking to be certain that discounts were still available. (Tr. 33) However, these discounts were premised on his purchasing "several items of equipment through them" and would apply "to most of the merchandise," but not necessarily all of it. (Bryan Ex. 8, p. 1)

6. Bryan claimed that he was told that "the transmitter/antenna cost would be based on the configuration of the equipment, which would be difficult to determine" until he was ready to build the station. (Bryan Ex. 8, p. 1) However, he was unable to explain what it was that was so "difficult" about determining what configuration of antenna and transmitter he would use in advance of actually constructing the station. (Tr. 34-35) His only response was that he was "not an engineer" and would need to rely on the expertise of an engineer when he actually began the construction. Id. As evidenced by his testimony at his initial deposition, as of January 12, 1994, Bryan still had not determined what transmitter/antenna configuration he was proposing:

Q: "I'm curious as to what type of antenna system you're proposing. Do you know?"

A: "Not really. Owl Engineering did that and I didn't consult as far as what they put on there."

Q: "So you didnt discuss with Owl whether it would be two bay or four?"

A: "No, I dont think so. I dont remember what was said."

Q: "Are you proposing then a six bay antenna?"

A: "Whichever. I'm not an engineer so I would say whatever is the best I could do at that point in time."
(Tr. 74)

Construction Costs.

7. When Bryan was preparing his cost estimates in 1991, he did not obtain any price quotation for a tower from any supplier, but, instead, relied upon a "ballpark" figure from someone from Hall Electronics, Bill Davis. Bryan stated that this "ballpark" was a general estimate, as opposed to a specific price for a specific tower or a specific make of tower. (Tr. 43) Bryan indicated that there was no reason why he did not obtain a written price quotation from a tower company; he simply concluded that the price Davis gave him was sufficient. (Tr. 44) The only specification that Bryan provided to Davis regarding the proposed tower was that he was proposing "a three to six bay antenna" and "his information was based on that." (Tr. 44-45) He is not certain he discussed with Davis whether the tower would be required to support any antennas other than an FM antenna. (Tr. 45) Bryan acknowledged that Davis was not even the person who was helping him put together his cost estimates. (Tr. 44) While Bryan "thinks" that Hall Electronics sells towers, he is not certain that they did in 1991 and he does not know if they sell a particular type of tower. (Tr. 43)

8. In preparing his Itemization of Costs Bryan relied upon "used" prices for the following equipment items: 1 Moseley STL package, 1 Scala parareflector antenna, 1 ITC Delta Recorder. (SBH Ex. 6, p. 3) Bryan did not obtain any price quotes from equipment suppliers on these three "used" items in writing, prior to certifying his financial qualifications. (SBH Ex. 6, p. 4)

The price quotes for these three "used" items were provided orally by Hall Electronics. (SBH Ex. 6, p. 4) Bryan did not enter into any agreement with Hall Electronics or any other equipment supplier regarding the purchase of any "used" equipment or regarding their making any "used" equipment available at any specified price, prior to certifying his financial qualifications. (SBH Ex. 6, p. 4) Nor did Bryan enter into any agreement with any equipment supplier to hold any "used" equipment for purchase at a later date. (SBH Ex. 6, p. 4) Bryan offered no evidence regarding the cost of purchasing any of these items, new. Richard Mertz acknowledged that, while used equipment may be generally available, there is no certainty that one would be able to find the same piece of equipment at a later date and certainly not for the same price. (Tr. 127-28)

9. In determining his total estimated costs of construction and initial operation and certifying his financial qualifications, Bryan based his Itemization of Costs on the assumption that a six bay antenna would be utilized and, accordingly, he prepared no cost estimates for a transmission system (transmitter, transmission line and antenna) utilizing a 2 bay antenna, a 3 bay antenna or a 4 bay antenna. (Tr. 73-74, 77-78)

10. Bryan's engineer, Garrett G. Lysiak, in an Engineering Statement prepared on Bryan's behalf acknowledged that Exhibit E-2 of Bryan's Application "depicts a 2 bay antenna side mounted on the tower." (SBH Ex. 9, P. 1) While contending that the

depiction of a 2 bay antenna in the Application did not restrict Bryan to utilizing a 2 bay antenna, Mr. Lysiak did acknowledge that the values specified for the antenna center of radiation and the overall height of the tower restrict Bryan to an antenna containing no more than 4 bays. (SBH Ex. 9, p. 1) Mr. Lysiak's Engineering Statement constitutes the only evidence of record regarding the possible transmitter output power/antenna/transmission line efficiency combinations capable of achieving the 6.0 kilowatt effective radiated power, proposed by Bryan. Each of the possible combinations assumes a line efficiency of 86.5%, based on the use of 1 5/8" transmission line. (SBH Ex. 9, p. 2) Thus, assuming the use of 1 5/8" line with an efficiency of 86.5% and a four bay antenna, a transmitter output power of 3.251 kilowatts will be required to achieve an effective radiated power of 6.0 kilowatts, while a transmitter output power of 6.956 kilowatts would be required to achieve the same effective radiated power, if a 2 bay antenna were utilized. (SBH Ex. 9, p. 2)

11. Bryan had no discussions with Lysiak regarding his technical proposal; his discussions were only with his attorney. (Tr. 38) He had no discussions with Lysiak regarding any recommendations regarding the transmitter configuration or what size transmitter he would need. (Tr. 39) The first time he was aware of the four bay limitation was when he read Lysiak's March, 1994 Engineering Statement (SBH Exhibit No. 9). (Tr. 105)

12. In determining his total estimated costs of construction and initial operation and certifying his financial qualifications, Bryan failed to include the cost of purchasing an FM modulation monitor or an RF amplifier. (SBH Ex. 6, p. 5-6) Bryan may have obtained price quotes for an FM modulation monitor and an RF amplifier and admitted that both of these items were inadvertently left off his Itemization of Costs. (SBH Ex. 6, p. 22-23) The cost of a Belar FM modulation monitor would be \$ 1,450.00, while The cost of a Belar RF amplifier would be \$ 850.00. (Bryan Ex. 9, p. 12; SBH Ex. 6, p. 13)

13. In determining his total estimated costs of construction and initial operation and certifying his financial qualifications, Bryan failed to include the cost of purchasing a second Scala parareflector antenna. (SBH Ex. 6, pp. 6, 34) He also failed to include the cost of purchasing any connectors for the transmission line to be used with his STL system or any mounting or grounding hardware for his main or STL transmission lines. (Tr. 147-48) Bryan also failed to budget for any monitoring speakers for his studio. (Tr. 148) The cost included on his Itemization of Costs for his transmission line (\$ 450.00) was erroneous and should have been in the \$ 3,400 to \$ 4,500 range. (Tr. 78-79)

14. Bryan claimed that he has a 5 kilowatt Kubota emergency power generator on hand as "extra equipment" at WSMG. He denied that it is currently being used as an emergency power generator for WSMG, claiming it had never actually been used for emergency

power, because he had never had a power outage. (Tr. 41)

However, when shown a copy of the Financing Statement relating to the loan from Greene County Bank to Burley Broadcasting, Inc. (SBH Ex. 10), which lists certain collateral pledged to the Bank to secure payment of the loan, Bryan acknowledged that the same Kubota generator is listed and in fact is pledged to the Bank as collateral to secure the loan and that he uses the generator for the studio building. (Tr. 42, 97)

15. Bryan claimed that he budgeted only \$ 500.00 for office furniture, because he had unused tables, chairs, desks and typewriters on hand at WSMG. (Tr. 45) While Bryan claimed that these items are not property of Burley Broadcasters or WSMG or are listed on the Financing Statement (SBH Ex 10), he acknowledged that they are located in the WSMG studio building. (Tr. 46) The collateral description attached to the Financing Statement includes a good deal of office furniture, as well as reference to "miscellaneous office items." (SBH Ex. 10, p. 2)

16. Bryan testified that he has one vehicle that is used in the operation of WSMG. He did not budget for purchasing any vehicles for the proposed FM station and stated that he probably would retain the vehicle, currently used at WSMG, for use in the FM. (Tr. 63-64) The collateral description attached to the Financing Statement includes two vehicles, a 1987 GMC Safari Mini-Van and a 1977 Chevrolet Blazer. (SBH Ex. 10, p. 2)

17. The cost figures Bryan included in his Itemization of Costs for telephone service do not include rental of phone

equipment. (Tr. 87) He did not budget for the purchase of phone equipment, because he already has such equipment, which is being used in the operation of WSMG. (Tr. 87)

18. Bryan acknowledged that he did not budget for a production studio for FM, although he does have a production studio for WSMG station. (Tr. 92) He claimed to have sufficient equipment on hand to outfit a complete production studio for the FM, including a reel to reel recorder, some cassette and CD players and a small monaural mixer. (Tr. 92-93) He claimed that this equipment was not being used in the operation of the AM station, but the collateral description attached to the Financing Statement does in fact include several reel to reel and cassette recorders, as well as a Shure Mixer, model M267. (SBH Ex. 10, p. 3; Tr. 94)

19. The Financing Statement reflects on its face that the property covered includes "all property used in the broadcasting business, now on hand or hereafter acquired." (SBH Ex. 10, p. 1) Stan Puckett, President of the Greene County Bank, confirmed that the Bank's security interest also covers replacements and that any equipment or other assets that are used in the operation of WSMG or any assets that are purchased with revenues generated by the station would be covered by the Financing Statement. (SBH Ex. No. 7, p. 13-14) Bryan acknowledged that "some" of the legal and engineering expenses that have been incurred in the preparation or prosecution of his application have been paid by Burley Broadcasters, Inc. and that as many as half of the checks that

have been written to pay prosecution costs have been written on one of the two Burley Broadcasters accounts. (Tr. 76) Bryan also acknowledged that the payment of his prosecution costs by Burley Broadcasters has not been treated as a loan from the corporation to him, but instead is being treated as a business expense of Burley Broadcasters, Inc. (Tr. 76-77)

20. In determining his estimated construction costs, as reflected in his Itemization of Costs, Bryan proposed to purchase and install 1 Orban Optimod, 1 Mosley STL system, 3 ITC Stereo Play Cart machines and 1 ITC Recorder. (SBH Ex. 6, p. 7; SBH Ex. 15) Bryan currently uses ITC Cart Machines, as well as an Orban Optimod and Mosely remote control equipment in the operation of WSMG. (SBH Ex. 10, pp. 2-3) Bryan offered no evidence at hearing regarding the cost of purchasing a new Orban Optimod, Mosley STL system or new ITC cart machines. However, the cost of a new Orban Optimod, as quoted by Continental Electronics Corp., would be \$ 5,950.00 and the cost of a new Mosley STL system, as quoted by Harris Allied Corp., would be \$ 8,250.00. (SBH Ex. 5, pp. 4, 5, 9, 25) While the ITC Delta Recorder/Reproducer is no longer manufactured, ITC does manufacture a comparable recorder/reproducer, the ITC 1-SRP Recorder/Reproducer, which, as quoted by Harris Allied Corp., would cost \$ 3,230.00. (SBH Ex. 5, pp. 6, 26) Three ITC 1-SP play only cart machines, as quoted by Harris Allied Corp., would cost \$ 6,225.00. (SBH Ex. 5, p. 26)

Other Pre-Operational Costs.

21. Charles A. Love was identified in Bryan's Application as the owner of his transmitter site. (Tr. 50) A "Land Option Agreement Letter", which was executed prior to filing, confirms that, as of the filing of his Application, Bryan held an option to acquire the referenced 3.64 acres of land for a total of \$ 7,000.00. (SBH Ex. 11; Tr. 50-51) Thus, at the time he filed his Application Bryan held an option to purchase the transmitter site. (Tr. 51) It was not intended to be a lease agreement or to provide for the payment of the purchase price over a period of time. (Tr. 51) The "Land Option Agreement Letter" by its terms provides no option to lease, no provision for payment over time nor does it provide for the consideration paid for the option to be offset against the purchase price. (SBH Ex. 11) However, in determining his total estimated costs of construction and initial operation and certifying his financial qualifications, Bryan failed to include the cost of purchasing his transmitter site. (SBH Ex. 15)

22. At hearing Bryan testified that he intended to undertake preliminary field testing prior to construction to determine what transmitter/antenna/transmission line combination would provide the best coverage. (Tr. 36) However, in determining his total estimated costs of construction and initial operation and certifying his financial qualifications, he failed to include the cost of such preliminary field testing. (SBH Ex. 15) Likewise, Bryan included no sales tax on the purchase of equipment or any

costs for freight charges in delivering the proposed equipment from the manufacturer to the transmitter and studio sites. (SBH Ex. 15)

23. In arriving at the \$ 175,000.00 total cost estimate reflected at Section III, Item 2 of his Application, Bryan included the legal and engineering costs, which he anticipated incurring in the prosecution of his application. (SBH Ex. 6, p. 9) Thus, a portion of the \$ 38,517.12 by which his \$ 175,000.00 total cost estimate exceeds the \$ 136,482.88 total reflected on the second page of his Itemization of Costs was intended to be used to pay the legal and engineering costs incurred in the prosecution of his application. (SBH Ex. 6, p. 9, 24) As of the date of Bryan's deposition, he had incurred in excess of \$ 40,000.00 in legal and engineering fees/expenses in the prosecution of his application. (Tr. 77)

Initial Operating Costs.

24. In determining his estimated initial operating costs, as reflected in his Itemization of Costs, Bryan included no expense for debt service, electric service or rent of office machines, during the first month of operation. (SBH Ex. 6, p. 7-8; SBH Ex. 15) Bryan included no expense for debt service during the first month of operation, because he anticipated that no debt service would have to be paid on the bank loan until the second month of operation. (SBH Ex. 6, p. 8) However, the December 12, 1991 letter from the Greene County Bank contains no provision for any moratorium on the commencement of repayment. (SBH Ex. 6, p. 18)

Neither the direct testimony of Bryan nor that of Stan Puckett addresses this issue. (Bryan Exs. 6 & 8) Bryan does anticipate drawing down a portion of the loan proceeds for purposes of constructing the proposed station prior to commencement of operations. (SBH Ex. 6, p. 9) While both Bryan and Stan Puckett indicated that interest only would be paid during the first year, the December 12, 1991 letter from the Greene County Bank contains no provision providing for the payment of interest only. (Bryan Exs. 6 & 8; SBH Ex. 6, p. 18)

25. Bryan suggested that a period of 60 to 90 days would be required to complete construction, based on a project he had been involved in, previously. (Tr. 79-80) It will be necessary to have electric service before he constructs the station, possibly for a period of 60 to 90 days. (SBH Ex. 6, p. 9; Tr. 80) Bryan anticipates that he also will incur costs in having electric service installed at the proposed transmitter site. (Tr. 80-81) Bryan acknowledged that he failed to list any costs for electric service for the studios and transmitter sites for the first month of operation or for the months during the period of construction. (Tr. 83)

26. While Bryan included a cost item for telephone service, during the first month, the amount budgeted (\$ 50) was only one sixth of the amount budgeted for the second and third months (\$300). (SBH Ex. 15, p. 2) He indicated that this cost item for telephone service included some installation, but that it would not be necessary to install many more phones. (Tr. 85-86) Bryan

acknowledged that more than likely he would have phone service at the transmitter site and would incur installation costs for that. (Tr. 86) He also conceded that basic telephone line charges would be the same each month. (Tr. 86)

27. The monthly cost Bryan budgeted for "business insurance" was intended to cover equipment and liability insurance, including tower insurance. (Tr. 88-89) Bryan based his estimate on the insurance costs for WSMG and indicated that the amount budgeted was "a little more" than he is paying currently for insurance for WSMG. (Tr. 88-89) However, the height of the WSMG tower is only 122 feet, while the proposed FM tower will be 300 feet. (SBH Ex. 10, p. 3; Bryan Ex. 9, p. 12)

The Post-Petition Tower Quote.

28. Walter J. Stone testified that he advised Bryan in a casual conversation that his company, American Aviation, Inc. could construct a 300' guyed tower and Bryan asked him for a written quote, which Stone provided on March 8, 1994. (Bryan Ex. 7) Stone indicated that this conversation occurred about 2-3 days, a week at most, prior to March 8, 1994. (SBH Ex. No. 8, p. 21, 35)

29. The March 8, 1994 quote which Stone provided was for a Rohn model 45G tower, including a 300 mm beacon. (SBH Ex. No. 8, p. 17-18, 35) The tower comes in a package, which includes: the tower, base plate, beacon plate, side arm mounts, guy brackets, guy cables, end sleeves, thimbles, turnbuckles, cable clamps, guy anchors, guy plates, anchor and base grounding. (Bryan Ex. 7)

The \$ 11,500 price, quoted by Mr. Stone for the Rohn 45G tower and beacon, breaks down as follows:

\$ 7644.00	- tower cost to Stone
704.00	- beacon cost to Stone
<u>210.00</u>	- cost of Rohn painting of tower
8558.00	- total tower and beacon cost to Stone
<u>2942.00</u>	- profit to Stone on tower and beacon
\$ 11500.00	- total price to Bryan (Joint Ex. No. 2)

The \$ 4,500.00 quoted for installation includes: pouring of the base and anchor pads, tower erection and mounting of the beacon and grounding. (SBH Ex. No. 8, pp. 19, 35) There would be an additional cost of \$ 500.00 for the installation of the antenna, main transmission line and for installation of the STL. (Bryan Ex. 7, p. 2)

30. Mr. Stone has never constructed a 300' tower. (Bryan Ex. 7) The tallest tower Stone has ever been involved in constructing was a 200' tower, which he helped to install in 1960, while he was employed with Reisenweaver Communications. (Bryan Ex. 1; SBH Ex. 8, pp. 29-30) Stone's testimony reflects that the towers he has constructed since that time have ranged between 30 feet and 150 feet in height, with most being in the 50-60 foot range. (Bryan Ex. 1; SBH Ex. No. 8, p. 13) The tallest tower American Aviation, Inc. has ever installed was 150 feet. (Bryan Ex. 1, p. 2) In the past Stone's clients for tower construction have all been airports; he has never constructed a tower for a broadcast station. (SBH Ex. No. 8, p. 14)

31. Richard Mertz acknowledged that the type of tower and installation must be appropriate to the topography of the area

and must enable the tower to withstand climatological extremes in the area where it is located. (Tr. 115-16) When asked whether he agreed with the proposition that both average and peak wind speeds should be taken into account in designing a particular installation, Mertz indicated that he attempted to meet certain recognized standards, but that all that was absolutely necessary was that the tower meet local zoning requirements and building codes. (Tr. 119-20) However, he had not looked at the local zoning requirements or building codes for Greene County. (Tr. 121) When asked whether he would in fact take into account only the average, as opposed to peak, wind speeds at the proposed site, Mertz indicated that it would be necessary to look at the particular area and situation. (Tr. 120-121)

32. Referring to the latest Rohn dealer price list, 300 feet is the maximum recommended height for the Rohn 45G tower, assuming a wind speed of 70 mph. (Tr. 138-39) However, if the applicable wind speed were increased to 90 mph, the 45G would be recommended for installations no higher than 240 feet. (Tr. 139) Referring to the latest Rohn dealer price list, the Rohn 55G tower could be installed at the higher wind speed (90 mph) up to 300 feet. (Tr. 139) The wind speeds listed in the dealer price list are basic, not peak, wind speeds. (Tr. 140)

33. Referring to the map from the Rohn catalogue (SBH Ex. 16), Mertz acknowledged that it shows a 70 mph basic wind speed for a good part of State of Tennessee, but has different shading where the Smokey Mountains are located, along the eastern border

of the State. (Tr. 140) This shaded area is intended to represent a "special wind region," where abnormal wind speeds can be expected which must be evaluated. (Tr. 140-41) Because he has had no experience in an area near a mountain range, Mertz could not indicate whether higher or lower speeds would exist in this particular "special wind region." (Tr. 141)

34. Mr. Stone testified that "prior to ordering the tower, I would contact the Rohn Tower Company representative and discuss the installation and ask whether they agree with my proposed use of a 45G tower or whether they would recommend going to the next size tower, the 55G." (Bryan Ex. 7, p. 3) Mr. Stone indicated further that, if the 55G were recommended by Rohn, "the additional cost of that size tower to Mr. Bryan would be \$ 13,897.00." (Bryan Ex. 7, p. 3) Stone did not indicate whether this price would include the cost of the 300 mm beacon, for which his cost is \$ 704.00. (Bryan Ex. 7, p. 3; Joint Ex. 2)

35. In contrast to the prices quoted by Mr. Stone for a 300' guyed tower, tower price quotes obtained by William H. Seaver of SBH reflected significantly higher costs: \$ 26,996.00, as quoted by Continental Electronics Corporation; \$ 32,000.00, as quoted by RF Specialties of Florida, Inc.; and \$ 47,500.00, as quoted by Harris Corporation. (SBH Ex. 6, pp. 19, 22, 31) Mr. Stone testified that his company has been a Rohn tower distributor since 1978 and, as such, receives a 30% discount from the "listed dealer price." (Bryan Ex. 7, p. 2) Mr. Mertz did not recall ever having installed a Rohn tower and has never recommended the use

of one. (Tr. 111, 112)

36. Bryan testified that he originally budgeted \$ 5,000.00 for a transmitter building in 1991, based upon a quotation he had obtained from a local contractor. (SBH Ex. 15; Bryan Ex. 8, p. 2) In 1994 Mr. Stone provided Bryan with a price quote of \$ 3,800.00 for a transmitter building. (Bryan Ex. 7, p. 3; SBH Ex. No. 8, pp. 21, 37)

The Post-Enlargement Updated Estimate.

37. At hearing Bryan offered testimony of Richard H. Mertz, including an itemized equipment/construction proposal, reflecting Bryan's original construction cost estimates and Mertz' Updated Estimate ("Updated Estimate"). (Bryan Ex. 9, pp. 11-12) Mertz was not involved in preparation of Bryan's original proposal. He was first consulted about two months prior to the hearing by Bryan's attorney, Mr. Carr. (Tr. 147)

38. Mr. Mertz acknowledged that his statement that the price Bryan estimated initially was "valid at that time" referred to Bryan's total estimate, not to the cost of any of the individual equipment items. (Tr. 126) Mertz did not go back and verify what the prices of the individual items were in 1991. (Tr. 126) He did not verify that Bryan's estimates were valid in 1991; all he did was list Bryan's original estimates on one side and next to it what he either kept or substituted. (Tr. 146-47)

39. The prices reflected in Mr. Mertz' Updated Estimate are list prices, taken out of catalogues. (Tr. 145) The 10% "package discount" he assumes was based on his experience in purchasing

equipment in the past, not based upon any specific equipment price quotes from suppliers. (Tr. 145)

40. Mr. Mertz indicated under cross examination that he had made an error with respect to the costs for the transmitter and for the QEI exciter listed in his Updated Estimate and that he has confirmed the prices and has an updated price sheet, which raises the combined cost of these two items by a total of \$ 3,000.00. (Bryan Ex. 9. p. 11; Tr. 144-45)

41. Mr. Mertz acknowledged that the Scala Minireflectors included in his proposal are smaller in size, as well as in price than the Scala Parareflectors proposed by Bryan. (SBH Ex. 15; Bryan Ex. 9. p. 11; Tr. 150) The Minireflectors are 2.5 to 3.0 feet diameter, where the Parareflector is about 4 feet. Id. Scala Parareflectors would cost \$ 630.00 each, or \$ 1,260.00 for two. (SBH Ex. 6, pp. 12, 25, 28)

42. Mr. Mertz proposed a type of transmission line and antenna that would be pressurized. (Tr. 134) His recommendation on pressurization of the line and antenna would be by use of nitrogen gas. (Tr. 147) The necessary equipment would include a tank and two gauges. (Tr. 135) However, Bryan has not budgeted for either purchasing or leasing such equipment nor has he budgeted for the gas. (SBH Ex. 15) Nor are such costs included in Mertz' Updated Estimate. (Bryan Ex. 9. pp. 11-12) While Mertz speculated during cross examination that the necessary equipment could be purchased locally for \$ 50.00 or even leased from the gas company (Tr. 134-35), he obtained no price quotation nor

included any documented cost in his testimony. (Bryan Ex. 9. pp. 11-12) The cost of the guages, as quoted by Harris Allied Corporation, would be \$ 295.00. (SBH Ex. 5, p. 24)

43. Mr. Mertz indicated that the use of lightning rods, extending above the tower beacon are considered standard engineering practice. (Tr. 117) However, no lightning rods or other lightning dissipating devices were included in Stone's proposal. (Bryan Ex. 7, p. 2) Normally, for towers up to 350 feet, the FAA requires side lighting in the middle of the tower and a beacon on the top. (Tr. 156) However, no side lighting package was included in Stone's proposal, which includes only the 300mm beacon. (Bryan Ex. 7, p. 2) Mertz also acknowledged that it is standard practice for the transmission building and tower base to be fenced and that, where the entire property is already fenced, the tower base and guy anchors should be fenced, individually. (Tr. 121-22) Bryan failed to budget for any fencing. (SBH Ex. 15; Bryan Ex. 9. pp. 11-12)

44. While Mertz' proposal calls for the purchase and installation of a Henry 6 kw amplifier, none of the transmitter sites he has constructed have been constructed with Henry transmitters. (Tr. 112) The transmitters he has used include: QEI, CCA, Harris, Continental, BE. (Tr. 112) Relative to the transmitters he has used, the Henry is a lower cost product. (Tr. 112-13) Mertz indicated that the difference in price results from the difference in manufacturers, as well as the incorporation of different features. (Tr. 113) He acknowledged that Henry also

makes a 3.0 kw transmitter, but indicated that it would not have sufficient power for this installation with the transmission line he proposed and the 4 bay antenna. (Tr. 125)

45. With regard to used broadcast equipment, Mr. Mertz acknowledged that, while used equipment may be generally available, there is no certainty that one would be able to find the same piece of equipment and certainly not for the same price. (Tr. 127-28)

The Need For An Intermediate STL Receive/Transmit Point.

46. Bryan intends to utilize a microwave studio-transmitter link (STL) to transmit his programming from his studio to his transmitter site. (SBH Ex. 15; Bryan Exhibit No. 8, p. 1; Tr. 99). Bryan confirmed that he intended to locate his studio for the proposed Tusculum FM station at the building which he owns and currently utilizes as the studios for WSMG(AM). (Tr. 97-98) Bryan testified that he has an existing 30 foot tower located at his proposed studio on which he would mount the STL antenna. (Tr. 99) However, Bryan could not state whether or not he would be able to obtain a line of sight path between his transmitter site and this 30 foot tower located at his proposed studio, given the fact that he had never investigated the question. (Tr. 100). However, Bryan's expert witness, Richard Mertz, confirmed that a line of sight path would be required. (Tr. 152)

47. In a post-hearing Engineering Statement, prepared by Steven J. Crowley, PE, and offered by SBH, it was demonstrated that a line of sight path could not be obtained from the 30'