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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

January 19, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: First Supplement to Joint Request for
Approval of Settlement Agreement
Calistoga, California
MM Docket 93-42

Dear Mr. Caton:

Attached is a supplement to the Joint Request for Approval of Settlement Agreement filed on January 13, 1995.

Respectfully submitted,

GARY E. WILLSON

By A. Wray Fitch III
A. Wray Fitch III
His Attorney

cc: The Honorable John M. Frysiak (Settlement Judge)(FCC Room 223)(By Hand)
The Honorable Edward Luton (FCC Room 225) (By Hand
Robert A. Zauner, Esq. (FCC Room 7212)(By Hand)
Lee Shubert, Esq.
Gary Willson (For Public File)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
JAN 1 9 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Matter of | **DOCKET NO. 93-42**

MONBEAM, INC.) **File No. BPH-911115MG**
)
GARY E. WILLSON) **File No. BPH-911115MO**
)
For a Construction Permit)
New FM Station on Channel 265A)
in Calistoga, California)

TO: The Honorable Edward Luton
Administrative Law Judge

FIRST SUPPLEMENT TO THE
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Gary E. Willson (Willson) and Moonbeam, Inc. (Moonbeam) filed a Joint Request for Approval of Settlement Agreement on January 13, 1995. This supplements the Joint Request.

Willson is attaching cost documentation demonstrating he has incurred costs in excess of $120,000 relating to his application for a new FM station in Calistoga, California. Also attached is Mr. Willson's declaration stating he is not paying or receiving any other consideration and that grant of the Settlement Agreement is in the public interest.

Two appraisals are attached providing an independent valuation of Mr. Willson's agreement not to engage in certain broadcast-related activities within the Calistoga station service area as provided in the Agreement (Attachment 1 to the Settlement Agreement). The appraisal provided by Mark Jorgenson values the Agreement at $180,000. The second appraisal provided by Americom values the Agreement at $140,000.

Attached also is a coverage map. This is Exhibit 1 to the Agreement which was inadvertently omitted from the Agreement filed with the FCC.

Respectfully submitted,

GARY E. WILLSON

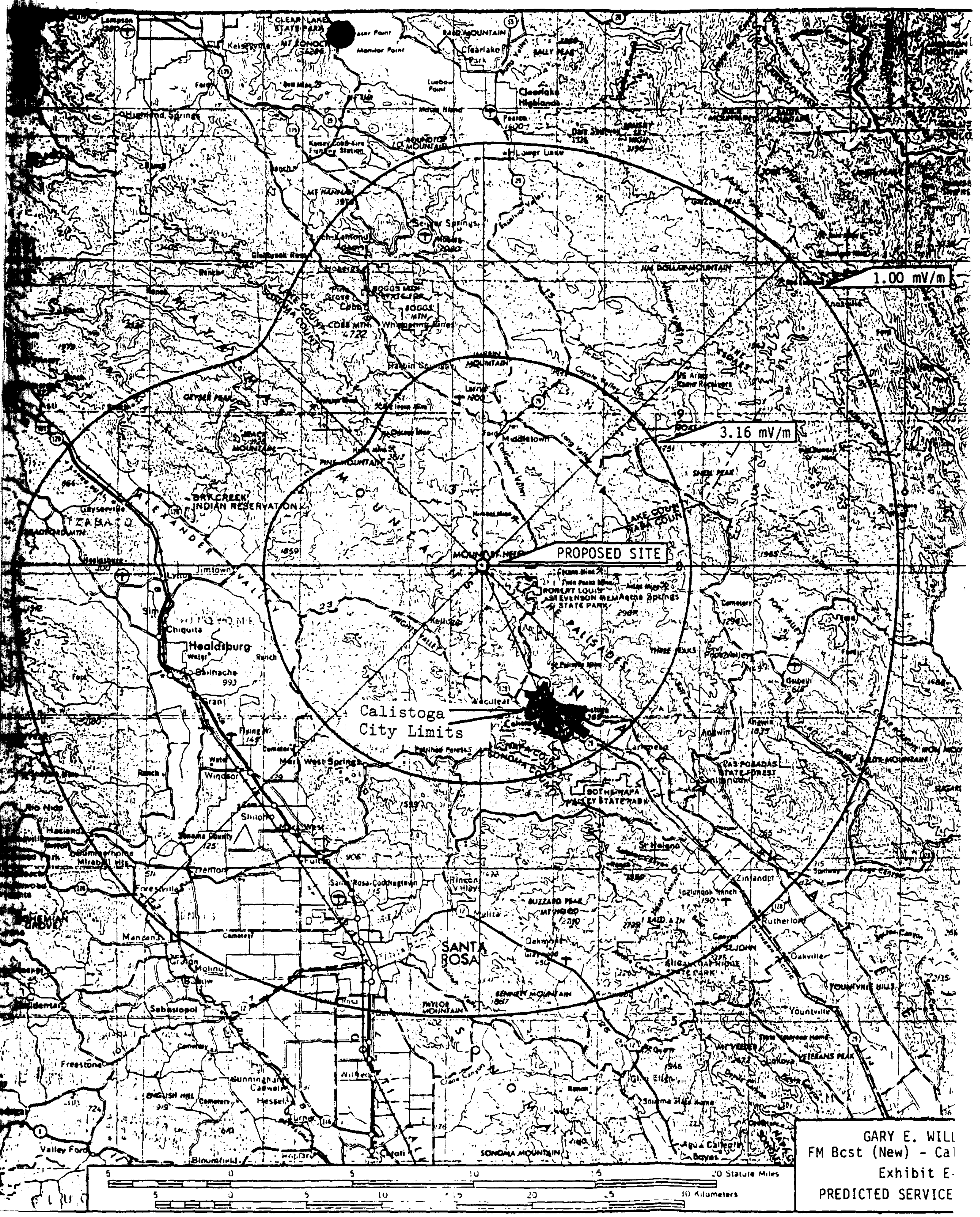
By ______________________
A. Wray Fitch III
His Attorney

GAMMON & GRANGE, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

January 19, 1995

EXHIBIT 1

TO AGREEMENT



GARY E. WILL
FM Bcst (New) - Cal
Exhibit E-
PREDICTED SERVICE

APPRAISALS

FAIR MARKET VALUATION
OF
COVENANT NOT TO COMPETE
FOR
FM IN CALISTOGA, CALIFORNIA

prepared by:

Mark Jorgenson
December 20, 1994

This report was prepared at the request of A. Wray Fitch III, an attorney with the firm of Gammon & Grange in McLean, Virginia. The purpose of this Fair Market Valuation is to establish a monetary value to the licensee of an FM radio station in Calistoga, California of a Covenant Not To Compete entered into with an experienced broadcaster from the area. The appraiser is familiar with the use of Covenants Not To Compete in broadcast transactions and has knowledge of radio station values in the proposed coverage area of the station.

This report speaks as to its date and Jorgenson Broadcast Brokerage and Mark Jorgenson disclaim any obligation to update or amend this report as a result of events or facts disclosed subsequent to the date given.

The undersigned appraiser states that his engagement as an appraiser and/or the compensation received is not conditioned on the appraisal producing a specific value. The statements and opinions expressed in this report are correct to the best of the appraiser's knowledge and belief, subject to the assumptions and conditions stated herein.

By: Mark W. Jorgenson

QUALIFICATIONS

Jorgenson Broadcast Brokerage is a media brokerage firm specializing in the marketing, sale, and purchase of radio and television stations throughout the United States. Mark Jorgenson has been involved in the sale of over $100,000,000 of radio properties since he entered the brokerage business in 1988. Jorgenson has represented buyers, sellers, and broadcast lenders in all aspects of brokering properties from coast to coast. Appraisals of media properties is an adjunct service provided by the firm.

Mark Wallace Jorgenson has eighteen years of experience in the broadcast industry in sales, management, ownership, and brokerage. A graduate of Duke University, Jorgenson's broadcast career began in 1976 at Multimedia's NBC affiliate in Winston-Salem, WXII-TV. Two years later he moved to a regional sales position at WLWT-TV in Cincinnati, the company's flagship station. In 1980, Jorgenson joined Post-Newsweek as Retail Development Coordinator of Miami's ABC affiliate, WPLG-TV. Two years later, he was named Local Sales Manager for WTVT-TV in Tampa, a CBS affiliate, a position he held for five years.

In 1987, Jorgenson became General Manager and largest stockholder of Spanish-language WQBN-AM in Tampa. He sold the station in 1988 and entered the brokerage business. Concurrently with his brokerage activities, Mark Jorgenson serves as Chief Operating Officer for ZGS Broadcast Holdings of Arlington, Virginia. The company owns and operates a Spanish language radio station in Tampa, as well as the Telemundo TV station in that market. It also owns the Telemundo TV station, Channel 64, in Washington, D.C.

Over the last seven years, Jorgenson Broadcast Brokerage has been involved in radio station transactions in markets all across the country. The transactions range from the sale of a $250,000 AM/FM in the mountains of Colorado to a $26 million AM/FM combo sale in Miami. Mark Jorgenson is familiar with the Santa Rosa radio market having visited it on two occasions in his work with other Santa Rosa station owners. He has contemporary knowledge of the competitive environment there as the firm is currently involved in negotiations for the sale of a Construction Permit in a nearby town. In fact, in recent years a good deal of the firm's business has been in California. In 1991, Jorgenson represented the sellers of two FM's in suburban L.A. and a combo near Palmdale. In 1992, the firm sold an FM in Placerville, California for group owner Douglas Broadcasting. 1994 saw the sale of EZ Communication's KQBR-FM in Davis (suburban Sacramento) for $2.5 million cash. Additionally, the FCC has granted the transfer of ownership of an AM/FM combo sold by Jorgenson in the Fresno market which should close in January of 1995.

VALUATION METHODOLOGY

The fair market value of a Covenant Not to Compete is dependent on several key variables. Among them are the value of the subject radio property, the experience of the individual being restricted by the Covenant, the length of the Covenant, the assumability of the Covenant to future owners of the subject property, and the size of the market. Covenants Not to Compete are employed in radio transactions to allow a new owner to protect his investment in the station from added competition while gaining tax advantages. In a Covenant Not to Compete one party agrees, in consideration for payment, that for a stipulated period of time he/she will not directly or indirectly own, manage, control, operate, be employed by or be connected with the ownership, management, operation or control of another radio station within a pre-determined radius of the subject radio property. From a tax standpoint, any payments made for non-competition are considered a deductible operational expense. This tax deductability favorably affects an the payee's "bottom line" as compared to a non-operational expense which is not tax deductable, thereby enhancing the station's profitablity and hence its value. Additionally, by restricting the activities of the potential competitor in the market, the station owner protects the station's advertiser base from being raided. Covenants Not to Compete are enforceable in a majority of states if the geographic area and time limitations of the agreement are considered reasonable. If the Covenant Not to Compete is structured to be transferrable to a new buyer, this enhances the goodwill value of the radio station in the eyes of a buyer and in the view of most lenders. Even though the Covenant Not to Compete represents an obligation of the owner of the station to make payments, in a subsequent sale of the station this obligation would not need to be satisfied in cash at closing but instead would be paid out in ordinary course, similar to the assumption of an existing note or equipment lease. Therefore, in a subsequent sale of the station, a transferrable Covenant Not to Compete makes the purchase of the station less dependent on a cash price, adding flexibility to the negotiations and most likely a somewhat higher price for the sale.

The fair market value of a radio station refers to the price which would be paid by a knowledgeable buyer and agreeable to a knowledgeable seller for all of the assets used and useful in the operation of the station. It assumes a cash sale of the assets, on a free and clear basis, conducted through the means of a routine sale between private parties wherein neither party is under compunction to act. The station appraisal excludes the value of cash, cash equivalents, accounts receivable, and similar assets not directly associated with the continuing operations of the station. It excludes all accounts payable and other liabilities against the assets.

Fair market value may also be described as the price a sophisticated buyer will pay in order to obtain a reasonable return on his investment commensurate with the risks involved. A multiple of cash flow or projected cash flow, generally corresponding to the number of years over which a buyer will expect to recoup his investment, is the principal index for determining value. Broadcast cash flow is defined as operating income before depreciation, interest, taxes, and ownership administrative charges. Cash flow provides a common denominator for establishing comparative values in that it tends to eliminate those items which may be individually unique from one owner to another. It is standard practice to discount future cash flows to present value. Under present market conditions, FM radio stations are selling for 6 to 10 times cash flow, depending on the economics of the market, the technical facility, and the competition among other factors.

In the absence of cash flow, recent sales of comparable stations in the market or in other markets of similar size are often used to establish the value of a radio property. Sometimes a multiple of revenue is used to determine value with a reasonable multiplier of 1.5 to 2 times gross. Another yardstick employed by respected radio industry analyst James H. Duncan, Jr. is "FM Base Value". This concept assigns a value to an FM "stick" in each radio market based on the number of FM viable stations competing for the available radio revenue in that market. Duncan's FM Base Values range from a low of 10% of market revenue to 30% of the radio dollars depending on the overall competitive environment of each market.

An FM Construction Permit, as is case in this valuation, usually has no hard assets, no program franchise in the market, and no revenue or cash flow (since the is not yet broadcasting). There is, nevertheless, an inherent and quantifiable monetary value in holding an FCC grant to build a radio station since the right to broadcast is regulated by the government and the number of stations serving each market is limited. It is the government sanctioned access to the radio market, the barrier to entry to those not possessing a license or permit, along with the ability to transfer that permit which gives the Construction Permit value in the marketplace.

Subjective judgement also plays a part in radio station appraisal, as there is no way to absolutely quantify various programming formats or to quantify the performance of various operators managing the same assets.

MARKET / STATION PROFILE

The community of Calistoga is located about 15 miles northeast of Santa Rosa, California. It forms part of the Santa Rosa radio market from both a signal coverage and retail advertising standpoint. The market is currently served by four AM and six FM stations. Only one of the FM's is a full Class B station; two are Class B1, and three are Class A. The Construction Permit in Calistoga will be a Class A facility. Broadcast Investment Analysts estimate that there is approximately $10 million in radio advertising revenue available to the stations competing in the Santa Rosa market. KXFX (a "B1" FM) and KRPQ (an "A") both sold in 1994. Both stations had a estimated billings of around $1.5 million. The "B1" sold for $2,780,000 in a duopoly deal while the "A" sold for $2,080,000. As witnessed by the success of market newcomer, KRSH-FM, a Class A licensed to Middletown, there is room in the market for new competitors. KRSH-FM garnered a 2.6 share of the 12+ audience in the Spring 1994 Arbitron survey.

GARY E. WILLSON

Mr. Willson is an experienced broadcaster who has worked in most every facet of the industry in both radio and television. In a career spanning four decades, Gary Willson has worked as a radio air personality, a salesman and sales manager in radio and TV, a broker and consultant, and an owner of a successful radio station in the Fresno market. Since the late 1950's, Gary Willson has lived and worked in Northern California, the last 13 of those years in the Santa Rosa region. During that time he has developed many strong contacts among advertisers, agencies, and broadcast owners in Santa Rosa. These contacts would be of great value to Mr. Willson as owner of an FM in the market. Conversely, negotiating a Covenant Not to Compete with Mr. Willson for the Santa Rosa market would be of value to other owners in the market. Given Mr. Willson's knowledge of, and his experience in, the Santa Rosa market, he would most likely be a strong competitor if given the opportunity.

CONCLUSION

The Fair Market Value of a three year Covenant Not to Compete involving Gary Willson for the Santa Rosa market is worth $120,000 to $180,000 to the station owner. In the ten million dollar Santa Rosa radio market, a new Class A station with no billing and no cash flow should be worth roughly $800,000 (Duncan's FM Base Value would be higher because it assumes signal parity with all other stations in the market). That value is based on a cash sale of a built and operating facility. Since it will take approximately $150,000 to build and equip the studios and transmission facilities of the Calistoga FM, and since most buyers of CP's discount their unbuilt value, I estimate the Calistoga FM Construction Permit to be worth $600,000. In the case of Gary Willson and the proposed FM in Calistoga, the value of eliminating a potentially formidable competitor and keeping him out of the market during the crucial early years of the new station's development far outweighs the payments made for his Covenant Not to Compete. The incremental revenue realized by the Calistoga station precisely because Mr. Willson is prohibited from competing for three years would be perhaps 10% of the station's total revenue. Assuming annual revenues during the Covenant of $600,000 for the station, that 10% would mean $60,000 extra dollars yearly. Converting that extra revenue into market value for the station using the multiplier of 2 times revenue, the incremental value to the Calistoga owners would be $120,000. If the station operated with a 25% cash flow margin, that same $60,000 in incremental revenue would add $15,000 to the station's annual cash flow. Using a cash flow multiple of 9 (for an immature FM facility) the extra $15,000 adds $135,000 to the market value of the station. Ignoring the market value of the station altogether, the pure cumulative value of the extra revenue realized by avoiding Mr. Willson's direct competition over three years would be $180,000 ($60,000 per year for three years).

AMERICOM

December 28, 1994

Mr. Gary E. Willson
2 Corte Del Bayo
Larkspur, CA 94939

APPRAISAL

FM CHANNEL 265A, CALISTOGA, CALIFORNIA

"AGREEMENT" VALUATION

You have asked Americom Radio Brokers, Inc. to render its opinion on the "Agreement" not to file for, buy, nor operate within a 15 mile radius extending from the center city post office of Santa Rosa, California. This "Agreement" stems from an application of yours to operate on channel 265A, licensed to Calistoga, California and serving the Santa Rosa Arbitron radio market.

Santa Rosa is the 109th largest Arbitron market, with a 12+ population of approximately 348,000 and retail sales of approximately $3.4 billion. We estimate radio revenue at approximately $13.5 million, based on industry standard conversions of retail sales to radio advertising dollars. This revenue is divided between one AM station and approximately five FM stations. The average revenue for these stations would be approximately $2.2 million.

The Calistoga allocation produces a 1 millivolt contour extending over most of the city of Santa Rosa. Consequently, in our opinion, the station will be able to generate significant advertising dollars from the market.

While the general radio station trading market has declined in recent years for start-up FM operations, given the high average FM revenue attributable to stations in the Santa Rosa market, it is our opinion that a 6 kw Class A FM serving Santa Rosa from Calistoga fully built would be worth approximately $1 million.

To arrive at the value for the "Agreement" we need to deduct equipment costs and one year's worth of start-up operational losses. Based on our experience, that would be approximately $300,000, so the unbuilt facility would be worth approximately $700,000 to a ready, willing and able buyer on a third party basis.

It is our experience that approximately 20% of the value of station transactions of this nature are attributable to agreements similar to the one referenced above. Given Mr. Willson's successful past broadcast experience and his association with the community, we feel that the 20% figure applies here.

Consequently, the value of the "Agreement" referenced above in December of 1994 for channel 265A, serving Calistoga, California would be $140,000.

If you have any questions regarding this matter, please contact me directly.

Sincerely,

AMERICOM RADIO BROKERS, INC.

Daniel T. Gammon
Appraiser

DTG:jrf

QUALIFICATIONS OF APPRAISER:

DANIEL T. GAMMON

Mr. Gammon is managing partner of Americom Radio Brokers, Inc. in Vienna, Virginia. Americom is nationally recognized as one of the leaders in radio broadcast brokerage. The firm has handled in excess of $2.2 billion in radio station transactions since 1985. Mr. Gammon is familiar with all phases of valuation. He has done appraisal work for the FDIC and many radio broadcasters.

COST DOCUMENTATION

DECLARATION

I, Gary E. Willson, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief.

In addition to the legal fees detailed in the separate declaration A. Wray Fitch III, I have incurred additional engineering and other expenses related to the filing and prosecution of my application for a new application for Calistoga, California as provided in the attached documents.

1-13-95
Date

Gary E. Willson

770

GARY E. WILLSON
MARTHA MARY WILLSON
2 CORTE DEL BAYO
LARKSPUR, CA 94939-1502

CMA Cash Management Account

5-1 1992

25-80
440

PAY TO THE ORDER OF Federal Communications Commission — $6760.00

Sixty seven hundred sixty and 00/100 DOLLARS

Merrill Lynch

BANK ONE. BANK ONE, COLUMBUS, NA

MEMO Hearing Fee

⑆044000804⑆ 3029288493⑈ 0770

DECLARATION

I, A. Wray Fitch III, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a shareholder of Gammon & Grange, P.C.

2. Gammon & Grange has provided Gary E. Willson legal services exceeding $118,000 related to his application for a new FM station in Calistoga, California.

3. Services rendered have included: preparation and completion of 301 application, filing amendments, responding to requests for production of documents, filing motions to compel production, filing oppositions to motions to compel, taking and defending numerous depositions, attending prehearing conferences, preparation for and attendance at hearing on the standard comparative issue, preparation and filing of three petitions to enlarge issues, preparation of three oppositions to petitions to enlarge issues, preparation of three replies to oppositions to petitions to enlarge issues, discovery on financial issue added against Moonbeam, preparation for and attendance at hearing on financial issue added against Moonbeam, preparation of findings and conclusions on financial issues added against Moonbeam.

1/19/95
Date

A. Wray Fitch III, Shareholder
Gammon & Grange, P.C.

DECLARATION

DECLARATION

I, Gary E. Willson, hereby declare under penalty of perjury as follows:

1. I am an individual applicant for a new FM station in Calistoga, California;

2. The Settlement Agreement and the attached and referenced documentation thereto is the only agreement between me and Moonbeam, Inc. No other consideration is being paid by me or being received by me other than as set forth in that documentation;

3. The Settlement Agreement is in the public interest because: (a) it would eliminate the need for further FCC proceedings; and (b) it would result in a more rapid initiation of a new FM service to the residents of Calistoga, California;

4. My application for a new FM station in Calistoga was not filed for the purpose of reaching or carrying out a settlement agreement.

Executed this 13th day of January 1995.

Gary E. Willson