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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of ) MM Docket 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 )

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To: Administrative Law Judge  
John M. Frysiak

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

1. On June 19, 1995, Darrell Bryan ("Bryan"), and SBH Properties, Inc. ("SBH") filed a joint request for approval of settlement agreement. On June 26, 1995, SBH filed a supplement to the joint request. The Mass Media Bureau hereby files its comments in support of the joint request for approval of settlement agreement.

2. The settlement agreement contemplates grant of the Bryan application and dismissal of the SBH application in exchange for reimbursement by Bryan of SBH's reasonable and prudent expenses incurred in prosecuting its application up to an amount not to exceed \$90,000. In addition, the parties have entered into a separate agreement whereby Bryan agrees to employ SBH principal William Seaver as a consultant. Under this agreement, Bryan will pay Seaver \$30,000 a year for two years for a total of \$60,000.

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In exchange, Seaver, who is a broadcaster with experience in the market and experience in the construction and operation of FM radio stations, agrees to provide such consultation and advice as may be requested by Bryan. The agreement requires Seaver to devote a minimum of 400 and a maximum of 800 hours during the term of the agreement to providing the services set forth in the agreement. The consultancy agreement also provides that, during its term, Seaver will not acquire any ownership interest in any AM or FM broadcast station licensed to any community within Greene County, Tennessee. Finally, approval of the settlement agreement is contingent upon the Presiding Judge's favorable resolution of the pending financial issues against Bryan. See Memorandum Opinion and Order, FCC 94M-296, released April 25, 1994.

3. A payment made pursuant to a consultancy agreement that is part of a settlement may be approved where, "the payment is fair compensation for services actually to be rendered rather than consideration for [the] agreement to dismiss [the] application." Gifford Orion Broadcasting, Ltd., 9 FCC Rcd 314, 315 n. 6 (1993) ("Gifford"). The consultancy agreement here closely mirrors the agreement approved by the Commission in the Gifford case in services to be rendered, compensation to be paid, and in the experience of the consultant. Consequently, the consultancy agreement does not constitute consideration for dismissal of the SBH application. Similarly, Seaver's

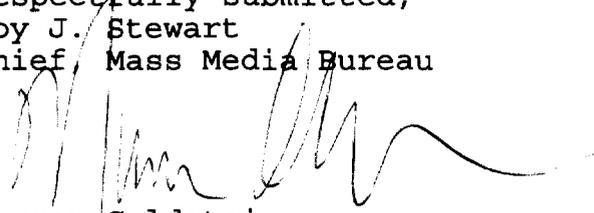
agreement not to acquire any AM or FM interests within Greene County, Tennessee, during the term of the agreement, is reasonably limited in time and geographic scope and therefore may be approved. Nirvana Radio Broadcasting Corporation, 4 FCC Rcd 2778 (1989).

4. Finally, the joint request and supporting materials submitted by the parties are in conformity with the requirements of Section 73.3525 of the Commission's Rules, which implement Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, the parties have established that approval of the agreement is in the public interest and that their applications were not filed for an improper purpose. Additionally, the parties have furnished the required full explanation and justification of their exchange of consideration.

5. In sum, contingent upon favorable resolution of the

pending financial issues against Bryan, the Bureau supports approval of the settlement agreement, dismissal of the SBH application and grant of the Bryan application.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



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July 11, 1995

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 11th day of July 1995, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement"** to:

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