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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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| In re Applications |) | MM Docket No. 93-241 |
| |) | |
| DARRELL BRYAN |) | File No. BPH-920109MA |
| |) | |
| SBH PROPERTIES, INC. |) | File No. BPH-920123MD |
| |) | |
| For Construction Permit for a |) | |
| New FM Station on Channel 276A |) | |
| in Tusculum, Tennessee |) | |

MEMORANDUM OPINION AND ORDER

Issued: July 13, 1995; Released: July 17, 1995

1. Under consideration are the following:

Joint Request for Approval of Settlement Agreement, filed June 19, 1995, by Darrell Bryan ("Bryan") and SBH Properties, Inc. ("SBH");

Supplement to Joint Request for Approval of Settlement Agreement, filed June 26, 1995, by SBH; and

Comments on Joint Request for Approval of Settlement Agreement, filed July 11, 1995, by Mass Media Bureau ("Bureau").

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. 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.

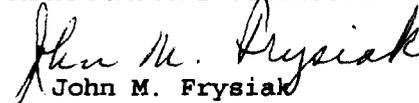
Finally, approval of the settlement agreement is contingent upon the favorable resolution of the pending financial issues against Bryan.¹

3. As noted by the Bureau in its support for approval of the agreement, 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 the 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.

Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement, filed June 19, 1995, as supplemented on June 26, 1995 IS GRANTED; the Agreement IS APPROVED; the application of SBH Properties, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiaak

Administrative Law Judge

¹ In the Initial Decision filed concurrently with the Memorandum Opinion and Order, herein, the financial issues specified against Bryan have been resolved in his favor.