

Rainbow Ex 3

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DECLARATION OF JOSEPH REY FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

I, Joseph Rey, under penalty of perjury, hereby declare as follows:

I am presently 90% voting stockholder, president, treasurer and a director of Rainbow Broadcasting Co., Inc., the general partner of Rainbow Broadcasting, Ltd., permittee of Television Station WRBW(TV) at Orlando, Florida. Prior to the time that we adopted a limited partnership form of business, I was the controlling partner of Rainbow Broadcasting Company ("RBC"), a general partnership. This declaration is submitted in order to show that RBC misrepresented no facts to the Commission and was truthful and candid regarding its financial qualifications to construct and operate its television station as proposed. To fully understand the facts and circumstances surrounding our financial qualifications, some history of my involvement in this proceeding is necessary.

In May 1978, I became National Sales Manager of Stations WGBS/WLYF, licensed to Storer Broadcasting Company at Miami, Florida. My job required frequent travel to major advertising centers in the United States. In the summer of 1978, on one of my trips to Chicago, I first met Susan Jaramillo at a gathering

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 3

Presented by Rainbow Broadcasting

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Rejected Withdrawn 6-26-96

Reporter JD

Date 6-25-96

at CBS Spot Sales which was located in the CBS Building. I also met Susan's sister, Leticia. In the latter part of 1978, Susan introduced me to Howard Conant of Chicago. I became friends with each of them, and over the next few years, we all kept in frequent contact. In 1979 I learned that Susan had become the general partner of 39 Broadcasting Company, a limited partnership that was applying for a new television station to operate at Miami, and that Howard Conant was her limited partner.

In 1980, after Storer Broadcasting Company had been sold, I became General Manager and National Sales Manager at Radio Stations WCMQ-AM/FM at Miami Springs and Hialeah, Florida. I continued to travel extensively as part of my job, and I sometimes met Howard on my trips to Chicago. I was aware by this time that Howard was a wealthy person with extensive business interests, and that he was a principal in Interstate Steel Company. Of course, I also knew that he was interested in broadcasting.

In early 1982, Susan Jaramillo moved to south Florida, having been awarded a construction permit for Station WDZL(TV) at Miami. I informally assisted Susan two or three times a week, providing her with advice regarding the ascertainment of community problems and needs as well as the most effective way to

realize sales projections. In return, I learned a great deal about start-up operations. I expected to use the knowledge I gained to someday acquire a broadcast station. During this period, I reviewed many WDZL(TV) documents with Susan. Among those were the financial statements and other materials relating to Howard Conant, Susan's limited partner. I learned the manner in which WDZL(TV) was financed and directly saw information with regard to the extent of Howard's financial resources.

Later that year, Leticia Jaramillo suggested that we explore the possibility of applying for a new television station. Shortly thereafter, we learned about the opportunity to apply for channel 65 at Orlando. We recognized that there was no certainty in obtaining a construction permit through this process, but we also knew that success would cost far less than purchasing an existing television station, and that a new television station would likely appreciate in value faster than one that had been purchased. I accepted a position with Station WDZL(TV) in sales management. I believed that this would allow me to gain experience in the construction and operation of a new television station, something that I had never been involved in before. We proceeded to file our application. The three RBC partners were

Leticia Jaramillo, my mother, and me. We relied upon a bank to establish our financial qualifications.

Station WDZL(TV) was sold in 1984. By that time, I had become increasingly familiar with Howard Conant and his financial position. He had financed the construction and operation of Station WDZL(TV), and I had had an opportunity on a number of occasions to speak with him about the television industry, including station values and finances, and his particular involvement in funding the Miami station. I had seen his financial statements, and I was aware of his net worth.

Howard Conant had agreed to lend RBC \$4 million in the event that we were successful and received a final construction permit from the Federal Communications Commission. I had reached this agreement with him in his Chicago office. I had provided him with estimates of what I thought it would take to put the station on the air and to operate it for an entire year. We had also discussed my sales projections and the Orlando television market which I believed was extremely solid at the time. In return for his financial commitment, we had agreed that Howard would receive 50% of the station's positive cash flow during the first 5 years of operation, and 25% thereafter. If the station were sold, Howard was to receive 10% of the net sales price, but he was to

have no financial obligation to a buyer if the station were sold before it had operated for five years. We had also agreed to provide him with a security interest in the station's assets, subject to any prior interest that an equipment supplier might enjoy. Leticia and I agreed to provide our personal guarantees as well. The loan was to be paid back over a 5-year period in monthly installments, and the interest to be charged was 2% over the prime rate as charged by the Continental Bank of Chicago. The Rainbow partners were to be financially responsible for all the costs of prosecuting the television application as well as for any other costs incurred prior to the grant of a final construction permit. Both Leticia and I felt that this arrangement was satisfactory, and we had agreed with Howard to proceed under his commitment. There was no written document. I believed that my personal relationship with Howard Conant and my knowledge of his net worth was enough that a written agreement was unnecessary. I did, however, expect that we would reduce the agreement to writing at the point we commenced actual construction.

We went through an arduous multiparty comparative hearing before the Commission. Ultimately, the Commission granted RBC's construction permit in October 1985. In January 1986, while

appeals of the Commission's decision were pending, we entered into a lease agreement with Gannett Tower Company which provided us with the top side mounted spot at 1500' on that company's tower. There was another, lower side mounted spot at 1400' which remained available.

It is important to note that from the very beginning of the application process, we envisioned RBC as the fifth television station to operate in our targeted market with transmission facilities in a centrally located area of the market at Bithlo, Florida. A fifth station promised to be highly competitive in this market, and all our projections had been accomplished with this competitive factor in mind. Moreover, our technical studies had shown that channel 65 was the only unbuilt commercial television channel allocation that could operate from the Gannett tower site and cover the relevant market.

After the Commission had granted the construction permit, to RBC, and while we were negotiating the tower lease, we addressed the possibility that a "channel swap" such as commercial channel 68 with educational channel 18, might allow another commercial television station to take advantage of the centrally located Gannett tower. We understood that technically a

channel 68/channel 18 "swap" might work from the Gannett tower at 1500', the spot on the tower that we had leased.

In 1986, Press Broadcasting Company had been the licensee of Station WMOD-TV, channel 43 at Melbourne, Florida. Press had also bought an option to purchase the licensee of channel 18 at Cocoa, Florida. Later, it sold WMOD-TV and purchased a construction permit for channel 68 at Clermont, Florida. In order to have maintained our competitive projections as the fifth market television station, we had leased the top space on the Gannett tower and had expected that any "swap" would have required the channel 18 proponent to construct a new tower. Accordingly, we expended considerable funds to preserve our location on the tower and to help ensure that we would begin operations as the fifth station in the market ahead of any possible channel 68/channel 18 "swap" proponent. Between the commencement of Rainbow Broadcasting Company's lease payments in 1986 and September 1993, we paid in excess of \$400,000 in rent to the tower company.

In 1990, after the United States Supreme Court had issued its decision upholding the Commission's construction permit grant to RBC, we uncovered blueprints which we believed showed that Gannett Tower Company had not acted in good faith even though we

continued to make payments, pursuant to the lease agreement. The blueprints depicted transmitter room space for a television station that we believed to be intended for Press Broadcasting Company, and we were aware that Press would have had to occupy RBC's 1500' spot on the tower in order to have even a shot at operating in compliance with the Commission's Rules. The 1400' spot would never have allowed for the placement of the requisite signal over Clermont. If Press Broadcasting Company were able to utilize the 1500' aperture at the Gannett tower, it meant that we would have become the sixth, rather than the fifth, television station in the market. Our competitive position would have been seriously compromised!

Unexpectedly, the Commission, in a rulemaking, allowed Press to use field measurements to demonstrate its ability to place the required signal over its community of license from our aperture. Indeed, the "swap" was approved after Press obtained reasonable assurance from the tower company to utilize the top spot on the tower which we believed had been leased to us.

It was now apparent that Gannett Tower Company intended to lease the space to Press that had been previously leased to us. We thereupon sought a Preliminary Injunction in a Florida state court in order to prevent Gannett Tower Company from entering

into a lease with Press Broadcasting Company for the 1500' aperture. Ultimately, at the request of Gannett Tower Company, the proceeding was moved to the United States District Court, Southern District of Florida. The facts and circumstances surrounding the tower litigation are important to an understanding of the actions we took in trying to ensure the station's long term financial viability.

Late in 1990, I felt that it was necessary to meet with Howard Conant in Chicago to discuss the nature of the litigation and the distinct possibility that RBC might now be at a competitive disadvantage. At our meeting, I expressed my concerns about the competitive risks that could rise dramatically with the introduction of another television station into the market. I addressed the time that it might take to resolve the tower litigation, and I also raised with Howard the wisdom of RBC seeking equity or some additional long term financing in light of the problems that existed with the national economy. I think I was relatively pessimistic in my analysis at the time. Howard did not withdraw his commitment. On the contrary, while he acknowledged my concerns, he spoke about taking a wait and see attitude.

Part of the reason for the remand from the United States Court of Appeals to the Federal Communications Commission appears to have been based on hearing testimony that I gave in the Florida District Court proceeding before Judge Stanley Marcus. That case of, course, was intended to resolve whether or not we were entitled to injunctive relief. Nevertheless, the District Court Judge assumed that we had no financing because I had testified that we had no written loan agreements and had only spoken about potential loans from Howard Conant.

I respectfully submit that what I stated in that hearing did not amount to any misrepresentation of RBC's financial qualifications under Commission standards, although the tower controversy had clearly raised questions in my mind as to whether or not Howard might ultimately move forward under his commitment. At the hearing, I misunderstood the opposing attorney's question with regard to Howard as having a potential minority participation. Howard and I never agreed to his having an equity position, and my response was based on my recollection of the 10% share of the net sales price that he would have received from a sale of the station. In my mind, that provision was equivalent to a 10% share.

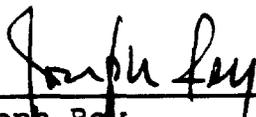
I continued to keep Howard updated with regard to the project. In the summer of 1991, after the District Court had denied our request for an injunction, I again spoke with Howard and discussed with him both good news and bad news. First, Nielsen Company was scheduled to introduce meters into the Orlando market within the next year, a development which would probably enhance the value of our station through ratings. I also expressed my thoughts that the economy had improved somewhat. However, I had to explain to Howard that Press had now entered into a lease for antenna space on the tower, and that our attorney expected that the District Court would remand the law suit back to State court, where we intended to litigate against the tower company for damages. I also raised the prospect of restructuring as a limited partnership.

Howard was perfectly willing to proceed under our agreement whether we were the fifth or sixth market station. However, in view of the changed competitive circumstances, it would likely take longer to break even. We agreed with Howard, that if we succeeded in bringing in limited partners, we would repay the amount of his loan from the limited partnership funds immediately after we had constructed the station and operated for ninety days. He would, of course, have remained entitled to 10% of the

net sales price when and if the station were sold. Later that summer we began in earnest to structure a limited partnership, and that effort culminated in the filing of FCC Form 316 in November 1991 to propose such a business entity to the Commission. As it developed, we did not have to rely on Howard Conant's commitment, but it was always there.

As the controlling RBC partner, I continually believed that we were financially qualified to construct and operate our station as proposed. Despite the setbacks that we have experienced in this case, we have achieved that goal. At no time was RBC without the necessary commitment to construct and operate the Orlando station as proposed. We have now been on the air continuously since June 1994 serving the viewing public in the Orlando television market. We have done so in good faith and continue to operate in the expectation that the Commission will find us fully qualified to become the licensee of television channel 65.

Respectfully submitted,



Joseph Rey

April 1, 1996

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JOSEPH REY, LETICIA JARAMILLO,) CASE NO. 90-2554-CIV-
and ESPERANZA REY-MEHR, as) Marcus
General Partners of RAINBOW)
BROADCASTING COMPANY, a Florida)
Partnership,)

Plaintiffs,)

vs.)

GUY GANNETT PUBLISHING CO.,)
Individually, GUY GANNETT)
PUBLISHING CO., doing business)
as GANNETT TOWER CO., GUY)
GANNETT PUBLISHING CO., doing)
business as BITHLO TOWER COMPANY,)
GANNETT TOWER COMPANY,)
Individually, MPE TOWER, INC.,)
Individually, and GANNETT TOWER)
COMPANY and MPE TOWER, INC., as)
General Partner and copartners)
doing business as BITHLO TOWER)
COMPANY, a Florida General)
Partnership,)

Defendants.)

Miami, Florida
January 11, 1991
9:50 a.m.

EXCERPT
TRANSCRIPT OF HEARING
BEFORE THE HONORABLE STANLEY MARCUS

APPEARANCES:

PLAINTIFFS: MALCOLM H. FROMBERG, ESQ.
ELSA ALVAREZ, ESQ.
420 South Dixie Highway
Third Floor
Coral Gables, Florida 33146

1 APPEARANCES:

2 PLAINTIFFS: MARGOT POLIVY, ESQ.
3 1532 Sixteenth Street, N.W.
4 Washington, D.C. 20036

5 DEFENDANTS: DONALD W. HARDENAN, JR., ESQ.
6 RICHARD J. SUAREZ, ESQ.
7 116 West Flagler Street
8 Miami, Florida 33130

9 REPORTER: ROBERT A. RYCKOFF
10 Fifth Floor
11 301 North Miami Avenue
12 Miami, Florida 33128

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1 (Call to order of the Court.)

2 * * * * *

3 THE COURT: Be seated, please, folks.

4 You may proceed with your next witness.

5 We might as well get started with Mr. Rey. If
6 you want to take a break for lunch, I am happy to do it
7 but let's get him started. Maybe we can finish him on
8 direct and then break or something like that.

9 If you would raise your right hand, sir, we will
10 have you sworn.

11 JOSEPH REY, PLAINTIFFS, SWORN.

12 THE COURT: Have a seat.

13 State your name, and spell your last name, please.

14 THE WITNESS: Joseph Rey, R-e-y.

15 THE COURT: And you can speak right into that
16 microphone. If you would just hold that to your -- thank
17 you much.

18 DIRECT EXAMINATION

19 BY MR. FROMBERG:

20 Q Mr. Rey, are you one of the principals of the plaintiff
21 Rainbow Broadcasting?

22 A I am.

23 Q Could you tell the Court briefly what your background
24 is in radio and television?

25 A I have been involved in the broadcasting industry

1 construction financing of a T.V. station where the
2 competitor is on the same tower (phonetic). That's --

3 THE COURT: Why don't you put the question as
4 directly as that, what opinion, if any, he may have as to
5 his ability to obtain financing depending on A or B or C?

6 We will take that. So we are clear, we are taking
7 it simply as lay opinion, Mr. Hardeman, under 702 of the
8 Federal Rules Of Evidence. We are not taking it as expert
9 testimony here, but to the extent that he has an opinion, it
10 may be of some relevance to the issues and lawsuit or, at
11 least, insofar as it may bear upon the issue of irreparable
12 harm. Perhaps it bears on the balancing of the equities.

13 You may proceed.

14 MR. FROMBERG: Thank you, Judge.

15 Q Mr. Rey, have you had reasonable assurances of financing
16 all the way up to the point of this litigation?

17 A Yes.

18 Q How does the presence of the issues raised in this
19 litigation affect those reasonable assurances of financing
20 that you have had up to date?

21 MR. HARDEMAN: I object, Your Honor.

22 It's an opinion based on hearsay entirely.

23 THE COURT: We will take it.

24 You may proceed.

25 THE WITNESS: Should I answer, your Honor?

1 A Depending on the timing I said earlier, sir.

2 Q No matter if they are next door, if they have the lower
3 slot, as you described, on this tower --

4 A Correct. Depending on the timing.

5 Q -- your business is dead?

6 MR. FROMBERG: Your Honor, objection.

7 It's repetitious. We have been through this
8 several times.

9 THE COURT: We will take the answer.

10 Let's proceed and move on, if we can, Mr. Hardeman.

11 MR. HARDEMAN: Yes, Your Honor.

12 Q Is that correct?

13 A Depending on the timing.

14 Q Sir, as things stand right now, you don't have any
15 contracts to purchase an antenna, do you?

16 A I have not signed a purchase order for an antenna, no,
17 sir.

18 Q You have no contracts to purchase the waveguide, which
19 is the main connecting link between your transmitter --

20 A I have not signed a purchase order for a waveguide, no,
21 sir.

22 Q You have not purchased or have a contract to purchase
23 your transmitting equipment?

24 A I have not signed a purchase order for a transmitter,
25 no, sir.

1 Q You don't have your building plans for your transmitter
2 area?

3 A I have been trying to get Gannett to give me information
4 on the bidders. We had meetings, we were under way.
5 Gannett happens to have a drawing of an addition. They are
6 holding back the information required for Rainbow to have
7 continued --

8 Q You understand you can't design a transmitter room
9 without knowing what your equipment is?

10 A The transmitter room -- we had a meeting on this, Mr.
11 Hardeman. I think it was either August or September before
12 this mess started. The transmitter room that's been
13 designed is functional for Rainbow, and we were on track
14 back in August and September to start construction on that
15 building.

16 Q The only asset that Rainbow has right now is your
17 construction permit, the piece of paper?

18 A And the lease. This is an asset, too.

19 Q Now, you also do not have any written loan agreements
20 with anybody to finance your venture --

21 A Written, no.

22 Q Who is your financier? Who is loaning you the money for
23 this --

24 A Rainbow has an agreement with an investor to build and
25 operate this station. It has not been reduced to writing

1 because of this.

2 Q Is this a person you are referring to?

3 A Yes, sir.

4 Q Who is it?

5 A By the name of Howard Conant.

6 Q Is he representing a group of investigators or just
7 himself?

8 A I believe it's just himself.

9 Q So he has not affirmatively loaned you any money?

10 A Pardon?

11 Q He has not actually given you some money and taken a
12 promissory note, for example?

13 A I said it has not been reduced to writing because of
14 this. There is an agreement for the financing of the
15 station, and then this hit and everything was put on hold.
16 You asked me that in a deposition. I said that everything
17 had been put on hold because of this.

18 Q Have you advised the F.C.C. of the fact that your
19 financing has been put on hold?

20 MR. FROMBERG: Objection, Your Honor.

21 That's not a legal requirement. That's not a
22 proper question.

23 THE COURT: What relevance does it have?

24 MR. HARDEMAN: Your Honor, it goes to whether or
25 not this gentleman has met the legal requirements to

1 continue going on the air.

2 THE COURT: What obligation, though, did he have to
3 notify them of that fact?

4 MR. HARDEMAN: The evidence is going to be through
5 Mr. Hummers, that once the application for a construction
6 permit is made -- and in that application the applicant has
7 to attest to the fact that he has the financial wherewithal
8 to construct and operate his business for a period of three
9 months without any revenues, and if there is any material
10 change in that circumstance, it's my understanding that the
11 F.C.C. requires continual update of that information, a
12 reverification of that information, or (unintelligible)
13 their construction permit expires January 31st of this year,
14 I believe. They were to have filed an extension December
15 31st of 1990. I am not aware that they have done it. But
16 if they filed for the extension, they have to reassert that
17 they have the financial wherewithal to continue, which he
18 does not have (phonetic).

19 THE COURT: We will take it subject to connection
20 at a later point.

21 Q Has this gentleman told you he will no longer loan you
22 the money?

23 A It's pending, the resolution of this matter.

24 Q Has he told you that if your space is not exclusive on
25 there, that he won't finance you?

1 A He has told me if Channel 18 gets on that tow
2 likelihood is that he will not finance the station.

3 Q Have you talked to anybody else about loaning you money.

4 A As of late, he is the only person I was talking to.

5 I would like to clarify something for the Court, too.

6 THE COURT: All right.

7 A It is Rainbow's understanding that Rainbow has two years
8 to construct the station from September, 1990, when the
9 litigation against the F.C.C. was terminated in the Supreme
10 Court.

11 MR. HARDEMAN: Your Honor, can I have a moment,
12 please?

13 THE COURT: Yes.

14 (Pause.)

15 Q Mr. Rey, you have a copy of the final lease, do you not?

16 A Plaintiffs' Exhibit 9.

17 Q Would you look at page 20, please, an article called --
18 entitled "Interference"?

19 A Yes.

20 Q The first paragraph, "Interference," and it says: That
21 tenant understands that landlord intends to grant to other
22 tenants facilities and/or rights which are the same as or
23 similar to those granted herein to the tenant.

24 Do you understand what that meant when you signed this?

25 A That meant the lower slot, as far as I was concerned.

1 Q That's what it meant to you?

2 A Yes, sir.

3 Q It goes on to say that you are to cooperate with other
4 tenants and potential tenants so as to anticipate and
5 prevent interference.

6 A My interpretation of this paragraph was that when
7 Rainbow went out it caused interference to existing tenants
8 on that tower such as the FM stations, et cetera, then this
9 would be apropos, or if other tenants further, in the
10 future, were to come in, et cetera, but it meant lower slot
11 as far as I was concerned.

12 Q Mr. Rey, what is the name of the person who has got the
13 loan commitment for you again?

14 A Howard Conant.

15 Q How do you spell that?

16 MR. FROMBERG: Your Honor, objection.

17 It's been asked and answered.

18 MR. HARDEMAN: I am trying to do it for
19 clarification, Judge.

20 MR. FROMBERG: I think it's a concern that I have
21 in terms of the revealing of somebody else that is not -- we
22 are talking about a tower that is leasing space to a tenant.
23 This is not a T.V. station, it's not a competitor. I have
24 no problem to this person on, but I do have a problem with
25 two competitors (unintelligible) knowing about --

1 THE COURT: The objection is overruled.
2 extent that you are seeking that I put a confidentialia
3 order around the question and the answer concerning a
4 hearing conducted in open court as to this preliminary
5 injunction, that application is denied. I do not see a
6 sufficient basis. I understand the reason and the
7 rationale, but I am not prepared to close this Court in an
8 open hearing as to this matter.

9 MR. FROMBERG: In our view, Your Honor, we are not
10 here before the F.C.C. and arguing about rights, which they
11 can always object to if they feel it's appropriate for the
12 F.C.C. We are talking about a lease. We are talking about
13 a right to a certain area on a lease. I think that this is
14 not relevant to --

15 THE COURT: I understand. You will recall that I
16 said earlier to the extent that we had discussed this
17 matter, to the extent you wanted to explore this area when
18 an objection was made, I said that I would permit him to
19 properly explore it on cross. That application is denied.

20 You may proceed.

21 Q Mr. Rey, how do you spell Mr. Conant's name?

22 A C-o-n-a-n-t.

23 Q Is he located in Miami?

24 A No, he is not.

25 Q Where is he located?

1 A Chicago, Illinois.

2 Q How much is his loan commitment?

3 MR. FROMBERG: Objection.

4 THE COURT: Isn't this relevant as to bearing
5 specifically and directly on the claimed irreparable injury
6 and the balancing of hardships?

7 MR. HARDEMAN: It absolutely is, Judge.

8 THE COURT: I mean, your claim here is that unless
9 we go ahead and enjoin join them, basically your client is
10 out of business, he can't function, or, at least, perhaps
11 put more artfully, he isn't able to get the business off the
12 ground. And presumably that's because of the difficulty in
13 obtaining financing, and so on, and so forth.

14 It seems to me that being part of the factual
15 predicate for your claim that, A, he would sustain
16 irreparable injury, and, B, that the balance of equity is
17 the hardship tips in favor of your clients against the
18 defendanc, that he ought to be permitted to explore
19 precisely that issue, and doesn't this question go to that
20 issue?

21 MR. FROMBERG: The question of irreparable harm is
22 basically handled by virtue of expert testimony as to what
23 this market will bear in terms of advertising. And upon the
24 testimony of experts, that the introduction of a competitor
25 in this T.V. market would reduce the rating to a two or