

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**RECEIVED**  
MAR 23 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Pulaski, Tennessee) )

MM Docket No. \_\_\_-\_\_\_  
RM No. \_\_\_\_

To: Chief, Allocations Branch  
Mass Media Bureau

**REQUEST FOR APPROVAL OF DISMISSAL AND WITHDRAWAL**

D. Mitchell Self Broadcasting, Inc. ("Self") and Big River Broadcasting Corp. ("Big River"), by their respective attorneys and pursuant to Section 1.420(j) of the Commission's rules, hereby request approval of the dismissal and withdrawal of the expression of interest in applying for, constructing and operating a new FM radio broadcast station on Channel 294A at Pulaski, Tennessee, filed by Self (the "Pulaski Proposal"); the dismissal and withdrawal of Self's June 26, 1996, "Petition for Rulemaking" that proposes allotment of Channel 294A at Pulaski, Tennessee (the "Petition"),<sup>1</sup> and the termination of this proceeding. In support, the following is shown:

1. Self and Big River have entered into an Agreement dated March 16, 1999, (the "Agreement") that, among other things, contemplates that Self will request approval of the dismissal and withdrawal of the Pulaski Proposal and the Petition. A copy of that

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MMB

<sup>1</sup> This includes Self's January 17, 1997, "Request for Waiver of Procedural Policy."

Agreement is appended hereto as Attachment 1. Self has executed the “Contingent Dismissal and Withdrawal” appended hereto as Attachment 2.<sup>2</sup>

2. Section 1.420(j) of the Commission’s rules requires that “whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM . . . Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest . . . in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth” information by subsections (j)(1) through (j)(4) of Section 1.420. Self’s Affidavit is appended hereto as Attachment 4. Furthermore, Section 1.420(j) of the Commission’s rules requires “each remaining party to any written or oral agreement” to submit an affidavit setting forth information requested by subsections (j)(5)(i) and (j)(5)(ii) of Section 1.420. Big River’s Affidavit is appended hereto as Attachment 5.

3. These Affidavits establish that neither Self nor its principals has received or will receive, and that neither Big River nor its principals have paid or will pay to Self, the principals of Self or any third party, any money or other consideration in excess of Self’s legitimate and prudent exchanges as approved by the Commission in exchange for the dismissal or withdrawal of Self’s expression of interest in applying for, constructing, and

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<sup>2</sup> On March 1, 1999, U.S. South Broadcasting Company, Inc. filed with the FCC a letter advising “that U.S. South no longer has any interest in the proposed allotment of Channel 294A at Pulaski, Tennessee, nor does it intend to file an application for a new FM station at Pulaski if the above channel is allotted to that community.” A copy of that letter is appended as Attachment 3.

operating a new FM radio broadcast station on Channel 294A at Pulaski, Tennessee, and for the dismissal or withdrawal of Self's June 26, 1996, "Petition for Rulemaking" that proposes allotment of Channel 294A at Pulaski, Tennessee. The Affidavit of J. Michael Self contains the requested itemized accounting of the expenses for which Self seeks reimbursement. Big River will reimburse the full amount of Self's expenses approved by the Commission. Finally, the Affidavits establish that there are no other agreements, written or oral, other than the attached Agreement.

4. Accordingly, approval of the Agreement and dismissal and withdrawal of the Pulaski Proposal and the Petition is consistent with the provisions of Section 1.420(j) of the Commission's rules. Furthermore, approval serves the public interest by facilitating the resolution of litigation.

WHEREFORE, Self and Big River request that the Commission approve the attached Agreement, dismiss and withdraw the Pulaski Proposal and the Petition, and terminate this proceeding.

March 23, 1999

Respectfully Submitted,

**DICKSTEIN SHAPIRO MORIN &  
OSHINSKY LLP**  
2101 L Street, NW  
Washington, DC 20037-1526  
202-833-7025  
202-887-0689 (FAX)  
mccombsh@dsmo.com

Attorneys for  
**BIG RIVER BROADCASTING CORP.**

By Harold K. McCombs, Jr.  
Harold K. McCombs, Jr.

**FLETCHER HEALD & HILDRETH, PLC**  
1300 North 17<sup>th</sup> Street; 11<sup>th</sup> Floor  
Arlington, Virginia 22209-3801  
703-812-0470  
703-812-0486 (FAX)  
jazzo@fhh-telecomlaw.com

Attorneys for  
**D. MITCHELL SELF BROADCASTING,  
INC.**

By Frank R. Jazzo  
Frank R. Jazzo

## **ATTACHMENT 1**

## AGREEMENT

This Agreement is entered into as of this 16th day of March, 1999, by and among D. Mitchell Self Broadcasting, Inc. ("Self"), Big River Broadcasting Corp. ("Big River") and Clifton Broadcasting Co. ("CBC") as follows:

WHEREAS, Big River tendered with the Federal Communications Commission ("FCC") an application for a construction permit for minor modification of the facilities of FM broadcast station WQLT, Florence, Alabama, to reduce power at the licensed transmitter site and antenna height and to downgrade the channel from Channel 297C to Channel 297C-1 status (File No. BPH-960322ID) (hereafter "WQLT Application");

WHEREAS, the FCC's Mass Media Bureau ("Bureau") granted the WQLT Application and issued to Big River a construction permit;

WHEREAS, Big River tendered with the FCC an application for a construction permit for minor modification of the facilities of FM broadcast station WXFL, Florence, Alabama, to change from Channel 241A to Channel 241C2 at a new transmitter file (File No. BPH-960322IF) ("WXFL Application");

WHEREAS, H-M-S Broadcasting Co. ("HMS") tendered with the FCC an application for a construction permit for minor modification of the facilities of FM broadcast station WDXE-FM, Lawrenceburg, Tennessee, to change from Channel 240A to Channel 294A and to increase power at its licensed transmitter site and antenna height (File No. BPH-960322IB) ("WDXE Application");

WHEREAS, on June 26, 1996, Self informally objected to the grant of the WXFL Application and the WDXE Application ("Informal Objection");

WHEREAS, the Bureau dismissed the WXFL Application and the WDXE Application;

WHEREAS, Big River and HMS sought administrative reconsideration and review of the dismissal of the WXFL Application and the WDXE Application;

WHEREAS, on June 26, 1996, Self tendered a petition for rulemaking to allot FM channel 294A at Pulaski, Tennessee (“Pulaski Petition”);

WHEREAS, on July 2, 1996, Self tendered a petition for rulemaking to allot Channel 293A at Clifton, Tennessee, (“Clifton Petition”);

WHEREAS, on July 7, 1997, Self tendered an application (File No. BPH-970707MG) for a construction permit (“Clifton Application”) for a new FM station on Channel 293A at Clifton, Tennessee, (“Clifton Station”);

WHEREAS, on May 28, 1997, Big River and HMS tendered a “Petition for Rulemaking” to amend the FM Table of Allotments at Florence and Killen, Alabama, and at Lawrenceburg, Tennessee (“Big River/HMS Petition”);

WHEREAS, the parties hereto have made other filings with the FCC arising out of the foregoing matters;

WHEREAS, by this Agreement the parties seek to resolve completely all of the issues and differences among themselves in a manner that advances the public interest, and

WHEREAS, this Agreement is subject to the approval of the FCC,

NOW THEREFORE, in consideration of the promises, terms and conditions contained herein the parties hereto agree as follows:

### **WXFL Application and WDXE Application**

1. Self agrees to dismiss and withdraw the Informal Objection; the January 6, 1997, "Opposition to Petition for Reconsideration"; the August 8, 1997, "Opposition to Application for Review", and any and all other pleadings and filings related to the WXFL Application and the WDXE Application. Big River will reimburse Self's legitimate and prudent expenses approved by the FCC in exchange for the dismissal and withdrawal.

2. Self will take no other actions or cause or encourage any third party to impede, hinder, delay, or to object to the WXFL Application, the WDXE Application or the Big River/HMS Petition or otherwise contest the improvements of the WDXE-FM or WXFL(FM) facilities.

3. Furthermore, Self will take no action, or cause or encourage any third party to take any action, to advocate or suggest the downgrade of WQLT(FM) by the FCC without the concurrent upgrade of WXFL(FM).

4. The parties hereto will request that the FCC grant both the WXFL Application and the WDXE Application. The parties will use their best efforts toward that end.

### **Pulaski Petition**

5. Self agrees to withdraw and request dismissal of the Pulaski Petition and any and all other related pleadings and filings. Big River will reimburse Self's legitimate and prudent expenses approved by the FCC in exchange for the dismissal and withdrawal.

### **Reimbursement of Expenses**

6. The total monetary reimbursement to Self by Big River under paragraphs 1 and 5 shall not exceed seventy thousand dollars (\$70,000). Payment shall be made ten

(10) business days after grant of the WXFL Application and the WDXE Application have become final and are no longer subject to administrative or judicial reconsideration or review under the Communications Act of 1934 as amended and the Rules of the FCC (hereafter the "Closing Date"). Payment shall be made by check payable to the order of "Fletcher, Heald & Hildreth, P.L.C." on behalf of Self.

**Clifton Petition; Clifton Application, and Clifton Station**

7. CBC agrees to dismiss and withdraw its August 26, 1998, "Petition to Deny" directed against the Clifton Application. CBC further agrees to withdraw and dismiss its September 4, 1997, "Request to Open Application Window" and its July 2, 1998, "Petition for Reconsideration", both of which concern the allotment of Channel 293A at Clifton, Tennessee. Big River will receive no monetary consideration for the dismissal and withdrawal.

8. The Clifton Application will be amended to substitute as the applicant a new limited liability company entitled Clifton Radio LLC (if the name is available) ("CR LLC") that is owned: (a) 51% by Self and (b) 49% by CBC or their designees (hereafter the "Amended Clifton Application"). Thereafter, Self and CBC will request that the Commission grant the Amended Clifton Application and issue to CR LLC a construction permit for the Clifton Station.

9. CBC shall contribute to CR LLC the funds needed to construct and operate the Clifton Station and shall be responsible for preparing and filing an FCC Form 302-FM application for license.

10. CBC shall retain J. Michael Self as a consultant for a period of thirty six (36) months at the rate of \$3,611.17 per month. Payment shall be made by check payable to the order of "J. Michael Self" and drawn on the account of CBC or its designee. The first payment shall be made on the first day of the month immediately following the Closing Date referenced in paragraph 6 of this Agreement. Mr. Self shall consult CR LLC concerning the construction and operation of the Clifton Station, no more than twenty (20) hours per week.

11. Upon final grant of the Amended Clifton Application and issuance of the construction permit for the Clifton Station CBC or its designees shall have the unilateral option to increase its ownership of CR LLC from 49% to 50% (and to reduce Self ownership from 51% to 50%) by filing an appropriate FCC application requesting FCC approval. Total consideration to exercise the option is One Dollar (\$1.00), payable to Self. Closing of that transaction will occur no later than five (5) business days after the FCC grant has become a final order. Self and/or its designees will fully cooperate and assist in the preparation and prosecution of the appropriate FCC application(s) or filings and in closing the transaction.

12. In the event of receipt of an offer to Purchase the Clifton Station, which is consummated after obtaining FCC approval consenting to the assignment of the authorization for the Clifton Station, then CBC shall be reimbursed from the proceeds for the funds it has contributed to CR LLC or spent directly under paragraph 9 of this Agreement, including any operating losses attributable to the operation of the Clifton

Station. The remaining proceeds, net of any CR LLC obligations shall be divided among the members based on their percentage of membership units.

### **FCC Approval**

13. The parties to this Agreement will file with the FCC, within five (5) business days of the execution of this Agreement, a request for: (a) approval of this Agreement, (b) dismissal and withdrawal of the Pulaski Petition, (c) dismissal and withdrawal of the Informal Objection, (d) grant of the WDXE Application, (e) grant of the WXFL Application, (f) grant of the Amended Clifton Application and (g) such other actions as appropriate and necessary to effect this Agreement.

14. The parties agree that the rights, obligations and duties herein are not subject to suitable monetary valuation for damages, that principles of equity apply, and that the parties can be compelled by courts to take the actions agreed to herein.

15. This Agreement embodies the entire understanding among the Parties and supersedes any and all prior negotiations, understandings or agreements. This Agreement may be modified only by a written instrument agreed to and executed by all Parties to this Agreement. The Parties shall execute such other agreements, documents and filings of any nature whatsoever as necessary to give effect to this Agreement.

16. This Agreement shall be binding upon all Parties, their respective successors, assigns, heirs, devisees, legal representatives, executors and administrators, and upon all officers, directors, shareholders, partners, members and principals of each Party.

17. If any provision of this Agreement shall be held invalid, then the remainder of this Agreement shall not be affected, and the Parties will use their best efforts to achieve the intent of the Parties.

18. All notices, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when deposited in the United States Mail, registered or certified, postage prepaid, addressed to the party to be notified as follows:

J. Michael Self  
D. Mitchell Self Broadcasting, Inc.  
520 D. Mitchell Self Blvd.  
Sheffield, AL 35660

With a copy to:

Frank R. Jazzo  
Fletcher Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street; 11<sup>th</sup> Floor  
Arlington, Virginia 22209-3801

Jerry L. Phillips  
Big River Broadcasting Corp.  
624 Sam Phillips Street  
Florence, AL 35631

With a copy to:

Harold K. McCombs  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, NW  
Washington, DC 20037-1526

Jerry L. Phillips  
Clifton Broadcasting Company  
79 South Mendenhall Road  
Memphis, Tennessee 38117

With a copy to:

Harold K. McCombs  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, NW  
Washington, DC 20037-1526

19. This Agreement may be executed in counterparts, all of which together shall comprise one and the same instrument.

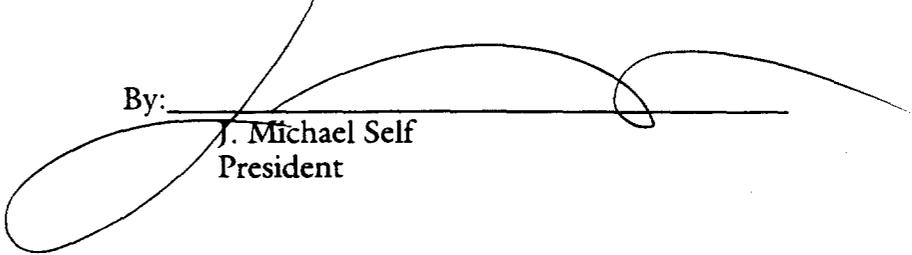
20. The parties agree that this Agreement will be interpreted, construed, and enforced under and according to the laws of the State of Alabama.

21. This Agreement evidences the intent of the Parties to resolve differences among themselves. However, in the event that the Parties are unable to give full effect to this Agreement, for any reasons beyond their control, then the Parties shall be returned to the *status quo ante*, as if this Agreement had never been entered into, and no Party shall use any provision of this Agreement, the existence of this Agreement, or the privileged and confidential negotiations that preceded this Agreement in any court, except as herein set forth, administrative agency, or other proceeding in any way adverse to the interests of the other Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized, as of the day and year first above written.

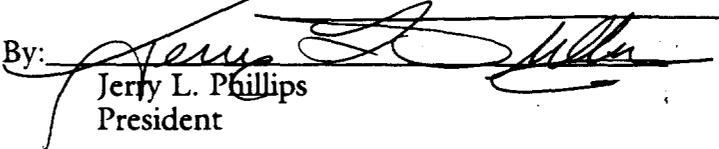
**D. MITCHELL SELF BROADCASTING, INC.**

By: \_\_\_\_\_

  
J. Michael Self  
President

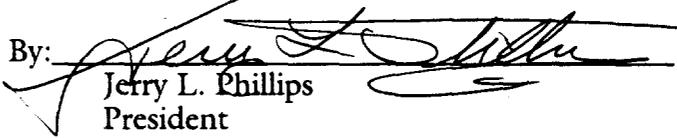
**BIG RIVER BROADCASTING CORP.**

By: \_\_\_\_\_

  
Jerry L. Phillips  
President

**CLIFTON BROADCASTING CO.**

By: \_\_\_\_\_

  
Jerry L. Phillips  
President

**ATTACHMENT 2**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of: )  
)  
Amendment of Section 73.202(b), ) MM Docket No. \_\_-\_\_\_\_  
Table of Allotments, ) RM No. \_\_\_\_  
FM Broadcast Stations. )  
(Pulaski, Tennessee) )

To: Chief, Allocations Branch  
Mass Media Bureau

**CONTINGENT DISMISSAL AND WITHDRAWAL**

D. Mitchell Self Broadcasting, Inc. ("Self"), by its President, herewith withdraws and dismisses its June 26, 1996, "Petition for Rulemaking." Self withdraws and dismisses its expression of interest in tendering an application for a construction permit for, in constructing, and in operating a new FM broadcast station on Channel 294A at Pulaski, Tennessee, contingent upon FCC approval of the Agreement dated March 16, 1999, by and among Self, Big River Broadcasting Corp. and Clifton Broadcasting Co. Self thereupon requests that this proceeding be terminated.

Respectfully Submitted,

**D. Mitchell Self Broadcasting, Inc.**

By: \_\_\_\_\_

J. Michael Self, President

Dated: \_\_\_\_\_

3/16/99

**ATTACHMENT 3**

ANN BAVENDER\*  
ANNE GOODWIN CRUMP  
VINCENT J. CURTIS, JR.  
RICHARD J. ESTEVEZ  
PAUL J. FELDMAN  
ROBERT N. FELGAR\*  
RICHARD HILDRETH  
FRANK R. JAZZO  
ANDREW S. KERSTING\*  
EUGENE M. LAWSON, JR.  
HARRY C. MARTIN  
GEORGE PETRUTSAS  
RAYMOND J. QUIANZON  
LEONARD R. RAISH  
JAMES P. RILEY  
KATHLEEN VICTORY  
HOWARD M. WEISS  
\* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW  
11th FLOOR, 1300 NORTH 17th STREET  
ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER  
(703) 812-0486

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March 1, 1999

FRANK U. FLETCHER  
(1939-1985)  
ROBERT L. HEALD  
(1956-1983)  
PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1961)  
RUSSELL ROWELL  
(1948-1977)  
EDWARD F. KENEHAN  
(1960-1978)  
CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
SHELDON J. KRYS  
U. S. AMBASSADOR (ret.)  
OF COUNSEL  
EDWARD A. CAINE\*  
MITCHELL LAZARUS\*  
EDWARD S. O'NEILL\*  
JOHN JOSEPH SMITH  
WRITER'S DIRECT

812-0474

kersting@fhh-telcomlaw.com

Magalie R. Salas, Esquire  
Secretary  
Federal Communications Commission  
Room TW-B204  
445 12th Street, S.W.  
Washington, DC 20554

Re: U.S. South Broadcasting Company, Inc.  
Petition for Rulemaking  
Channel 294A, Pulaski, Tennessee

Dear Ms. Salas:

On behalf of U.S. South Broadcasting Company, Inc. ("U.S. South"), this is to advise the FCC that U.S. South no longer has any interest in the proposed allotment of Channel 294A at Pulaski, Tennessee, nor does it intend to file an application for a new FM station at Pulaski if the above channel is allotted to that community.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,  
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting  
Counsel for U.S. South Broadcasting  
Company, Inc.

cc: John A. Karousos (FCC) (by hand)  
Mr. Peter H. Doyle (FCC) (by hand)  
Harold K. McCombs, Jr., Esq. ✓

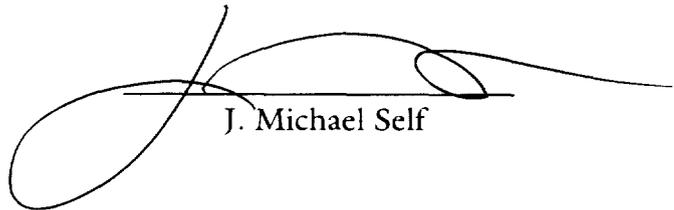
**ATTACHMENT 4**

County of Lauderdale )  
 )  
State of Alabama ) ss:

AFFIDAVIT

I, J. Michael Self, being duly sworn, do hereby depose and state as follows:

1. I am President of D. Mitchell Self Broadcasting, Inc. ("Self").
2. Neither Self nor its principals has received or will receive any money or other consideration in excess of its legitimate and prudent expenses in exchange for the dismissal and withdrawal of its expression of interest in tendering an application for a construction permit for, in constructing, and in operating, a new FM broadcast station on Channel 294A at Pulaski, Tennessee, and for the dismissal and withdrawal of Self's June 26, 1996, "Petition for Rulemaking."
3. Attached is a true and accurate itemized accounting of the expenses for which Self seeks approval by the FCC and reimbursement from Big River Broadcasting Corp. ("Big River").
4. There is no oral or written agreement other than the Agreement dated March 16, 1999, by and among Self, Big River and Clifton Broadcasting Co.

  
J. Michael Self

Sworn to and subscribed to before me  
this 16<sup>th</sup> day of March, 1999.

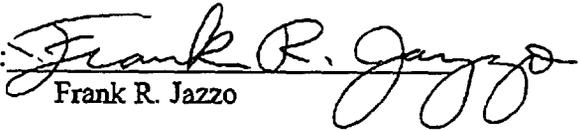
  
Notary Public

My Commission expires: 4/1/2008

**DECLARATION**

I, Frank R. Jazzo, do hereby declare, under penalty of perjury, the following:

1. I am co-managing member of Fletcher, Heald & Hildreth, P.L.C. ("FH&H").
2. FH&H is communications counsel to D. Mitchell Self Broadcasting, Inc. ("Self").
3. Self has incurred legal fees and expenses of approximately Forty-Three Thousand Six Hundred Thirty-Seven and 43/100 Dollars (\$43,637.43) with FH&H in connection with its pleadings concerning the WQLT, WDXE and WXFL applications and Self's Petition for Rulemaking to allot a new FM channel to Pulaski, Tennessee, and related matters.

By:   
Frank R. Jazzo

Dated: March 22, 1999

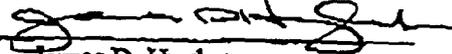
\\l:\office\wpin\jazzo\self.dec

**DECLARATION**

I, James D. Hughston, do hereby declare, under penalty of perjury, the following:

1. I am a partner with the law firm of Hughston, Hughston & Hughston ("HH&H").
2. HH&H is local counsel to D. Mitchell Self Broadcasting, Inc. ("Self").
3. Self has incurred legal fees and expenses of approximately Eleven Thousand Five

Hundred and 00/100 Dollars (\$11,500.00) with HH&H in connection with its pleadings concerning the WQLT, WDXE and WXFL applications and Self's Petition for Rulemaking to allot a new FM channel to Pulaski, Tennessee, and related matters.

By:   
James D. Hughston

Dated: March 22, 1999

03/23/99 12:10 FAX 703 612 0400

**DECLARATION**

I, Olvic E. Sisk, do hereby declare, under penalty of perjury, the following:

1. I am the principal owner of Sisk Engineering, Inc. ("Sisk").
2. Sisk is the consulting engineering firm for Mitchell Self Broadcasting, Inc. ("Self").
3. Self has incurred professional fees and expenses of approximately Sixteen Thousand Five Hundred and 00/100 Dollars (\$16,500.00) with Sisk in connection with its pleadings concerning the WQLT, WDXE and WXFL applications and Self's Petition for Rulemaking to allot a new FM channel to Pulaski, Tennessee, and related matters.

By: *Olvic E. Sisk*  
 Olvic E. Sisk

Dated: March 22, 1999

\\nc\office\wp\pin\jazzo\olvis.sis

**ATTACHMENT 5**

