

90-4061

Bills of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-1269

September Term, 1998

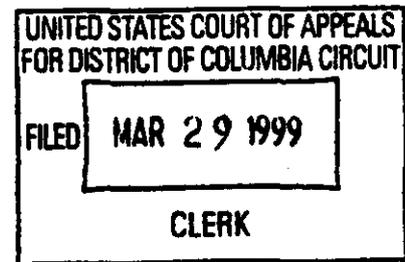
Vernon C. Floyd,

Appellant

v.

Federal Communications Commission,  
AppelleeDavid Earl Hoxeng  
*d/b/a* ADX Communications of Pensacola, and  
Miracle Radio, Inc.,

Intervenors



Appeal of an Order of the  
Federal Communications Commission

Before: WILLIAMS, ROGERS and TATEL, *Circuit Judges*.

## JUDGMENT

Petitioner Vernon Floyd seeks review of the Commission's decision that he failed to demonstrate he had the necessary financial resources at the time of certification to construct and operate the proposed radio station. Although the court has noted the vagueness of the agency's requirements for demonstrating financial qualification, *see Mission Broad. Corp. v. FCC*, 113 F.3d 254, 260 (D.C. Cir. 1997), the version of Form 301 used by Floyd referred to the need to demonstrate net liquidity. *See id.* (quoting Form 301); *see also CHM Broad. Ltd. Partnership v. FCC*, 24 F.3d 1453, 1457-58 (D.C. Cir. 1994). Likewise, this requirement was clear from the Commission's decision in *Sunshine Broad. Co.*, 6 F.C.C.R. 5981, 5982-83 (1991), which was decided before the hearing with the administrative law judge.

Consequently, because the Commission had reasonable grounds for rejecting the

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appraisal by Susan Harrison that Floyd submitted, the use of money in his bank accounts became critical based on his own estimate of purchasing and operating costs for the new station. The documentation and testimony presented by Floyd to the Commission failed, however, to address a material issue, namely whether or not Floyd had any outstanding liabilities. Although the challenge to Floyd's financial qualification initially focused on the appraisals of his existing two stations, once Floyd testified that his bank accounts were available to finance the new station, he needed to address his *net* liquidity. As the Commission observed in *Sunshine*, statements that funds are readily available and earmarked for a particular purpose are insufficient to demonstrate net liquidity. *Id.* at 5983. Floyd testified that he owned all of his assets, including his home and other investment properties and his two radio stations, "free and clear of any debt." Absent even a statement under oath by Floyd that he had no such liabilities as would draw down or offset his bank balances below the amount needed, however, the Commission was unable to determine that Floyd was financially qualified.

Accordingly, it is hereby **ORDERED and ADJUDGED** that the Commission's order be affirmed.

The Clerk is ordered to withhold issuance of the mandate herein until seven days after disposition of any timely petitions for rehearing. *See* D.C. Cir. Rule 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:



Deputy Clerk