

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-438

In re Application of

PORT HURON File No. BPH-830325AE
FAMILY RADIO,
INC.

For Construction Permit for a
New FM Station
Port Huron, Michigan

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; Released: July 18, 1990

By the Commission:

1. In its decision in this case, *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532 (1989), the Review Board concluded that Port Huron Family Radio, Inc. (Family) was financially unqualified because it did not have, at the time it filed its application and certified its financial qualifications, a balance sheet or other documentary evidence (such as a financial statement) demonstrating that the person proposing to lend the funds for constructing and operating its station for three months without revenue, had sufficient net liquid assets to meet that loan commitment. Now before us is an Application for Review filed April 24, 1989 by Family.¹ For the reasons that follow, we find that Family was financially qualified when it certified its financial qualifications, and that a grant of its application will serve the public interest.

2. In *Northampton Media Associates*, 4 FCC Rcd 5517 (1989), which was decided after the Board's decision, the Commission held that applicants need not have in hand such documentation when certifying their financial qualifications; instead, they can prepare and submit such documentation after certification when requested to do so by the Commission. *Id.* at 5518-5519 ¶ 14.² Such documentation must reflect that the applicant had reasonable assurance of the lender's financial ability to provide the necessary funds when it certified its financial qualifications. To do this, the applicant must provide substantial and reliable evidence (such as a financial statement or balance sheet) that the lender -- when it is a person and not a financial institution -- had sufficient net liquid assets on hand to meet its loan commitment to the applicant. Moreover, where that loan agreement is oral such as in this case, the existence of such an agreement at the time of financial certification must be established by both the applicant and lender via uncontroverted affidavits and/or testimony at hearing.³ *Id.* at 5519 ¶¶ 15-17.

3. In view of the foregoing, the test applied by the Board for determining whether Family had reasonable assurance at the time of certification -- i.e. contemporaneous written documentation -- is no longer controlling

under Commission precedent.⁴ Consequently, by Order, FCC 90I-13 (Gen. Counsel released Feb. 7, 1990), Family was directed to submit documentation demonstrating that the person it had relied on for financing the construction and operation of its station for three months without revenue had the financial ability to meet that loan commitment at the time Family certified its financial qualifications. The Mass Media Bureau's comments on the above showing were also solicited. Both Family's request showing and the Bureau's comments have been submitted and, for the reasons that follow, we agree with the Bureau that Family has shown that it had reasonable assurance of its financial qualifications when it so certified.

4. The record reveals that Family's estimate of the cost of constructing and operating its proposed station for three months without revenue was \$168,867, in addition to estimated legal expenses of \$30,000. Thus, Family's total cost estimate was \$198,867. To meet those estimated costs, it is undisputed that Family relied on an oral loan agreement between itself and George Clark -- a friend of Martin Doorn, who is a principal of Family and who certified the applicant's financial qualifications. Both Clark and Doorn confirmed the existence of that loan agreement in their respective testimony in this case. See *Port Huron Family Radio*, 3 FCC Rcd 5562, 5563 ¶¶ 11-13 (ALJ 1988). Regarding Clark's financial ability to make such a loan to Family, the record is also undisputed that Doorn discussed the matter with Clark's former accountant and was assured that Clark had the financial means to do so. *Id.* at 5563-5564 ¶ 14.

5. In its recent submission, Family has submitted a reconstructed financial statement reflecting Clark's financial condition as of March 1983, the time when Family's financial certification was made. The statement reveals that Clark had at that time assets valued at \$531,500 and liabilities of \$56,000 (\$14,000 in current and \$42,000 in long-term liabilities), resulting in a net worth of \$475,500. Also, in a declaration under penalty of perjury, Clark states that he relied on the following assets to finance his loan to Family:

Cash	\$ 30,000
Vacant Land	42,500
Excess Construction Equipment	101,000
Accounts Receivable	90,000
	\$263,500

As to the listed value of the vacant land, Clark has submitted a letter from a real estate broker, indicating that he appraised that property in December 1982 and determined that its fair market value was \$42,500. Regarding the estimated value of the construction equipment, Clark has submitted a copy of a March 1983 letter from a construction equipment company which states that the quick sale value of the equipment was \$101,000. Also submitted is a letter from a public accountant who prepared Clark's reconstructed financial statement. The accountant states that the \$90,000 accounts receivable indicated therein is based on Clark's best recollection of the information given him by his former accountant, who is now deceased. Because all of Clark's financial records prior to 1985 were destroyed in a flood, the accountant further states that she has reviewed Clark's accounts re-

ceivable for the last five years and found them to average at \$73,400, with a 97% collection rate within a 30 day billing.

6. Before determining whether Clark's liquid assets were adequate to finance his loan commitment to Family at the time of certification, it is necessary to make certain adjustments in the respective valuations of some of those assets because of Commission precedent.⁵ Hence, the valuation of those assets, as adjusted, and the net funds available from those assets are as follows:

Cash	\$ 30,000
Vacant Land	28,333
Construction Equipment	75,750
Accounts Receivable	67,500
Total Funds Available	\$ 201,583
Less Current Liabilities	14,000
Net Funds Available	\$ 187,583

Given the above showing, we conclude that the \$187,583 available to Clark from his liquid assets was sufficient to cover his loan commitment to finance the \$168,867 needed by Family to construct and operate the proposed station for three months without revenue.⁶ Because Family has shown that it has paid its legal expenses as they have been incurred, such expenses have not been taken into consideration in determining Family's financial qualifications. See *Muncie Broadcasting Corp.*, 54 RR 2d 42 (1983).

7. In view of the foregoing, we find that Family has submitted probative evidence demonstrating that the person proposing to lend the necessary funds for constructing and operating its station for three months without revenue had sufficient net liquid assets to meet that loan commitment when it certified its financial qualifications; has established on the record of this proceeding the existence of a valid loan agreement upon which it relied for financing its proposed station; and, in view of the foregoing, has shown a reasonable basis for its financial certification. Accordingly, we conclude that Family was financially qualified when it certified its financial qualifications and that a grant of its application will serve the public interest.

8. ACCORDINGLY, IT IS ORDERED, That the Motion to Supplement Application for Review filed August 23, 1989 by Port Huron Family Radio, Inc. IS GRANTED, and the accompanying Supplement IS ACCEPTED.

9. IT IS FURTHER ORDERED, That the Application for Review filed April 24, 1989, as supplemented, IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

10. IT IS FURTHER ORDERED, That the Review Board's decision in this case, *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532 (1989), IS MODIFIED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the above-captioned application (File No. BPH-830325AE) of Port Huron Family Radio, Inc. IS GRANTED, and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ Also before us are: a Motion to Supplement Application for Review and the accompanying Supplement filed August 23, 1989 by Family; a Supplemental Financial Showing filed March 23, 1989 by Family; and Comments thereon filed April 8, 1990 by the Mass Media Bureau.

² The financial certification process has been modified for applicants filing after the effective date of the amended Form 301. *Revision of Application for Construction Permit for Commercial Broadcast Station*, 4 FCC Rcd 3853 (1989).

³ After the Board's decision and the Commission's decision in *Northampton*, the Board approved a settlement agreement between Family and L&K Broadcasting, Inc., which resulted in the dismissal of the latter's application. *Port Huron Family Radio, Inc.*, 4 FCC Rcd 6144 (1989).

⁴ *Las Americas Communications, Inc.*, 1 FCC Rcd 786 (Rev. Bd. 1986), which was relied upon by the Board in this case, was effectively overruled by *Northampton Media Associates, supra*, and thus Las Americas and its progeny are no longer good law.

⁵ Because the net proceeds received by a seller of real estate are normally less than fair market value, the Commission has reduced the market valuation by as much as one-third. See *Dodge-Point Broadcasting Co.*, 11 FCC 2d 751 (1968). It is also Commission practice to credit only 75% of the accounts receivable when they are aged. See *Kaiser Broadcasting Corporation*, 62 FCC 2d 246 (1977). Moreover, as the Bureau suggested, we have also adjusted the estimated value of Clark's used construction equipment.

⁶ If the smaller accounts receivable average of \$73,400 is used, \$55,050 of that amount would be considered liquid assets from Clark's accounts receivable. Hence, the valuation of Clark's total liquid assets would be \$175,133 as of March 1983. That amount would likewise be adequate to cover Clark's loan commitment to Family.