

Application, Processing of  
 Control, Transfer of  
 Financial Qualifications, Availability of Funds  
 License, Assignment of, Procedures

Commission modifies financial qualifications standard for parties applying for license assignments or transfers of control of broadcast licensees. Applicants will now be required to demonstrate the availability of funds to meet contractual closing requirements and three-month costs. The current standard established in *Ultravision Broadcasting Co.*, 1 FCC 2d 554, is no longer necessary.

FCC 81-272

BEFORE THE

## FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re:

Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301); and Modification of Processing Standards for Determining the Financial Qualifications of Broadcast Station Purchasers.

June 23, 1981—BC

NEW FINANCIAL QUALIFICATIONS STANDARD FOR BROADCAST  
 ASSIGNMENT AND TRANSFER APPLICANTS

The Commission has modified the financial qualifications standard for applicants seeking to acquire broadcast stations through a license assignment or transfer of control. The new standard requires that applicants demonstrate only sufficient capital to consummate the transaction at the closing on the sale and to meet expenses for three months.

This new standard replaces the current financial standard, based upon *Ultravision Broadcasting Company*, FCC 65-581, 1 FCC 2d 544 (1965), and an associated Public Notice (1 FCC 2d 550), which required all broadcast station applicants to demonstrate sufficient capital to meet construction costs or purchase price requirements and all other first year expenses. The one-year *Ultravision* test was originally adopted to deal primarily with UHF applications at a time when UHF development had not progressed very far, and thus, the viability of UHF stations was considered unsure. The Commission

was concerned that UHF station failures might result not only in particular private detriments, but also in a public detriment in that potential applicants would view investments in the industry too risky.

In recent actions relaxing the first year expense requirement to ninety days for new radio and television construction permit applicants, the Commission concluded that the rationale which supported the *Ultravision* policy was no longer persuasive. See *Financial Qualifications Standards*, 72 FCC 2d 784 (1979), and *Financial Qualifications Standards for Aural Broadcast Applicants*, 69 FCC 2d 407 (1978). We continue to believe this to be the case and wish to make the financial standard for broadcast station purchasers more consistent with that for new construction permit applicants. Additionally, the *Ultravision* standard conflicts with Commission policies favoring minority ownership and diversity because its stringency may inhibit potential applicants from seeking broadcast licenses. Finally, it has been our experience and observation that station failure rates have not been affected substantially by the *Ultravision* standard, but rather depend more upon market forces, competition, the general state of the economy, or the quality of station management.

The new standard will apply to all assignment and transfer applications now pending before the Commission, as well as to those filed on and after the date of this Notice.

The Commission also approved revisions to FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station) which includes a revised Section III (Financial Qualifications) which requires an applicant to certify that it has the requisite resources to build and operate the station for three months without revenues. See News Release, Report No. 18032, June 17, 1981. The Commission also approved a proposal that the assignment of license and transfer of control application forms (FCC Forms 314 and 315, respectively) be similarly revised to require a certification that the proposed assignee or transferee has the requisite resources to consummate the transaction and to meet expenses for three months. Revision of FCC Forms 301, 314 and 315 incorporating the new certification requirements is subject to forms clearance approval by the Office of Management and Budget (OMB). Pending OMB approval of the revised forms, applicants will be required to submit such documentation as is presently required by FCC Forms 301, 314 and 315 to establish their financial qualifications.

Action by the Commission June 16, 1981. Commissioners Fowler (Chairman), Lee, Quello, Washburn and Jones, with Commissioner Fogarty dissenting and issuing a statement.

## DISSENTING STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY

IN RE: REVISION OF APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION (FCC FORM 301); AND MODIFICATION OF PROCESSING STANDARDS FOR DETERMINING THE FINANCIAL QUALIFICATIONS OF BROADCAST STATION PURCHASERS.

The Commission has voted to delete the current requirement that new station and assignment applicants file certain documentation in support of their financial qualifications. In place of these requirements, the Commission intends to rely on a general certification statement by the applicant that it is in fact "financially qualified."

In justifying this decision, some of my fellow Commissioners have suggested that "the marketplace" is an adequate judge of basic financial capabilities. While this proposition is interesting and worthy of further examination, I am constrained to observe that the deleted documentation requirement has served other critical review functions than only the assessment of an applicant's financial ability to construct and operate a broadcast facility. In particular, the required documentation (specifying bank loan commitments, other financing arrangements, security interests, etc.) has provided a basis for review of applicant compliance with the Commission's multiple and cross-ownership rules and Section 310 of the Communications Act limiting foreign ownership of broadcast facilities. Without this documentation, the Commission will have no real check on adherence to these rules and policies.

When these concerns were raised during Commission discussion, they were swept aside with the conclusory observation that the staff can come up with an array of application form "questions" designed to assure compliance in fact with our ownership restrictions and policies. Whether this observation is realistic or unduly sanguine remains to be seen; however, I think the Commission has put the cart before the horse by ordering the deletion of the documentation requirement *before* it has addressed the feasibility of possible alternative safeguards.

As has been recently suggested, this Commission may be "the last of the New Deal dinosaurs" and may be moving in a "fog" of past regulatory excesses. However, in our haste to metamorphose into a more sleek and streamlined creature, and in our yearning to step forth boldly into the dazzling rays of the new enlightenment, I trust we will make at least some passing reference to the guideposts of our existing statute and fundamental responsibilities, lest we stumble into a new mire taking with us the industries we still regulate if only in some quaintly vestigial sense. I dissent to what appears to me to be a first faltering and backward step.