

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

**PUBLIC NOTICE**

Released: March 19, 1987\*

**IN THE MATTER OF CERTIFICATION OF  
FINANCIAL QUALIFICATIONS BY  
APPLICANTS FOR BROADCAST  
STATION CONSTRUCTION PERMITS**

As a result of deregulation and simplified application requirements, applicants for AM, FM, or TV construction permits are no longer required to submit detailed supporting documents and information demonstrating that they are financially qualified. Instead, such applicants now need only to certify, rather than document, that they have the required financial resources.<sup>1</sup> However, in replacing the documentation requirement with financial certification the Commission was careful to emphasize that it was not, in any way, modifying the basic substantive financial requirement,<sup>2</sup> *i.e.*, the ability to construct and operate the proposed station for three months without relying on advertising or other station revenues to meet operating costs.<sup>3</sup>

Certification of financial qualifications is an effective deregulatory measure which provides significant benefits both to applicants and to the Commission. Applicants are spared the time and effort necessary to prepare and submit the documentation previously required to demonstrate their qualifications. Thus, their costs are reduced and the application submission process is accelerated. For its part, the Commission does not have to expend the considerable time and effort necessary to analyze the previously required documentation, especially from the thousands of applicants which will not become Commission licensees. The staff's processing of applications is simplified and accelerated, and substantial Commission resources are therefore saved. However, after five years of experience with the financial certification requirement in lieu of documentation, it is clear that a number of broadcast construction permit applicants have certified their financial qualifications without any basis or justification.<sup>4</sup> Such false certifications constitute abuses of the Commission's processes. They waste the resources of both the Commission and legitimate qualified applicants. As a consequence, the public may receive delayed service, substandard service, or no service at all. Further, such false certifications constitute material misrepresentations to the Commission by the applicants.

Accordingly, applicants and potential applicants are advised that the Commission's staff has been directed to institute procedures designed to detect and deter such abuses of the Commission's processes. When the Commission substituted the certification requirement for detailed documentation of financial qualifications, it provided that the staff could require applicants to submit additional information and documentation if circumstances warranted.<sup>5</sup> In accordance with this authority, the staff will initiate a program of random checks of the financial

qualifications of applicants for construction permits for new broadcast facilities. Such random checks will be conducted as part of the staff's pre-designation processing. In addition, in cases where an applicant has a large number of pending broadcast applications, the staff may question the validity of the applicant's financial certifications. Those applicants may also be required to verify their financial qualifications. Whether selected at random or as a result of an actual question as to the validity of a certification, each applicant selected for financial certification verification will be directed to submit documentation and information supporting its certification that it has available the financial resources to construct and operate the facility for three months without reliance on advertising or other station revenues. If such financial certification check reveals that an applicant's certification is false, hearing issues will be designated to determine (i) whether the applicant is financially qualified to be granted the construction permit, and (ii) whether the false certification involves misrepresentation.<sup>6</sup>

If the evidence adduced at hearing reveals misrepresentation, the false certification may result in the applicant's disqualification in the proceeding in question,<sup>7</sup> as well as other sanctions provided for in the Communications Act and the Commission's Rules.<sup>8</sup> The Commission believes that this procedure will discourage false financial certifications while preserving the deregulatory benefits of the simplified application requirements.

Action by the Commission March 19, 1987. Commissioners Fowler (Chairman), Quello, Dawson, Patrick and Dennis.

**FEDERAL COMMUNICATIONS COMMISSION**

\* Note: This item, although publicly released on the date indicated, was not included in the appropriate pamphlet of the Federal Communications Commission Record.

**FOOTNOTES**

<sup>1</sup> *Revision of Form 301*, 50 RR 2d 381, 382 (1981).

<sup>2</sup> *Id.*

<sup>3</sup> *Financial Qualifications for Aural Broadcast Applicants*, 69 FCC 2d 407 (1978); *Financial Qualifications Standards*, 72 FCC 2d 784 (1979).

<sup>4</sup> *See, e.g., Duchess Communications Corporation*, 101 FCC 2d 243, 245 n.3 (Rev. Bd. 1985), and cases cited therein. In that case, the Review Board observed that, despite their financial certifications, "applicant after applicant is sorely deficient in this regard." *Id.*

<sup>5</sup> *Revision of Form 301, supra*, at 382; *see also*, FCC Form 301, Section III Instructions.

<sup>6</sup> The procedure established by this Public Notice for the designation of a financial qualification/misrepresentation issue as a result of a financial certification check by the Commission's staff does not in any way change or affect the procedural and substantive burdens upon applicants who seek to enlarge issues pursuant to Section 1.229 of the Commission's Rules, 47 C.F.R. §1.229.

<sup>7</sup> *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 FCC 2d 1179, 1210-11 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), *petition for review pending sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. filed March 17, 1986). Applicants are reminded that disqualification in one proceeding for misrepresentation to the

Commission will raise a serious question as to whether the applicant possesses the basic character qualifications to hold any Commission license or authorization. *Id.*

<sup>8</sup> Section 73.1015 of the Commission's Rules, 47 C.F.R. Section 73.1015, prohibits the submission to the Commission of an application which contains "any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission." (*See also*, 47 C.F.R. Section 73.3513(d).) Violation of this rule may subject the applicant to a monetary forfeiture pursuant to Sections 502 and/or 503 of the Communications Act, 47 U.S.C. Sections 502 and 503. An intentional false certification also may be sanctioned under Section 1001 of Title 18 of the United States Code, 18 U.S.C. Section 1001, which makes it a crime, punishable by a \$10,000 fine, or five years imprisonment, or both, to knowingly and willfully make "any false, fictitious or fraudulent statements or representation" with respect to any matter within the jurisdiction of a federal agency.