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Borrower BEWARE

Few industries challenge lenders like broadcasting. Here's how to make the most of a tricky relationship.

By Jim Pfau and Erwin Krasnow

W "Working with your lender" is a phrase whose meaning is in the eyes of the beholder. For a consumer, it may mean calling the credit card company after a job loss. For a farmer, it means talking with the bank at the beginning and end of each growing season. For a manufacturing business, it means keeping the lender apprised of inventory levels and sales.

For broadcasters, "working with your lender" means something more. A broadcaster's relationship with its lender is a dialogue that begins before the first term sheet and continues until the loan is paid in full. While some aspects of the relationship are like other commercial loan relationships, no other industry shares all of the challenges that broadcasters pose for lenders: Broadcasters have no inventory, and even their equipment typically has too little value to support their lending needs. Their individual receivables are often too small to warrant significant collection efforts following foreclosure. Most importantly, under existing Federal Communications Commission regulations and case law, their most valuable asset, the FCC license, can't be subjected to a lender's security interest.

Because broadcasters are unique, they need to find lenders who have knowledge of their industry and can withstand the ups and downs of the broadcasting industry. With that in mind, we offer the following tips on working with lenders.

1. Learn the differences among lenders. There are many ways to categorize commercial lenders:

Asset-based lenders vs. cash-flow lenders: Finance companies and other asset-based lenders typically expect to be repaid from cash flow, but they count on selling the borrower's assets to pay the debt if the cash flow is inadequate. Asset-based lenders are usually a poor fit for broadcasters, most of whose value is typically tied up in the FCC license. In contrast, cash-flow lenders will be focused on the value of your business as a going concern. Even if they take collateral, the most realistic broadcast lenders recognize that the collateral serves primarily as leverage, not as a direct source of repayment.

Holders vs. sellers: The secondary mortgage market – in which mortgage loan originators sell their loans to Fannie Mae or others – has existed for decades. More recently, commercial loans have been packaged and resold to large consortia of investors, whether through securitizations or specific participations. Obtaining a waiver or amendment from a single lender can be straightforward. Obtaining a waiver or amendment from a handful of lenders can be a little more difficult. Obtaining a waiver or amendment from a large number of lenders – or from a trustee acting on behalf of investors – can be almost impossible. Given a choice, and assuming identical financial terms, you will generally find life easier when working with a single lender (and a single lender's credit review process) than with a lender that sells its loans and retains only the servicing rights.

Number-crunchers vs. character lenders: This distinction is a bit misleading since all lenders these days must crunch numbers, and we hope that all lenders pay at least some attention to character. Still, lenders fall at different points along the spectrum. If you get into trouble, you'd rather be working with a lender who has confidence in your character (unless, of course, your own character won't win you any points).

2. Ask questions. Some broadcasters don't have the luxury of choosing among lenders, and some will make a choice based solely on pricing. If you have a choice among lenders with similar terms, ask some basic questions that may make a difference when you hit a rough spot:

Does your banker understand broadcasting? As noted above, broadcast lending is unique. A community banker used to lending against inventory and equipment may get skittish when the broadcasting industry experiences a downturn. An experienced broadcasting lender will be more likely to understand your place in the industry-wide cycles that inevitably occur.

Who will be managing your loan in two years? Financial institutions, and even departments within financial institutions, turn over their personnel at different rates. If the loan officer who closes your loan is likely to move up the corporate ladder in 18 months, you'll be dealing with an unknown quantity during the life of your loan. If you are concerned about loan officer churn (and maybe even if you aren't) it's a good idea to talk with other lenders in the bank's media finance department, including the department manager. Departments develop their own personalities. Talking to other lenders in the department may give you an idea whether your banker is typical or an aberration – and let you know who you might be facing in two years when you need a waiver.

Who will represent the lender? For the initial negotiation and closing, at least, your lender's attorney can make your life hellish or smooth the road to a good lending relationship. Find out the name of the individual lawyers or law firm your lender will engage, and ask others in the industry about their experience with that lawyer. You may save yourself initial headaches and a rocky start.

3. Read the loan documents. It seems obvious, but don't leave the documents entirely to the bankers and lawyers. Even the best lawyer won't know enough about your business to tell you whether the loan documents match your needs. If you tire of the "legalese" or have a short attention span, focus your reading on some key provisions:

The borrowing mechanics: If the loan documents require three days' written notice for an advance but you want to borrow on a same-day basis, the document won't work for you.

Financial covenants and related definitions: Your lender will probably measure your performance primarily by compliance with the financial covenants. Make sure that you understand those covenants and that they make sense for your business. For example, ratios based on tangible net worth seldom should be applied to broadcasters, but lenders unfamiliar with broadcasting may include them out of habit. You may also find surprises in the definitions. Perhaps a definition of "broadcast cash flow" (or "operating cash flow" or "EBITDA") doesn't include all of your expected addbacks.

Restrictive (or negative) covenants: Look carefully at covenants restricting your indebtedness, liens, dividends and the like. If your business is incorporated as a subchapter S corporation or a limited liability company, are you allowed to make distributions for your owners' tax payments? Does the indebtedness covenant permit you to buy copiers, vans and the like with purchase-money financing (including capitalized leases)? Do you have the right to move funds among related companies in accordance with your usual practices?

Don't be bashful in providing comments to your loan officer. It's a near certainty that your lender (and maybe even your lender's lawyer) didn't actually think about every single point in the first draft. A good lender will welcome the opportunity to refine the loan documents to match the parties' actual intentions.

4. Keep your lender informed. Most of us know what it's like to delay bad news, hoping that Mom won't learn about the failing grade, or Dad somehow won't find the broken garage window. A surprising number of borrowers exhibit the same behavior.

Our advice: Face up to the facts and let your banker know. As the journalist Earl Wilson once wrote, "Snow and adolescence are the only problems that disappear if you ignore them long enough." For broadcasters, this means:

Deliver your financial statements on time. Delaying your financial reporting may convince the banker that you're a risky credit and untrustworthy. It's better just to be a risky credit.

Call (don't e-mail) the lender with advance notice of bad news. Your lender doesn't want to find out about your problems when you deliver your audit 120 days after year-end. Place a call to the lender as soon as you recognize that your covenants are going to be breached. This will demonstrate your good faith to the lender. Some lenders will also find it easier to obtain internal approval for an amendment or consent (loosening the covenants) than for a waiver of a default after the fact.

Avoid accounting gimmicks. Maybe you can reverse some charges to appear in compliance with the loan documents, or maybe you can make a clever argument that the definitions don't mean what the parties really intended. We recommend resisting that temptation unless you have no intent to continue working with this lender. When a lender feels that you have violated the spirit of the loan documents but wriggled out of the default through clever legal work or accounting, the well has been poisoned, and you will probably find the lender quicker to scream "default" in the future when you breach the loan documents.

5. When all else fails, consider asking for a different loan officer. Sometimes two personalities just don't mix. The lender who was in eager sales mode before closing has turned hostile, or perhaps has been replaced by his or her evil twin. Consider having a meeting with the lender's department head to ask whether you can have a different loan officer. Use this approach sparingly, though: You may get a reputation as a troublemaker – and the department head may say "no," leaving you with the same loan officer but in a less friendly mood.

For a borrower, the ultimate correction for a failed lending relationship is replacement of the lender. Like euthanizing the miscreant pet, though, this should never be a preferred option. In many cases, the borrower will simply trade one set of problems for another, and each new lender is likely to charge a new set of origination, document preparation and legal fees. By following the advice in this article, we hope that you'll be able to build a relationship that lets you continue with your lender through many long and mutually profitable years.

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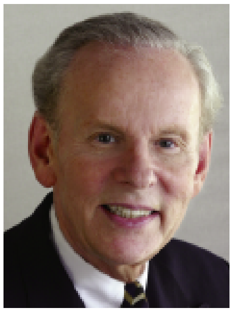

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