Financing a Station in Difficult Times

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Even in these economic times, there are several ways to secure your loan if you are looking to finance a radio station.

Factors that contribute to the current financing drought in broadcasting — for example, radio is not an inventory-based business, and those new to the industry have little to no cash flow — begin with a piece of paper.

Once upon a time it was printed on bond and was imprinted with a seal, but no more. Nowadays the document — an FCC license to broadcast — is no more distinctive than any other ordinary xerographic output.

Yet that paper has always been the single most valuable "asset" of a broadcast business. As a consequence, lenders who are considering media loans may well worry that they cannot be protected if the station's business were to flounder.

Not to worry. While it is true that the FCC prohibits taking a security interest in the actual license, there are other ways to secure your loan. You just need to be aware of what special steps to take to assure that the lender obtains value from your FCC licenses.

Here's our short list of action items for you to consider.

- Seek out lenders who understand broadcasting and do not need to be educated about FCC policies concerning security interests in FCC licenses. If the lender with whom you have an established banking relationship would benefit from seasoned insight into broadcast lending, consider arranging a short course with a knowledgeable source such as a broadcast broker or communications counsel.

- Where your station's cash flow is solid, look for cash-flow lenders who 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 payment. By contrast, because the FCC license typically constitutes most of the value of the business, finance companies and other asset-based lenders usually are a poor fit for broadcasters.

- Be sure that the definition of collateral in the loan documents includes the "proceeds on the sale" of the license. The FCC and the courts have recognized that a lender can have a security interest in the proceeds of the sale of a station and its license, just not a direct security interest in the license itself. The rationale for such a distinction is that a security interest in the proceeds of the debtor's license would not give the creditor control over the license itself. Without the license, the liquidation value of the collateral would be only a fraction of the station's value. If the station is sold as a going concern, however, the lender's chances of recouping the debt go up commensurately.

- Include a proviso in the loan documents that if and when the communications laws permit a security interest in an FCC license, then a security interest is granted in any and all FCC licenses. The FCC has acknowledged that this conditional language is acceptable in radio station deals.

- If your company is a corporation or a limited liability company, you might provide additional security for the loan by agreeing to a pledge of the stock or your LLC units. Indeed, many broadcast lenders require that the borrower set up a separate "license subsidiary," namely, a company that holds as its only asset the FCC license of the station. The lender and the broadcaster then enter into an agreement whereby the stock or LLC interest of the licensed subsidiary is pledged to the lender. Understand, however, that the lender may not exercise the voting rights until the FCC has approved the new holder of the station's licenses. The requirement for prior FCC approval should be recited in the pledge agreement.

- Advise the lender that it is free to secure all the other facets of the business that it normally would for a non-broadcast station loan, such as obtaining a security interest in the equipment, a mortgage on any real property, personal guarantees from the principals, guaranties from affiliated companies, collateral assignment of insurance policies, assignment of accounts receivable in the event of a default, and restrictions on payment of dividends and payments to affiliates.

- Educate the lender about the unique positive aspects of radio. Radio is the only medium, electronic or otherwise, that is truly flexible. It requires only the ear's attention to be fully appreciated. The technology is mature and ubiquitous, yet radio has always successfully changed with the times. It can be contained in a small environment and transported (and heard) virtually anywhere — in a car, in a headset, or near a swimming pool. Radio is Internet-savvy and has made its way to the iPhone and other portable entertainment and communications devices. It is a distinctively "user-friendly" medium that gives advertisers the speed, flexibility and immediacy needed to compete in a media-saturated marketplace. Radio is a service business with a relatively high level of fixed costs compared to variable costs — virtually no inventories or materials are required to create the programming service provided. There continues to be an active trading market in the sale and purchase of radio stations.

We live in a world of optimists, who see the glass as half full, and pessimists, who see the glass as half empty. According to the sage Woody Allen, the realist views the glass as completely full, with half water, half air.

We might say that a pessimist views the FCC ban on security interests in licenses as yet another sign of lien (pardon the pun) times. The optimist wears rose-colored glasses in a world that is less than rosy.

But the realist — that's you, dear reader — takes a pragmatic approach and follows the action steps recommended in this article.

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