

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET SW
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio

JUL 31 2009

PROCESSING ENGINEER: Khoa Tran
TELEPHONE: (202) 418-1200
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: khoa.tran@fcc.gov

Auburn Network, Inc.
P.O. Box 950
Auburn, AL 36831

In re: WGZZ(FM), Waverly, AL
Facility ID #15283
Auburn Network, Inc.
BMPH-20081216BKY

Dear Applicant:

This letter refers to the above-captioned minor change application, as amended on June 4, 2009, to modify their previously granted construction permit to specify facilities on Channel 232A at Waverly, AL.¹

An engineering review of the application reveals that the proposal violates 47 C.F.R. § 73.3573(g)(2). Specifically, the proposed facilities on Channel 232A at Waverly, AL is not mutually exclusive with its license on Channel 262A at Dadeville, AL. Although the permittee was granted an original construction permit to specify Channel 262A at Waverly, AL, a modification of permit can not propose facilities that would not be authorized as an initial construction permit.² The Allocations Streamlining Report and Order³ specifically precluded the filing of rapid, successive community changes that sidestep the mutual exclusivity requirement of the rules. The same rationale applies to the filing of a community change application and a subsequent channel substitution application. Thus, any application modifying a previously granted community of license change filed by a permittee that has not built its current permitted facilities and that is not mutually exclusive with the applicant's built and licensed facilities is unacceptable for filing. Accordingly, the applicant must specify a proposal that is mutually exclusive to the license on Channel 262A at Dadeville, AL. Alternatively, the applicant may construct the facilities authorized in BPH-20071219ABU and file a license application on FCC Form 302.⁴

¹ Auburn Network, Inc. is licensed (BLH-20070726ADX) to operate on Channel 262A at Dadeville, AL. On April 11, 2008, Auburn Network, Inc. was granted a construction permit (BPH-20071219ABU) to operate on Channel 262A at Waverly, AL.

² This is equivalent to an applicant filing multiple minor change applications to ultimately achieve a major modification.

³ See *Revision of Procedures Governing Amendments to FM Table of Allotments and changes of Community of License in the Radio Broadcast Services, 21 FCC Red 14212 (2006)* ("Allocations Streamlining Report and Order")

Pursuant to 47 C.F.R. § 73.3522, "... an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally, 47 C.F.R. § 73.3564 states that "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. This letter constitutes your opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3522.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide the WGZZ opportunity to respond. Failure to correct all tender and acceptance defects within the thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to 47 C.F.R. § 73.3564. Please note, any amendment must be submitted in the same manner as the original application.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Mark N. Lipp, Esq.

⁴ We note in the supplement filed June 4, 2009 that WGZZ's proposed channel change was originally part of an involuntary substitution in WAOQ(FM), Goshen, AL's application (BPH-20081216BKG). WGZZ agreed to this channel change and filed this contingent application to also change sites to a nearby existing tower. However, WGZZ's license and authorized site would not be fully spaced on Channel 232. Therefore, WAOQ could not have proposed an involuntary channel substitution for WGZZ on Channel 232.