



Federal Communications Commission
Washington, D.C. 20554
May 11, 2011

In Reply Refer to:
1800B3-MFW

Mr. Kevin Dowdy, President
Flint Media, Inc.
P.O. Box 7425
Bainbridge, Georgia 89183

Re: Constructed Tower for
WBGE(FM), Bainbridge, GA
Facility ID No. 89183
Permit No. BPH-20070918ACM

Dear Mr. Dowdy:

Flint Media, Inc. ("Flint" or the "Licensee"), licensee of Station WBGE(FM), Bainbridge, Georgia (the "Station"), notified the Commission in March of 2011 that the 116-meter (380-foot) tower¹ authorized in the referenced construction permit for modification of the Station's facilities had not undergone a complete environmental review prior to construction and commencement of operation of the Station from that tower. On March 16, 2011, Flint submitted *via* its environmental consultant (Environmental Resources Management) ("ERM") a "Post-Construction NEPA Review" ("PCNR") with supporting documents, to Stephen delSordo, the Commission's Federal Preservation Officer; the PCNR addresses each of the criteria listed in Section 1.1307(a) of the Commission's Rules (the "Rules").² The PCNR concludes that the WBGE(FM) tower will not significantly affect the environment and neither the preparation of an EA nor further environmental processing is warranted.

Specifically, the PCNR states and documents that the tower is not located in an officially designated wilderness area, wildlife preserve, or floodplain, will not involve significant change in surface features, complies with the Commission's requirements regarding human exposure to levels of radiofrequency radiation, and will not be located in a residential neighborhood. Additionally, the PCNR

¹ Antenna Structure Registration # 49421.

² 47 C.F.R. § 1.1307(a), which provides that Commission action with respect to the following types of facilities may significantly affect the environment and require preparation of an environmental assessment ("EA") pursuant to 47 C.F.R. § 1.1311: (1) facilities that are to be located in an officially designated wilderness area; (2) facilities that are to be located in an officially designated wildlife preserve; (3) facilities that may affect listed threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior; (4) facilities that may affect districts, sites, buildings, structures or objects that are listed, or are eligible for listing, in the national Register of Historic Places; (5) facilities that may affect Indian religious sites; (6) facilities to be located in a flood plain; (7) facilities whose construction will involve significant change in surface features, such as wetland fill, deforestation or water diversion; and (8) antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by applicable zoning law. In addition, section 1.1307(b) provides that Commission actions granting construction permits, licenses to transmit including renewals of licenses to transmit, equipment authorization or modification in existing facilities require the preparation of an EA if the facility, operation or transmitter would cause human exposure to levels of radio frequency radiation in excess of the limits in 47 C.F.R. §§ 1.1310 and 2.1093. 47 C.F.R. §§ 1.1307(a)-(b), 1.1310.

contains correspondence with the U.S. Fish and Wildlife service in which ERM concludes that no federally listed species or habitat are likely to be present at the tower site.³

The PCNR also contains an FCC Form 620 and the summary of an October 2007 archaeological survey of the site; ERM concludes that the tower has no effect on historic properties, listed or eligible for listing on the National Register of Historic Places.⁴ It also includes a summary of the contacts with native nations through the Commission's Tower Construction Notification System ("TCNS"), reporting that no native nation had voiced concern about the impact of the tower on religious or cultural sites.

Finally, the PCNR includes a statement from Flint President Kevin Dowdy regarding the reasons for both the certification in the construction permit application authorizing construction of the tower⁵ and for completing construction prior to completing an environmental review.⁶ Mr. Dowdy indicates that, when Flint acquired the site for the Station's modified facilities, it was advised that it needed to prepare an FCC Form 620 to satisfy Commission requirements, which in this case included an archaeological survey. Mr. Dowdy states that, when these were completed in 2008, Flint was advised by its contract engineer and FCC counsel that it had "the complete environmental study to show compliance with the SHPO/THPO," and he believed in good faith that all necessary requirements were satisfied.⁷ He states that it was not until it was contacted by a wireless carrier in 2010 about the possibility of collocating on the WBGE(FM) tower that Flint was advised that it must have "a complete NEPA review performed."⁸

We have reviewed the PCNR, we find that the WBGE(FM) tower is categorically excluded from environmental processing under Section 1.1306(b) of the Rules. Accordingly, other Commission licensees may collocate on the WBGE(FM) tower without further review.

³ PCNR, *Letter from Lana Skvortsova, Natural Resources Specialist, ERM, to Mr. John Doresky, U.S. Fish and Wildlife Service* (Dec. 27, 2010). The PCNR also includes FWS' January 19, 2011, comments, which do not disagree with the conclusion but make recommendations regarding use of white strobe lighting (already required for this project) and bird deflectors. *Letter to Environmental Resources Management from Sandra S. Tucker, Field Supervisor, U.S. Fish and Wildlife Service* (Jan. 19, 2011).

⁴ PCNR, FCC Form 620. ERM initially submitted the Form 620 to the Historic Preservation Division of the Georgia Department of Natural Resources ("GAHPD"), but was informed by that office that construction of the tower prior to GAHPD review had foreclosed GAHPD's ability to comment on any potential effects of the tower pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. *Letter to Angela Kappen, Environmental Resources Management from Elizabeth Shirk, Environmental Review Coordinator, Historic Preservation Division, Georgia Department of Natural Resources* (Jan. 25, 2011).

⁵ See Application No. BPH-20070918ACM, Section III-B, Item 17. Flint certified in response to that question that construction of the WBGH(FM) tower was categorically excluded from environmental processing.

⁶ PCNR, Memorandum from Kevin L. Dowdy, President, Flint Media, Inc., to Marlene Dortch, Secretary, Federal Communications Commission.

⁷ *Id.* at 1. The archeological survey letter and the Form 620 were submitted with the application. See Application No. BPH-20070918ACM, Attachment 34.

⁸ *Id.* at 2.

However, we find that Flint both incorrectly certified⁹ that construction of the WBGE(FM) tower was categorically excluded from environmental processing and violated the Commission's Rules by constructing the tower prior to completing the environmental review required by Section 1.1307(a) of the Rules and related authority cited therein. Violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful and actionable violations of the Commission's Rules.¹⁰ Considering all the circumstances involved in this case, we conclude that an admonishment is an appropriate sanction for these violations.¹¹

For the reasons stated above, Flint Media, Inc. IS ADMONISHED for its erroneous certification and violation of Section 1.1307(a) of the Commission's Rules, and it is cautioned to be more punctilious in its application responses in the future.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Larry Perry, Esq.
Mr. Ken Rosenbaum, Environmental Resources Management

⁹ Section 1.17(a)(2) of the Rules provides that no person may provide written statements that are made without a reasonable basis for believing the statement is correct and not misleading. The Commission has explained that this requirement was intended to more clearly articulate applicant obligations, ensure that applicants exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts. *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-4017, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004). Although the environmental certification in Flint's application was incorrect, we find that it does not rise to the level of a false certification deserving of a more severe sanction. Given the effort and expense necessary to complete the archaeological survey and FCC Form 620, and the advice of counsel and Flint's engineering consultant (which appears to have been misinterpreted by Mr. Dowdy), we cannot find that the certification was made without a reasonable, albeit erroneous, basis for believing it to be true.

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹¹ See, e.g., *KNYD(FM), Broken Arrow, Oklahoma*, Letter, 22 FCC Rcd 18903, 18905-6 (MB 2007) (licensee admonished for failure to comply with 47 C.F.R. § 1.1307(a)(4) where no historic properties were affected).