

Community of License Change – Section 307(b)

Capstar TX Limited Partnership (“Capstar”), licensee of WDXB(FM), Channel 273C1, Jasper, Alabama, Facility ID No. 2114 (the “Station”), submits this application for a construction permit for the minor modification of the Station to specify operations on Channel 273C1 in Pelham, Alabama, in lieu of operation on Channel 273C1 in Jasper, Alabama (the “Proposal”). This exhibit, together with the Technical Exhibit, demonstrate that the proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). As set forth in the Technical Exhibit, the facilities requested in the Proposal are mutually exclusive with the Station’s current allotment. As to the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission’s Rules (to which the exception contained in Section 73.3580(e) of the Commission’s Rules does not apply to an application proposing to change the community of license of an FM station), Capstar will undertake compliance with respect to the Proposal to give notice of the amended proposed community of license. Consequently, the proposed community of license change qualifies for submission as a minor modification application pursuant to Section 73.3573(g) of the Commission’s Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission considers whether the proposal would serve one or more of the Commission’s four priorities. <sup>1/</sup>

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<sup>1/</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”). The four priorities are: (i) one full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) one local transmission service to a community; or (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also

Here, grant of the Proposal would further the third priority by authorizing a first local aural transmission service for the community of Pelham, Alabama, and the community of Jasper, Alabama will continue to have local aural transmission services. 2/ Thus, the Proposal constitutes a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment.

Pelham is a community that deserves its own local transmission service and it is a community suitable for allotment purposes under Commission precedent. The City of Pelham, which was incorporated in 1964, has a population of 14,369. 3/ Pelham has its own post office and zip code (35124). 4/ The town is governed by an elected mayor and five council members, each of whom serve a four-year term. 5/ Across its 13 departments, the City of Pelham employs nearly 400 individuals. 6/ The City of Pelham provides many municipal services to its residents, including park and street maintenance, water and sewage, and waste management. 7/ In addition to a city park and four neighborhood parks (Chandalar, Oak Mountain Estates, Mallard Point, and Fun-Go-Holler Park), the city also operates recreational facilities for its residents, including

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*Report and Order, In the Matter of Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, 21 FCC Rcd 14212, 14218 [¶ 10] (2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under application procedures).*

2/ See Technical Exhibit.

3/ See the “About Us” webpage on the city of Pelham, Alabama website at <http://www.pelhamonline.com/> (copy at Attachment 1) (“Pelham Website”) and the Profile of General Demographic Characteristics for Pelham city, Alabama, U.S. Census Bureau, Census 2000, at <http://censtats.census.gov/data/AL/1600158848.pdf> (copy at Attachment 2).

4/ See United States Postal Service website at <http://zip4.usps.com> (copy at Attachment 3).

5/ See the “Mayor” webpage and the “City Council” webpage (copies at Attachment 1).

6/ See the “Organization” webpage on the Pelham Website (copy at Attachment 1).

7/ See the “Water and Sewer” webpage, the “Streets and Sanitation” webpage, and the “Parks and Recreation” webpage on the Pelham Website (copies at Attachment 1).

a public golf course and racquet club. 8/ There is a full-time Pelham Fire Department and a Pelham Police Department. 9/ Within the city limits, there is an elementary school (K-2), an intermediate school (3-5), a middle school (6-8), and a high school (9-12). 10/ Pelham High School has an enrollment of approximately 1400 students and a faculty and staff of more than 100. 11/ There is also a Pelham Public Library, which is a full service library located adjacent to Pelham City Hall. 12/ In addition to traditional library services, the Pelham Public Library also operates the Pelham Senior Center, which provides events, programs, and activities for Pelham's senior residents, including guest speakers, bingo, field trips, line dancing, and art classes. 13/ In 2005, the Pelham Public Library was awarded "Blue Ribbon Library" status by the Alabama Library Association. 14/ In addition to the award-winning library, Pelham also provides its residents with access to a state-of-the-art recreational facility called the Pelham Civic Complex. 15/ The Pelham Civic Center has two NHL-size skating rinks and exhibition space for corporate and social events. 16/

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8/ See the "Parks and Recreation" webpage on the Pelham Website (copy at Attachment 1).

9/ See the "Police Department" webpage and the "Fire Department" webpage on the Pelham Website (copies at Attachment 1).

10/ See the "Schools" webpage on the Pelham Website, which links to the websites of each school in Pelham (copy at Attachment 4). The schools are part of the Shelby County School System.

11/ *Id.*

12/ See the Pelham Public Library website at <http://www.pelhamlibrary.com> (copy at Attachment 5).

13/ See the "Senior Citizen Programs" webpage of the Pelham Public Library website at <http://www.pelhamlibrary.com> (copy at Attachment 6).

14/ See the Pelham Public Library website at <http://www.pelhamlibrary.com> (copy at Attachment 5). "Blue Ribbon Library" status is the highest award recognizing excellence in library service and the Pelham Public Library is one of only seven public libraries in the state to receive this designation. *Id.*

15/ See the Pelham Civic Complex website at <http://www.pelhamciviccomplex.com> (copy at Attachment 7).

16/ *Id.*

There are a plethora of businesses in Pelham that meet the day-to-day living needs of Pelham's residents, including banks, restaurants, doctor and dentist offices, grocery stores, drug stores, and general stores. 17/ According to the U.S. Census Bureau's business pattern statistics, there are over 1,000 business establishments in the Pelham zip code. 18/ Also, to serve the spiritual needs of Pelham residents, there are over a dozen churches in Pelham as well as a mosque and a temple. 19/

As evidence of the pride that Pelham residents have in their city as a distinct and independent community, dozens of businesses in Pelham have "Pelham" in their names, including Pelham Auto & Equipment, Carpet Outlet of Pelham, Pelham Cleaners, and Pelham Flowers, 20/ and the website of the City of Pelham has a wide selection of "e-postcards" emblazoned with the city's seal and featuring photos of the city's premier sites and events. 21/

The City of Pelham website of Pelham explains: "Birds fly south just for the winter - people come to Pelham for a visit and never want to leave." 22/ Aware of the allure of their city, Pelham residents have planned for the continued growth and development of their community. The City of Pelham website features a downloadable copy of "Continuing the Progress: Pelham Comprehensive Plan 2025—Preparing Pelham for the Future," which was

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17/ See listings in the Yahoo! Local Yellow Pages phone directory at <http://www.yp.yahoo.com> (copy of a representative sampling of listings at Attachment 8).

18/ See Zip Code Business Patterns (NAICS), 2005 Industry Code Summary for Zip Code 35124 Pelham, AL, U.S. Census Bureau at <http://censtats.census.gov> (copy at Attachment 9).

19/ See listings in the Yahoo! Local Yellow Pages phone directory at <http://www.yp.yahoo.com> (copy of a representative sampling of listings at Attachment 10).

20/ See listings in the Yahoo! Local Yellow Pages phone directory at <http://www.yp.yahoo.com> (copy of a representative sampling of listings at Attachment 11).

21/ See the "E-Postcards" webpage on the Pelham Website (copy at Attachment 12).

22/ See the "Comprehensive Plan" webpage of the Pelham Website (copy at Attachment 1). A copy of the comprehensive plan is attached hereto as Attachment 13.

adopted by the Pelham City Council in 2003. 23/ The Regional Planning Commission of Greater Birmingham recently estimated that Pelham will have a population of 21,448 by the 2010 Census and more than 32,000 residents by 2025. 24/

Under Commission precedent, these indicia of community confirm that Pelham is a community deserving of its own local aural transmission service and that grant of the Proposal would further the public interest in the fair, efficient, and equitable distribution of radio services.

Finally, while the principal community contour of the Station operating on the proposed allotments at maximum facilities from the proposed reference coordinates would encompass more than 90 percent of the Birmingham, Alabama Urbanized Area with a 70 dBu contour, 25/ Commission precedent holds that a “*Tuck*” analysis is not required here because, as set forth in the Technical Exhibit, the Station’s contour pursuant to its current authorization already encompasses a majority of the Birmingham, Alabama Urbanized Area. 26/

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23/ See the “Comprehensive Plan” webpage of the Pelham Website (copy at Attachment 1).

24/ See “Pelham Find its Groove; New Development includes Retail Centers, Golf Course, Subdivisions,” Birmingham Post-Herald, December 5, 2004 (copy at Attachment 14).

25/ See Technical Exhibit.

26/ See, e.g., *Greeley and Broomfield, Colorado*, 15 FCC Rcd 9419, 9419 [¶ 2] (Chief, Allocations Br. 2000) (no *Tuck* analysis required for community of license change when 70 dBu contour already placed over majority of urbanized area); *Durant, Oklahoma and Tom Bean, Texas*, 20 FCC Rcd 4315, 4315 [¶ 3] (Chief, Allocations Br. 2005) (no *Tuck* analysis required for community of license change when 70 dBu contour already placed over 100% of urbanized area).