

EXHIBIT RE SECTION 307(B) AND RELATED ISSUES

The purpose of this application (the "Application") is to restore Gaffney, South Carolina as the community of license for Station WNOW-FM (the "Station" or "WNOW") using the Station's currently authorized transmitter site. The Application is being filed pursuant to a Settlement Agreement with William B. Clay ("Clay"), who filed an objection to the Station's relocation to Bessemer City, North Carolina. A Joint Request for Approval of Settlement Agreement is being filed simultaneously herewith.

BACKGROUND

On January 19, 2007, Gaffney Broadcasting Incorporated ("GBI"), the licensee of the Station, filed an application (BMPH-20070119ACY) to change the community of license to Bessemer City, North Carolina under the Commission's new procedures in *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services* (MB Docket 05-210), 21 FCC Rcd 14212 (2006). The Media Bureau (the "Bureau") rejected the opposition pleadings filed by Clay on May 30, 2008, and granted the construction permit as requested (See Letter from Peter H. Doyle to Mr. William B. Clay, DA 08-1232).

On July 7, 2008, Clay filed an Application for Review.¹ GBI filed a Motion to Dismiss the Application for Review because it was not timely filed. That motion and the Application for Review remain pending. GBI nonetheless proceeded with construction, and, on May 21, 2009, GBI filed its license application (BLH-20090521ADJ) for the authorized facility at Bessemer City at the new transmitter site. GBI recognized that the grant of the permit was not final and that GBI constructed at its own risk.

The foregoing facts demonstrate that GBI had every intention of constructing the proposed facility to serve Bessemer City and in fact did construct the facility and file the license application. However, due to the delays in obtaining finality, and with the prospect that additional appeals would be filed with the Commission and/or the United States Court of Appeals even if the Commission were to grant GBI's Motion to Dismiss and affirm the Bureau's decision, GBI had discussions with Clay to determine whether there was a mutually-acceptable way to satisfy his concerns. As a result of these discussions, GBI has agreed, subject to Commission approval, to return the Station to its former and currently licensed community, Gaffney, South Carolina. In exchange, Clay has agreed to dismiss his pending Application for Review and his objection to the pending license application.

The Bureau can grant this Application without a showing pursuant to Section 307(b) of the Communications Act of 1934, as amended, because the decision to grant the construction permit to relocate the Station to Bessemer City is not final. The

¹ In addition, on October 28, 2008, Clay filed a Motion for Stay of the Bureau's decision in the United States Court of Appeals (DC Cir.) (No. 08-1255). The Court of Appeals dismissed the Motion for Stay as premature due to the pendency of the Application for Review.

Commission therefore has the authority to issue a new construction permit that would return the Station to Gaffney, South Carolina without having to make a finding under Section 307(b) that Gaffney is more deserving than Bessemer City. Until the grant of the permit is final, the applicant can withdraw its expression of interest in serving Bessemer City and remain at its currently licensed community.

This is, in effect, what GBI proposes to do if the Bureau grants the instant Application to serve Gaffney at the current authorized transmitter site. In that regard, it should be noted that GBI cannot return to its previously licensed transmitter site without undue disruption to four other radio stations which have been granted permits conditioned on the Station remaining at its currently authorized and operating site.² Thus, only by specifying this transmitter site will GBI be able to resolve this proceeding and avoid substantial disruption to the four stations which have relied on the new WNOW transmitter site, including one of the four stations (WGOG) which is already constructed and operating at its new site pursuant to a pending license application. Such disruption would likely lead to the filing of complaints or other requests for Bureau action which would needlessly complicate the matter. In addition, the public interest will benefit from the new first local services that will be provided by these four stations based on the grant of the instant Application and resolution of the issues raised by Clay

THE INSTANT APPLICATION

There are two processing matters that are relevant to the use of the current operating site for the Station at Gaffney, South Carolina.

First, the channel study in Exhibit E1 to the Technical Report indicates that the current site is short-spaced to third adjacent Station WKQC under the grandfathering provision of Section 73.213(a)(4). GBI has previously established that its relationship with WKQC has existed since before Nov. 16, 1964, and it has been continuously short-spaced since that date. See BMPH-20070119ACY. Since the Station's proposed transmitter site is not changing in this Application, no additional showing should be required to satisfy Section 73.213(a)(4).

Second, the aforementioned Station WGOG has a pending application (BPH-20090819AGW) which is short-spaced to the existing WNOW transmitter site and therefore will continue to be short-spaced to the Station after grant of the instant Application. WGOG proposes contour protection to WNOW's existing transmitter site. As mentioned earlier, WGOG was granted a permit and has a license application pending that is conditioned on the relocation of WNOW from its previously-licensed transmitter site. WGOG's existing operation as well as its proposed facility are dependent on WNOW's operation remaining at its currently authorized transmitter site. Furthermore, it is WGOG's site change (a move of 53.8 km) that creates the need for Section 73.215

² The four stations that would be adversely affected are: (1) WGOG, Walhalla, SC (BPH-20080624ABW) license application pending (BLH-20090819AGU); (2) WRBN, Clayton, GA (BPH-20080624ACE); (3) WTMT, Weaverville, NC (BPH-20080725ACI); and (4) WSGC-FM, Tignall, GA (BPH-20070413AGU)

contour protection. WNOW is not proposing to move its site and therefore is not creating the short-spacing to WGOG. Thus, it is appropriate for WGOG, rather than WNOW, to continue to use contour protection in its application.

Accordingly, in order to resolve the appeal filed by Clay and obtain finality with respect to the Station's operation at the transmitter site it is currently using, GBI urges expeditious grant of the instant Application to restore Gaffney, South Carolina as the Station's licensed community.