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FILE

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MAY 16 1991

Federal Communications Commission  
Office of the Secretary

May 16, 1991

91-10

**VIA HAND DELIVERY**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**Re: Supplement to Integration and Diversification  
Statement of Northeast Florida Broadcasting Corp.,  
an applicant for a new FM Station on Channel 289A  
at Baldwin, Florida, File No. BPH-891214NA**

Dear Ms. Searcy:

Enclosed are an original and six copies of a Supplement to Integration and Diversification Statement which are being filed on behalf of Northeast Florida Broadcasting Corp., an applicant for a new FM radio station on Channel 289A at Baldwin, Florida, File No. BPH-891214NA.

Please contact undersigned counsel if you have any questions concerning the filing of this Supplement.

Sincerely,



Desmond P. Brown

Enclosure

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MAY 16 1991

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 91-10
	)	
Charley Cecil & Dianna Mae White	)	
d/b/a WHITE BROADCASTING PARTNERSHIP	)	File No. BPH-891214MM
<u>et al.</u>	)	
	)	
NORTHEAST FLORIDA BROADCASTING CORP.	)	File No. BPH-891214NA
	)	
For a Construction Permit to Build	)	
a New FM Station on Channel 289A	)	
at Baldwin, Florida	)	

To: The Honorable Edward Luton  
Administrative Law Judge

**SUPPLEMENT TO INTEGRATION  
AND DIVERSIFICATION STATEMENT**

Northeast Florida Broadcasting Corp. ("Northeast Florida"), by its counsel, hereby submits its Supplement to Integration and Diversification Statement regarding the above-captioned application. In support thereof, Northeast Florida states the following:

1. On December 14, 1989, Northeast Florida submitted an application for a construction permit to build a new FM radio station on Channel 289A at Baldwin, Florida. The application was filed on the FCC Form 301 (1989 ed.). In Section IV-B of the application, Northeast Florida set forth the details of its Integration Statement. This portion of the application is attached hereto as Exhibit 1.

2. In its December 14, 1989 Integration Statement, Northeast Florida explained that Ms. Lillian Holt, its lone voting

shareholder, would be integrated into the day-to-day management and control of the proposed facility. The Integration Statement also stated that Ms. Holt was a female of African American descent. As such, Northeast Florida stated that it would seek enhancement credit for Ms. Holt's status as a minority and female applicant.

3. On May 10, 1991, in response to the Order of the Presiding Judge, FCC 91M-1455, released April 24, 1991, Northeast Florida filed a copy of its Integration and Diversification Statement. In its Integration and Diversification Statement, Northeast Florida recited the same information that was set forth originally in the Integration Statement that was part of its application. However, the information regarding Ms. Holt's status as a African American female was inadvertently omitted. Therefore, Northeast Florida is submitting this Supplement in order to conform its Integration and Diversification Statement filed on May 10 to the Integration Statement filed as part of its application on December 14, 1989.

4. Commission precedent makes clear that this Supplement should be accepted. The purpose of requiring parties to file and exchange integration statements is to "lock-in" and disclose the applicants' specific comparative positions. Northland Communications, 100 FCC 2d 914, 918, 58 RR 2d 825 (Rev. Bd. 1985), recon. denied, 60 RR 2d 7761 (1986); Mableton Broadcasting Co., Inc., 5 FCC Rcd 6314, 6324 n. 13; (Rev. Bd. 1990); Revision of Application for Construction Permit, 4 FCC Rcd 3853, 3860, 66 RR 2d 519 (1989). In revising the FCC Form 301, the Commission stated that the effect of requiring the Integration Statement to be filed

as part of the Form 301 would be that, "[a]pplicants will be locked into their proposals, as a comparative matter, by the amendment as of right date." Revision of Application, 66 RR 2d at 532.

5. Here, Northeast Florida disclosed and locked into its comparative proposal on December 14, 1989, the date on which it filed its application. The parties were fully advised of Northeast Florida's comparative position as of that date. Northeast Florida has not varied nor attempted to change its comparative position since first giving notice of its integration statement on December 14, 1989. Thus, Northeast Florida has not attempted to engage in "integration gamesmanship." Id. Indeed, Ms. Holt's status as a African American female is not a matter which Northeast Florida could alter or amend even if it wished. It will be self-evident the moment she walks into the hearing room.

6. A similar question was presented in Mableton Broadcasting Company, Inc., 5 FCC Rcd 6314 (Rev. Bd. 1990), in which an applicant, RML, filed direct case exhibits at the hearing which failed to include information previously provided in its integration statement. The Administrative Law Judge first indicated that he would allow the applicant to reform its direct case exhibits to incorporate the information previously filed in the integration statement. But, the ALJ later denied the applicant's request to do so.

7. The Review Board reversed the ALJ's determination and ruled that the applicant should be allowed to reform its direct case exhibits. Id. at 6319. The Review Board found that the ALJ's

initial instinct to allow the applicant to reform its exhibits was correct. Id. at 6319. The Review Board held that:

[u]nder the unusual circumstances presented here, we believe that the ALJ's reflexive instinct to permit RML to reform its exhibits to conform to its "Integration Statement" was correct. Although, as a technical matter, RML's prefiled "integration" proposal did not again accompany its direct case exchange, its "Integration Statement" was already officially on record, RML intended to propose no variance or "contingencies," no delay or prejudice appeared likely, and the question was hypertechnical. We fully appreciate the ALJ's tergiversations, and fault him neither for first inviting RML to reform nor for subsequently changing his mind, for his conduct throughout suggests a conscientious effort to do justice and avoid prejudice. Albeit, we find that RML's failure to duplicate its prefiled "Integration Statement" again in its exhibits to have been a harmless technical error; and so long as no variance or upgrading was contemplated, no prejudice would have inured to the competing applicants by allowing reformation. As did the ALJ, we fully appreciate how this minor misunderstanding arose, but will permit RML to reform and to have its actual "integration" proposal tested in a hearing crucible (its comparative case was neither tried nor considered, I.D., para. 173), just as RML tested and challenged the comparative proposals of its adversaries.

Id. (emphasis added).

8. Here, the Presiding Judge is faced with a similar case of a "harmless technical error." All parties were advised of Northeast Florida's complete integration proposal as of December 14, 1989, the date on which Northeast Florida first filed its application. Northeast Florida, by the submission of this Supplement, intends "to propose no variance or contingencies," and "no delay or prejudice" appears likely to result from its acceptance. Id.

9. As the Review Board concluded in Mableton, Northeast Florida should be allowed "to have its actual 'integration'

proposal tested in a hearing crucible. . . ." Id. In doing so, the public will be guaranteed the best practical service by ensuring that the Commission is able to select the best qualified applicant.

10. Here the parties were given Northeast Florida's Integration Statement on the date its application was first filed. They were thereby given full and fair notice of Northeast Florida's intent to claim credit for Ms. Holt's status as a African American female, and thus the parties have no standing to complain of delay, prejudice or gamesmanship. The Integration Proposal contained in Northeast Florida's application on December 14, 1989, is the same Integration Statement that would result from the acceptance of this Supplement. The omission of the aforementioned material from Northeast Florida's Integration and Diversification Statement should therefore be viewed as "harmless error."

WHEREFORE, having shown good cause, Northeast Florida respectfully requests that the Presiding Judge accept this Supplement to Integration and Diversification Statement and thereby allow its actual integration proposal to be tested by the competing applicants at the hearing on the merits.

Respectfully Submitted,

**NORTHEAST FLORIDA  
BROADCASTING CORP.**

By:



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James L. Winston  
Desmond P. Brown  
RUBIN, WINSTON, DIERCKS & HARRIS  
1730 M Street, N.W.  
Suite 412  
Washington, D.C. 20036  
(202) 861-0870

Its Attorneys

Dated: May 16, 1991

**EXHIBIT 1**

**RUBIN, WINSTON & DIERCKS**

ATTORNEYS AT LAW

ERIC M. RUBIN, P.C.  
JAMES L. WINSTON, P.C.  
ALTER E. DIERCKS  
STEVEN J. STONE  
DESMOND P. BROWN\*

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(202) 861-0870

TELECOPIER NUMBER  
(202) 429-0657

OF COUNSEL  
STUART D. RUBIN\*  
\* ADMITTED ONLY IN NEW YORK

December 14, 1989

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891214

FCC  
FEE SECTION

VIA HAND DELIVERY

Ms. Mildred Williams  
Acting Chief  
Fee Section  
Federal Communications Commission  
1919 M Street, N.W.  
Room L-18  
Washington, D.C. 20554

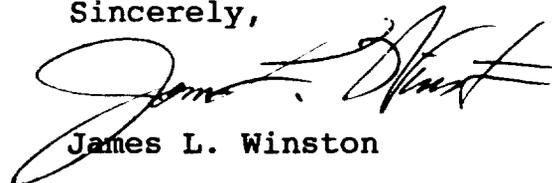
Re: FCC Form 301 -- Application for Authority to  
Construct a New FM Radio Station on Channel 289A  
at Baldwin, Florida

Dear Ms. Williams:

Transmitted herewith on behalf of Northeast Florida Broadcasting Corp. are an original and two copies of an FCC Form 301, Application for Authority to Construct a New FM Radio Station on Channel 289A at Baldwin, Florida. Enclosed also is a check for \$1,800.00 made payable to the Federal Communications Commission to cover the filing fee.

Please contact undersigned counsel if you have any questions concerning this application.

Sincerely,



James L. Winston

Enclosure

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	FEE TYPE	
	FEE AMT:	FOR COMMISSION USE ONLY
	ID SEQ:	FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant <b>Northeast Florida Broadcasting Corp.</b>			Send notices and communications to the following person at the address below:		
Street Address or P.O. Box 7235 Sharbeth Drive South			Name James L. Winston Rubin, Winston & Diercks		
City Jacksonville	State FL	ZIP Code 32210	Street Address or P.O. Box 1730 M Street, N.W., Suite 412	City Washington	State DC
Telephone No. (Include Area Code) (904) 771-8824			ZIP Code 20086		
Telephone No. (Include Area Code) (904) 771-8824			Telephone No. (Include Area Code) (202) 861-0870		

2 This application is for:  AM  FM  TV

(a) Channel No. or Frequency 289A	(b) Principal Community Baldwin	City Baldwin	State FL
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(c) Check one of the following boxes:

- Application for NEW station
- MAJOR change in licensed facilities; call sign: \_\_\_\_\_
- MINOR change in licensed facilities; call sign: \_\_\_\_\_
- MAJOR modification of construction permit; call sign: \_\_\_\_\_  
File No. of construction permit: \_\_\_\_\_
- MINOR modification of construction permit; call sign: \_\_\_\_\_  
File No. of construction permit: \_\_\_\_\_
- AMENDMENT to pending application; Application file number: \_\_\_\_\_

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

Is this application mutually exclusive with a renewal application?  Yes  No

If Yes, state:

Call letters N/A	Community of License City State
---------------------	---------------------------------------

**Section IV-A - PROGRAM SERVICE STATEMENT**

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.  
A

**Section IV-B - INTEGRATION STATEMENT**

Attach as an Exhibit the information required in 1 and 2 below.

Exhibit No.  
B

- 1 List each principal of the applicant who, in the event of a grant of the application on a comparative basis proposes to participate in the management of the proposed facility and, with respect to each such principal, state whether he or she will work full-time (minimum 40 hours per week) or part-time (minimum 20 hours per week) and briefly describe the proposed position and duties.
- 2 State with respect to each principal identified in response to Item 1. above, whether the applicant will claim qualitative credit for any of the following enhancement factors:
  - (a) Minority Status
  - (b) Past Local Residence  
If Yes, specify whether in the community of license or service area and the corresponding dates.
  - (c) Female Status
  - (d) Broadcast Experience  
If Yes, list each employer and position and corresponding dates.
  - (e) Daytime Preference

Integration Statement

Lillian Holt, 100% voting shareholder, President and Director of Northeast Florida Broadcasting Corp., will work full-time (minimum of 40 hours per week) as General Manager of the proposed station. As General Manager, Ms. Holt will have complete responsibility for all major decisions in the day-to-day management of the station. Ms. Holt will supervise all management employees of the station and have final authority with respect to all hiring and firing decisions. Ms. Holt will resign from any then current employment to assume her duties as the General Manager not later than the grant of program test authority for the station.

Ms. Holt has resided within Jacksonville, Florida since February, 1985 and will claim service area local residence credit.

Ms. Holt is an African American and will claim minority enhancement credit.

Ms. Holt is a female and will claim female enhancement credit.

Ms. Holt will claim civic involvement credit for the following civic activities:

- 1986-1988 UNCF Duval County Telethon Campaign
- 1988 Mayor's Educational Council
- 1987 "We Care Festival" at Edward Waters College
- 1989 Arts Assembly of Jacksonville, Board of Directors, Member Arts and Education Committee and Cultural Diversity Committee.
- 1988-1989 Asland House, Volunteered proposal drafting help.
- 1988-1989 Help Center, volunteered proposal drafting help.
- 1989 Duval County School Board, Middle School Coordinating Committee
- 1989 Resource Development Task Force, Jacksonville.

- 1989 National Urban League Aids Advisory Committee  
for South Eastern Region; Aids Literature Review  
Committee
- 1989 Jacksonville Urban League, Minority Aids  
Coalition
- 1989 Jacksonville Chamber of Commerce, Community  
Affairs Department, Board of Directors
- 1989 Planning Committee, Florida Black on Black Crime  
Annual Conference

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks & Harris, hereby certify that a copy of the attached **SUPPLEMENT TO INTEGRATION AND DIVERSIFICATION STATEMENT** was served this 16th day of May 1991, to the following persons by first class mail, postage prepaid:

Honorable Edward Luton  
Administrative Law Judge  
Federal Communications  
Commission  
2000 L Street, N.W.  
Room 225  
Washington, D.C. 20554

Mr. Charles E. Dziejczak  
Chief, Hearing Branch  
Federal Communications  
Commission  
Mass Media Bureau  
2025 M Street, N.W.,  
Room 7212  
Washington, D.C. 20554

Chief, Data Management Staff  
Federal Communications  
Commission  
Mass Media Bureau  
Audio Services Division  
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Broadcasting, Ltd.

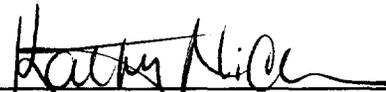
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AGC-230  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

  
Kathy Nickens