

BEFORE THE
Federal Communications Commission

ORIGINAL
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MAR 20 1992

In the Matters of)
)
Request for Temporary Suspension)
of New Commercial FM Station)
Allotment and Application)
Processing)
)
Request for Review of the)
Commission's Commercial FM)
Allotment and Licensing Policy)

Federal Communications Commission
Office of the Secretary
RM No. 7932
RM No. 7933

TO: Chief,
Mass Media Bureau

OPPOSITION

Troy Broadcasting Corporation (hereafter TBC), by its attorneys, and pursuant to Section 1.405 of the Commission's Rules, hereby opposes (1) the National Association of Broadcasters Request for Temporary Suspension of New Commercial FM Station Allotment and Application Processing and (2) the National Association of Broadcasters Petition for Rule Making insofar as it too urges the suspension of the processing of new commercial FM station applications. In support thereof, TBC respectfully states as follows:

1. On February 10, 1992, the National Association of Broadcasters (hereafter NAB) filed the above-referenced requests which inter alia seek the temporary suspension of the processing of new commercial FM station applications. By Public Notice, Report No. 1882, released March 20, 1992, the Commission advised that interested persons may file within 30 days statements opposing or supporting the NAB requests. TBC is the licensee of standard

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broadcast Station WTBF, Troy, Alabama, and an applicant for authority to construct and operate a new FM broadcast station on Channel 234A at Brundidge, Alabama (BPH-880310MJ; MM Docket No. 90-96). As such, it is an interested person within the meaning of Section 1.405 of the Rules.

2. In its requests, the NAB asserts that based on technical, policy and economic considerations, the Commission should undertake prompt review of its policies and rules underlying the licensing of new commercial FM stations. NAB expresses the belief that the Commission would be remiss if, during the pendency of this policy review, it continued to authorize new FM service and that inter alia the Commission should temporarily suspend new FM application processing, including "all applicants that have not been granted a construction permit by the Commission" (NAB Request for Temporary Suspension, at pp. 2-4, and footnote 8).

3. TBC tendered its application for Channel 234A at Brundidge on March 10, 1988. Its application and those of eight others were designated for comparative hearing on February 22, 1990. Hearing Designation Order, 5 FCC Rcd 1696 (1990). After a trial type hearing (in which three of the nine applicants participated), the Presiding Judge granted TBC's application. Initial Decision of Administrative Law Judge Edward J. Kuhlmann, FCC 91D-53, released October 8, 1991 (MM Docket No. 90-96). The case is presently on appeal before the Review Board, which heard oral argument on March 20, 1992.

4. The parties to the Brundidge FM proceeding have expended four years and much effort in the Commission's broadcast application and comparative hearing process. The Brundidge docket runs the complete gamut of comparative hearings - - interlocutory issue pleading, full discovery (interrogatories, document production, depositions) four days of trial, proposed findings, reply findings, exceptions, replies, further issue pleadings and oral argument before the Board (MM Docket No. 90-96).

5. Especially given the procedural posture of the Brundidge proceeding, TBC would most respectfully urge that NAB is remiss in seeking a temporary suspension thereof and that it would be grossly inequitable, if not arbitrary, capricious and an abuse of administrative discretion for the Commission to do so. This is especially so because the activation of Channel 234A would provide Brundidge with a first local transmission service and would, therefore, in the words of the NAB assist the Commission in claiming a "307(b) Victory" (NAB Petition at p. 11).

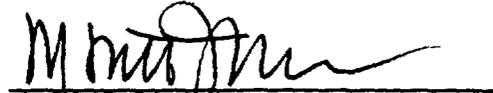
WHEREFORE, TBC would respectfully urge the Commission to deny NAB's request temporarily to suspend new commercial FM station application processing.

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Respectfully submitted,

TROY BROADCASTING CORPORATION

By:



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DATED: April 20, 1992
[29043]

CERTIFICATE OF SERVICE

I, Virginia L. Davidson, a secretary in the law firm of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing "OPPOSITION" were sent April 20, 1992, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

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