

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

In re Applications of
Dixie Broadcasting, Inc.
For Renewals of Licenses of Stations
WHOS(AM) and WDRM(FM),
Decatur, Alabama

)
)
) File Nos. BR-881201WO
) and BRH-8981201WN
)

RECEIVED

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TO THE CHIEF, MASS MEDIA BUREAU

**JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT**

Region V of the NAACP ("NAACP") and Dixie Broadcasting, Inc. ("Dixie") respectfully request the Commission to approve the Agreement between them dated January 22, 1992, appended hereto as Exhibit 1.

The Agreement attempts to resolve allegations raised in a petition to deny, filed March 1, 1989 by the NAACP, which alleged, inter alia, that Dixie had not complied with the Commission's EEO Rule in its operation of WHOS(AM) and WDRM(FM). If approved, the Agreement would fully resolve those allegations. NAACP and Dixie therefore request approval of the Agreement and unconditional grants of the WHOS(AM) and WDRM(FM) license renewal applications.

In support of this Agreement, NAACP is submitting, as Exhibit 2 hereto, documentation of the legal fees and expenses attributable to the attorneys for NAACP who worked on this case. Such fees and expenses well exceed the sum of \$3,750 which Dixie has agreed to reimburse to NAACP should this Agreement be approved.

The Agreement expresses the totality of the understandings between the parties, and no other funds are to flow from Dixie to any party under the Agreement (except insofar as the station may compensate as yet unidentified student interns).

Appended as Exhibits 3 and 4 hereto are the declarations of no consideration of Everald Thompson, Esq., Assistant General Counsel of the NAACP, and J. Mack Bramlett, President of Dixie. These declarations comply with the Commission's requirements applicable to citizen-broadcaster agreements.^{1/}

1/ Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780, 4785-86 (1989) ("Renewal Policies"). Therein, the Commission stated:

Where a petition to deny is settled in exchange for money, we will allow such payments provided they do not exceed the petitioner's legitimate and prudent expenses in prosecuting its petition. We agree with Capital Cities/ABC, UCC et al., ACT et al. and other commenters that we must not discourage the use of petitions to deny in order to further our public interest goals. Petitions to deny play a critical role in our current regulatory scheme. Members of the public, through the use of petitions to deny, serve as private attorneys general informing us of deficiencies in the performance of licensees and helping us ensure that licensees serve the public interest. By permitting recovery of legitimate and prudent expenses, we are preserving the petition to deny process as a monitoring and regulatory tool. It is more likely that individuals or public interest groups will perform their function of informing us of licensee deficiencies if they can maintain hope of recovery of the expenses they incur. To preserve the private attorney general function of petitions to deny, we believe we should provide for the possibility that a petitioner can be made economically whole (fns. omitted).

Reimbursement of these expenses comports both with the FCC's policies on petitions to deny^{2/} and with federal policy regarding reimbursement of fees of litigants serving as private attorneys-general.^{3/}

WHEREFORE, the relief sought in this Joint Request should be granted in its entirety.

Respectfully submitted,

Everald Thompson /dh

Dennis Courtland Hayes
General Counsel
Everald Thompson
Assistant General Counsel
NAACP
4805 Mt. Hope Drive
Baltimore, Maryland 21215
(301) 486-9185

David Honig

David Honig
1800 N.W. 187th Street
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(305) 628-3600

Counsel for NAACP

Daniel F. Van Horn

Dan Van Horn
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Ave. N.W.
Washington, D.C. 20036
(202) 857-6030

Counsel for Dixie Broadcasting, Inc.

February 3, 1992

^{2/} Id.

^{3/} Cf. Sullivan v. Hudson, 109 S.Ct. 2248, 2257 (1989) (approving EAJA reimbursement of fees in administrative proceedings because of the "'mandatory' nature of the administrative proceedings...and their close relation in law and fact to the issues before the District Court on judicial review.")

January 22, 1992

Dixie Broadcasting, Inc.
401 - 14th Street, S.E.
Decatur, Alabama 35601

Attention: Mr. J. Mack Bramlett

Re: Station WHOS(AM), Decatur, Alabama,
and Station WDRM(FM), Decatur, Alabama

This letter sets out the Agreement between Dixie Broadcasting, Inc. ("Dixie"), licensee of Stations WHOS(AM), Decatur, Alabama and WDRM(FM), Decatur, Alabama (collectively, the "Stations"), and Region V of the NAACP and its various branches (the "NAACP").

The NAACP enters into this Agreement as a representative of the radio-listening public of Decatur.

It is understood by all parties to this Agreement that Dixie's substantive commitments in Section I herein relate to Dixie's operation of the Stations during such time as it remains the licensee of the Stations, or until April 1, 1996, whichever comes first. Dixie acknowledges that an application to transfer control over Dixie to Mountain Lakes Broadcasting, Inc. ("Mountain Lakes") is currently pending before the Federal Communications Commission ("FCC"), and agrees that the consummation of that transfer of control shall have no effect whatsoever on Dixie's obligations hereunder. Moreover, if, prior to the Effective Date, Dixie shall have pending before the FCC a Form 314 application for consent to the assignment of the licenses for the Stations or a Form 315 transfer of control of Dixie to some entity other than Mountain Lakes, such application(s) shall manifest the intention of the

proposed assignee(s) or transferee(s) to be bound by the terms of this Agreement and to assume any then-unaffected responsibilities of Dixie under this Agreement. Dixie further consents and concurs that Mountain Lakes shall be bound by that certain agreement by and between the NAACP and Radio WBHP, Inc. ("Radio WBHP") relating to Station WBHP(AM), Huntsville, Alabama, if the proposed merger of Radio WBHP and Dixie to form Mountain Lakes occurs. The obligations of Dixie hereunder, however, shall in no event be affected by the failure of that merger, or any of the other previously-described transactions, to occur.

1. OPERATING PROVISIONS

1.1. When job vacancies occur at the Stations, and such vacancies are not to be filled through promotion from within, Dixie will notify the Huntsville Branch of the NAACP (the "Branch") and at least three (3) additional sources of minority applicants recommended by the Branch. In the event the organizations (other than the Branch) to be notified by Dixie pursuant to this Section 1.1 prove unproductive, Dixie may determine to utilize other organizations or institutions to replace them in the Station's recruitment efforts. In such event, the Branch shall assist Dixie in identifying such replacement organizations or institutions.

1.2. Beginning in June, 1992 or within four months following the Effective Date of this Agreement, whichever is later, the Stations will begin to operate a minority student internship program. Such a program would be designed to permit at least one minority

high school or college student to intern for reasonable compensation (at least the minimum wage) at the Stations on a full-time basis during the summer. To the extent possible, the interns will be exposed to several job functions, such as sales, production, and promotion. The program will be organized in consultation with the NAACP. Dixie will exercise ultimate discretion for selecting the interns and establishing and administering their employment and other compensation. The NAACP recognizes that the creation of this intern program furthers the goals of the FCC's EEO rule.

1.3. The General Manager of the Stations will meet annually with the President of the Branch or his or her designee(s). Among the items on the agendas of these meetings will be the following matters:

- a. Recruitment sources to be used when job openings occur;
- b. Training and internship opportunities for minorities for positions in broadcasting;
- c. Progress toward employment of minorities at the Station, including the Stations' Top Four job categories, consistent with the FCC's Equal Employment Opportunity policies;
- d. Programming and/or public service announcements on the Stations of interest to minority organizations in the Stations' service area; and
- e. Opportunities for minority businesses to provide goods and services to the Stations.

1.4. NAACP recognizes and agrees that its role with respect to the operation of the Stations shall be consultative in nature, and that the operation of the Stations and, in particular, the implementation of Dixie's affirmative action plan and other employment policies, shall be the responsibility of Dixie in its good faith determination, consistent with the requirements of the FCC.

2. IMPLEMENTING PROVISIONS

2.1. Dixie shall reimburse the legitimate and prudent legal expenses of NAACP in connection with its March 1, 1989 Petition to Deny and in connection with the negotiations resulting in this Agreement. The amount to be reimbursed is agreed by Dixie and NAACP to be \$3,750.00. This reimbursement shall be made within five days of the date on which an order by the FCC, on its own or pursuant to delegated authority, approving the reimbursement of such fees, shall become final and no longer subject to reconsideration, review or appeal.

2.2. In contemplation of its commitment to make the reimbursement reflected in ¶2.1 above, Dixie has delivered \$3,750 to a law office escrow or trust account of Arent, Fox, Kintner, Plotkin & Kahn. On the Effective Date of this Agreement, Arent, Fox, Kintner, Plotkin & Kahn will transfer the said \$3,750 by cashier's check or wire transfer to "David Honig, Esquire, Escrow Account #2" at Peoples National Bank of Commerce, Miami, Florida. Arent, Fox, Kintner, Plotkin & Kahn will credit any accumulated interest to Dixie. Mr. Honig has agreed to act as escrow agent for subsequent

disbursements to all NAACP counsel who provided services in connection with this matter.

2.3. Unless otherwise provided, the following terms shall govern in the event of any default of the terms of this Agreement:

- a. In the event that either party breaches this Agreement, the breaching party shall have ten (10) days from receipt of written notice of the breach from the other party to cure said breach, after which time the breaching party shall be deemed to be in default.
- b. In the event that either party is in default in the performance of the terms of this Agreement, the other party shall have available to it all remedies for default to which it is entitled under Alabama law or equity, including the right to seek injunctive relief.
- c. If a default by Dixie is not cured pursuant to subparagraph 2.3(a) of this Agreement, Dixie will pay the reasonable attorney's fees incurred by NAACP in seeking to enforce this Agreement.

2.4. Dixie and NAACP agree that in light of the representations set out in this Agreement, and Dixie's past association with the President of the Decatur/Morgan County Chapter of the NAACP in connection with the Stations' efforts to recruit minority employees, as described in Dixie's previous submissions to the FCC, the pending applications for renewal of the Stations' licenses

EXHIBIT 1

should promptly be granted. Therefore, upon the execution of this Agreement by both parties hereto, NAACP will promptly move for leave to withdraw the Petition to Deny, and will manifest its support of unconditional grants of the applications for renewals of the Stations' licenses. Such motion will be contained in a Joint Petition for approval of this Agreement ("Joint Petition"). Both parties will cooperate in supplying the necessary supportive documentation to be appended to the Joint Petition.

2.5. Dixie's obligations and undertakings as set forth herein shall not be diminished by virtue of any action by the FCC relating to equal employment opportunity or Dixie's pending renewal applications. However, in the event the FCC, on its own or by delegated authority, does not approve any aspect of this Agreement, Dixie and NAACP will confer within seven days of their receipt of notice of such ruling to attempt, in good faith, to reform the Agreement to satisfy their mutual objectives and respond to the FCC's objections.

2.6. The Effective Date of this Agreement shall be five business days following the date on which an order or orders by the FCC, on its own or pursuant to delegated authority, approving this Agreement, and granting at least one of Dixie's applications for renewal of licenses for the Stations, shall become final and no longer subject to reconsideration, review or appeal.

2.7. Dixie and NAACP agrees that this Agreement may be executed by their respective representatives in counterparts, that

facsimile signatures shall be acceptable, and that it will be governed by Alabama law.

Very truly yours,

Dennie Courtland Hayes
General Counsel
Everald Thompson
Assistant General Counsel
National Association for the
Advancement of Colored People
4805 Mt. Hope Drive
Baltimore, Maryland 21215
(301) 486-9185

David Honig
1800 N.W. 187th Street
Miami, Florida 33056
(305) 628-3600
Counsel for NAACP

AGREED:

DIXIE BROADCASTING, INC.

By: 

J. Mack Bramlett

Title: VP G.M.

EXHIBIT 2

DECLARATION OF DAVID HONIG

David Honig states as follows:

1. I am the communications counsel for the national NAACP and its branches, state conferences of branches and regional offices. In that capacity I performed legal services on behalf of Region V of the NAACP in the matter of the applications for renewals of licenses of stations WHOS(AM) and WDRM(FM), Decatur, Alabama.

2. The following NAACP staff attorneys also performed legal services on behalf of the NAACP in this matter: Herbert H. Henderson, former Acting General Counsel; Dennis Courtland Hayes, General Counsel; Brian Carter, formerly Assistant General Counsel; and Everalld Thompson, Assistant General Counsel. I have personal knowledge of their time and charges on this matter.

3. The following chart summarizes the hours spent by each attorney on this case. Hours have been rounded downward to the nearest half hour. Where tasks were performed simultaneously in connection with this and other cases (eg. preparation of the legal arguments in the petition to deny) time for such tasks has been pro-rated. Tasks requiring less than 1/2 hour of time and time spent preparing this fee statement is not reflected below.

4. Tasks reflecting work performed before the filing of the petition to deny took place between January 2, 1989 and March 1, 1989. The settlement negotiations began on November 20, 1991 and concluded on January 22, 1991.

<u>Attorney</u>	<u>Work Performed</u>	<u>Hours</u>
H. Henderson	Reviewed, approved petition to deny	1.0
	<u>TOTAL HOURS, H. HENDERSON</u>	1.0
B. Carter	Counselled and prepared NAACP principals for litigation	4.0
	Pre-litigation research	1.0
	Reviewed, approved petitions to deny	1.5
	<u>TOTAL HOURS, B. CARTER</u>	6.5
E. Thompson	Reviewed, approved Settlement Agreement	1.5
	<u>TOTAL HOURS, E. THOMPSON</u>	1.5
D. Hayes	Reviewed, approved Settlement Agreement	1.0
	<u>TOTAL HOURS, D. HAYES</u>	1.0
D. Honig	Pre-litigation research	4.0
	Counselled NAACP principals concerning Petition to Deny	2.5
	Preparation of petition to deny	7.0
	Negotiation of Settlement Agreement and Preparation of Settlement Petition	9.5
	<u>TOTAL HOURS, D. HONIG</u>	23.0

5. The hourly rates for each attorney are those rates ordinarily compensable to each of them in connection with civil rights litigation in the federal courts. Those rates are as follows: H. Henderson: \$250.00; B. Carter: \$200.00; E. Thompson: \$200.00; D. Hayes: \$250.00; D. Honig: \$200.00.

6. Thus, the total amount of reimbursable fees is as follows:

<u>Attorney</u>	<u>Hours</u>	<u>Attributable Fees</u>
H. Henderson	1.0	250.00
B. Carter	6.5	1,300.00
E. Thompson	1.5	300.00
D. Hayes	1.0	250.00
D. Honig	23.0	4,600.00
<u>TOTAL</u>	<u>33.0</u>	<u>\$6,700.00</u>

7. Out of pocket expenses incurred on this matter and not otherwise reimbursed included the following (itemized to nearest dollar and aggregated among all counsel):

Federal Express (10 packages)	\$162
Paralegal's Time (\$50/hour)	60
Clerk's Time (\$25/hour)	50
Duplication (\$0.10/copy)	7
Telephone (11 calls)	43
Postage	2
Faxes (11)	65
<u>TOTAL OUT OF POCKET EXPENSES</u>	<u>\$389</u>

8. Thus, the total time and charges attributable to this matter is \$7,089.00.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed 1/29/97.

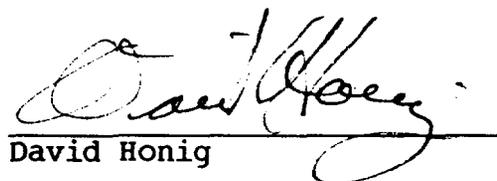

David Honig

EXHIBIT 3

Attached is an unexecuted copy of Mr. Thompson's Declaration.
The original executed copy will be filed with
the Commission shortly.

Declaration of Consideration

I, Everalld Thompson, Assistant General Counsel of the NAACP, on behalf of Region V of the NAACP ("NAACP") hereby certify that neither I nor anyone else representing the NAACP has received or been promised any money or other thing of value in connection with the proposed dismissal of the NAACP's Petition to Deny the license renewal applications of stations WHOS(AM) and WDRM(FM), Decatur, Alabama, with the exception of the proposed reimbursement of a part of NAACP's legitimate and prudent legal fees and expenses.

There are no oral agreements between the NAACP and Dixie Broadcasting, Inc., the licensee of WHOS(AM) and WDRM(FM).

I further certify that the NAACP did not file the Petition to Deny for the purpose of reaching the said Agreement, or for the purpose of reaching any other settlement, or for purposes of delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed _____.

Everalld Thompson

EXHIBIT 4

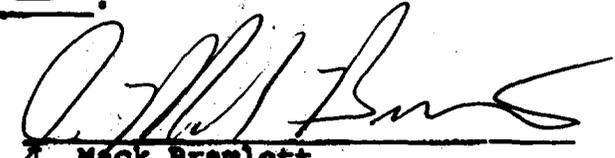
Declaration of Consideration

I, J. Mack Bramlett, Vice President of Dixie Broadcasting, Inc. ("Dixie"), the licensee of stations WHOS(AM) and WDRM(FM), Decatur, Alabama, hereby certify that neither I nor anyone else representing Dixie has paid or promised to pay money or other thing of value in connection with the proposed dismissal of the NAACP's Petition to Deny the license renewal applications of WHOS(AM) and WDRM(FM), with the exception of the proposed reimbursement of part of the NAACP's legitimate and prudent legal fees and expenses.

There are no oral agreements between the NAACP and Dixie.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed Jan-30-92.



J. Mack Bramlett

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 3rd day of February, 1992 caused a copy of the foregoing "Joint Request for Approval of Settlement Agreement" to be delivered via U.S. First Class Mail, postage prepaid, to the following:

Roy Stewart, Esq.
Chief
FCC Mass Media Bureau
1919 M St. N.W.
Washington, D.C. 20554

Glenn Wolfe
Chief
FCC Mass Media Bureau
EEO Branch
2025 M St. N.W.
Washington, D.C. 20554



David Honig