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

In re Applications of	)	MM Docket No. 92-183
	)	
WESTERN INSPIRATIONAL BROADCASTERS INC.	)	File No. BPED-910923MF
	)	
et. al.	)	
	)	
For Construction Permit for a New FM Broadcast Station on Channel 224A, Chico, California	)	

To: Administrative Law Judge
Edward J. Kuhlmann

MASS MEDIA BUREAU'S COMMENTS ON
JOINT REQUEST FOR APPROVAL OF SETTLEMENT

1. On September 8, 1992, Western Inspirational Broadcasters, Inc. (Western), Broad Spectrum Communications, Inc. (BSCI), Phoenix Broadcasting, Inc. (Phoenix) and Ninety-Two Seven, Ltd. (NTSL) filed a joint request for approval of settlement. Included with the joint request is a motion by Phoenix for leave to amend its application to substitute the application of Chico FM, Inc. for Phoenix as the surviving applicant in this proceeding (See Exhibit C to the joint request). On October 2, 1992, the parties filed a supplement to the joint request. The Mass Media Bureau hereby offers its comments in support of the joint request, as supplemented.

2. The settlement consists of two separate agreements. The first, between Phoenix and Western, calls for Phoenix to reimburse Western's reasonable and prudent expenses up to $5,000,

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in exchange for Western seeking the dismissal of its application. Western provides an itemization of expenses establishing that it incurred expenses totalling $2,208 in prosecuting its application.

3. The second agreement calls for a merger of the three remaining applicants in this proceeding. The applicants will form a new corporation, Chico FM, Inc. (CFMI), which will be substituted for the application of Phoenix. Phoenix, which owns two other broadcast stations, BSCI and NTSL will each own one-third of CFMI. CFMI will be controlled by Phoenix, which has the right to name three of CFMI's five directors. The agreement gives BSCI and NTSL options to exchange their CFMI stock for either cash or a 4% stock interest in Phoenix. These options, however, may not be exercised until the 367th calendar day subsequent to the date that CFMI commences broadcast operations. Neither of the merging applicants will receive any "up-front" cash or other consideration in return for their participation in the merger. Should BSCI and/or NTSL exercise their options to obtain cash, the payment would be based on the value of CFMI at the time the option is exercised, as determined by an independent appraiser. Of course, BSCI and NTSL can choose not to exercise either option and retain their one third interest in CFMI.

4. In amending Section 73.3525 of its Rules, the Commission noted that "[a] bona fide merger of business entities represents

a consensual allocation of economic risks and rewards among the merging parties which presumably reflects the assets brought to the joint undertaking by the various participants." Amendment of Section 73.3525 of the Commission's Rules, 6 FCC Rcd 2901, 2902 (1991). In determining whether merger proposals are legitimate, the Commission stated that it will examine with a "heightened level of scrutiny any merger proposal where the dismissing applicant receives cash, either up-front or on a deferred basis, and the payment is guaranteed regardless of the outcome of the business venture." (Id.). Where the Commission has found a bona fide merger to exist, it does not apply the settlement limitations applicable to non-merger settlements. (Id.).

5. In the instant case, it is clear that BSCI's and NTSL's options to put their stock to Phoenix for cash does not affect the legitimacy of the merger. The value of their stock interests will be directly proportional to the success of the business venture as measured by an independent appraisal. The right of each of these two parties to put their CFMI stock to Phoenix in exchange for 4% of that company's stock, also does not appear to affect the legitimacy of the merger. If BSCI and NTSL exercise their options they would not receive cash either up-front or on a deferred basis for their CFMI stock, but rather stock interests in Phoenix. Thus they would continue to share in the risk of the station, albeit on a diluted basis in light of Phoenix's ownership of two other stations. Moreover, proprietary

information provided by the parties to the Bureau but not filed as part of the joint request, relating to the history of the settlement negotiations between the parties, indicates that the parties anticipated that the value of 4% of Phoenix's stock would about equal one-third of the value of CFMI one year after broadcast operations began. Thus, Phoenix believed that the options it granted BSCI and NTSL, which would permit each to exchange its interest in CFMI for 4% of Phoenix's stock, would accurately reflect the added value the new FM station would bring to Phoenix and encourage BSCI and NTSL to put their CFMI stock to Phoenix. Given this background, it appears clear that the parties entered into the option agreements for reasonable business purposes and not to evade the Commission's limitations on reimbursement.

4. The joint request and supporting materials submitted by the parties are otherwise in conformity with the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, they have established that approval of the agreements is in the public interest and that their applications were not filed for an improper purpose. Additionally, the parties have furnished the required justification for consideration to Western in the amount of $2,208.

5. On September 8, 1992, Phoenix filed a motion seeking

deletion of the contingent environmental issue specified against it in the Hearing Designation Order (HDO), 7 FCC Rcd 5276 (1992). By letter dated September 17, 1992, the Assistant Chief, Audio Services Division, Mass Media Bureau, requested that the contingent environmental issue against Phoenix be eliminated form the HDO. In light of this letter the Bureau supports deletion of the issue.

6. In sum, the Bureau supports deletion of the contingent environmental issue against Phoenix, approval of the settlement agreements, dismissal of the Western, BSCI and NTSL applications, acceptance of Phoenix's interrelated petition for leave to amend

its application to substitute the application of CFMI for that of Phoenix and a grant of the Phoenix application, as amended.[1]

Respectfully submitted,
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October 15, 1992

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[1] Although the Bureau does not oppose grant of the requested relief, the Bureau hereby notifies the Presiding Judge and the parties that we have recently learned that the Enforcement Division of the Mass Media Bureau is investigating certain allegations concerning Phoenix. The Bureau is currently awaiting a response from Phoenix to a letter of inquiry concerning these allegations. The Bureau therefore requests that the Presiding Judge withhold action on the pending settlement until such time as the Bureau has had an opportunity to review Phoenix's response and determine what action, if any, may be appropriate. The Bureau will advise the Presiding Judge and the parties of this determination once it is made.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 15th day of October 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Joint Request for Approval of Settlement"** to:

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