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MAY 14 1999

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

Federal Communications Commission  
Office of Secretary

|  |   |                       |
|--|---|-----------------------|
| In re Applications of  | ) | MM DOCKET NO. 88-487  |
|  | ) |                       |
| GOODLETTSVILLE BROADCASTING<br>COMPANY, INC.   | ) | File No. BPH-861215MI |
|  | ) |                       |
| BLED SOE COMMUNICATIONS, LTD.  | ) | File No. BPH-861216MD |
|  | ) |                       |
| HEIDELBERG-STONE BROADCASTING<br>COMPANY   | ) | File No. BPH-861217MA |
|  | ) |                       |
| WILLIAM E. BENNS, III  | ) | File No. BPH-861217MQ |
|  | ) |                       |
| For a Construction Permit for a New FM<br>Station on Channel 246C2 at<br>Goodlettsville, Tennessee | ) |                       |

To: The Commission

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

1. On April 14, 1999, Goodlettsville Broadcasting Company, Inc. ("GBC"), Bledsoe Communications, Ltd. ("Bledsoe") and William E. Bennis, III ("Bennis") (collectively, the "Joint Requesters") filed a "Joint Request for Approval of Agreement" ("Joint Request"). On April 16 and 28, 1999, Bennis filed supplements to the Joint Request. On May 7 and May 11, 1999, GBC filed supplements to the Joint Request. The Mass Media Bureau submits the following comments.

2. The Joint Requesters are three of the four parties whose applications in this proceeding are still pending. GBC, Bledsoe and Bennis propose to merge, with each holding 1/3 of the equity and the controlling votes of a new company to be called Mid-TN Broadcasters, LLC ("Mid-TN"). Bennis proposes to amend his application to substitute Mid-TN as the applicant. In exchange for their interests in Mid-TN, GBC and Bledsoe will

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dismiss their applications.

3. Bennis/Mid-TN further proposes to amend its application to specify a new transmitter site. The Joint Requesters represent that the new site will be "fully spaced" and that it will be designated and owned (or controlled) by an entity called DBBC, L.L.C. ("DBBC"). DBBC will lease the site to Mid-TN for a term of 10 years at \$1,000 per month.

4. In addition to its role with respect to the new transmitter site, DBBC is to obtain an option to purchase all of the equity of Mid-TN for a pre-determined price. The option fee (the amount and terms of payment of which are not disclosed) is non-refundable. DBBC has up to 30 days after grant of the permit to Mid-TN has become final to exercise its option. The purchase price will vary depending on the amount expended by Mid-TN should it be required to compete with the remaining applicant in this proceeding, Heidelberg-Stone Broadcasting Company ("HSBC"), in an auction for the frequency.<sup>1</sup> In this regard, DBBC will advance to Mid-TN funds up to a pre-determined amount to allow Mid-TN to participate in the auction. In the event Mid-TN's bid exceeds the pre-determined amount, Mid-TN can request additional funds from DBBC or make separate arrangements for additional funds to enable Mid-TN to continue bidding. Should DBBC exercise its option, the amounts advanced

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<sup>1</sup> The settlement agreement also provides that, if HSBC wishes to join the settlement, it will be given a membership interest in Mid-TN; however, the four (now-merged) applicants would be required to convey their entire interest in Mid-TN to DBBC.

by DBBC<sup>2</sup> will be credited against the purchase price. If DBBC does not purchase Mid-TN's equity, Mid-TN promises to repay the amounts advanced by DBBC no later than 3 years after the date monies were originally advanced. The amounts to be advanced by DBBC and the option price it will pay GBC, Bledsoe and Bennis appear in schedules which are referenced in the agreement but not included with the materials submitted to the Commission. The agreement also provides that Mid-TN can re-purchase DBBC's option by giving notice thereof prior to DBBC's exercise of the option and by paying DBBC an amount equal to the sums advanced by DBBC, plus a sum (together with a 25% premium) based on the auction price. Finally, if Mid-TN is unsuccessful in the auction, it must file a petition to deny the HSBC application. DBBC will fund such a petition at least up to \$25,000.

5. The Joint Requesters contend that their settlement agreement serves the public interest because grant thereof would simplify this proceeding and put in place a structure, which, they hope, will lead to a global settlement. They submit that the Commission has approved similar settlements, citing *Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253 (1997) and *Heidi Damsky*, 13 FCC Rcd 11688 (1998), where not all of the parties in the proceeding joined the settlement, and *Frank Digesu, Sr.*, 9 FCC Rcd 7866 (Rev. Bd. 1994) and *Lamar Communications, Inc.*, 6 FCC Rcd 7022 (OGC 1991), where third parties held options to acquire the permit. Citing the *Balanced Budget Act of 1997*, Pub. L. No. 105-33, 111 Stat.

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<sup>2</sup> The amounts advanced could include not only what DBBC lends relative to the auction but also amounts loaned to help construct the station. DBBC would advance such construction loans pursuant to a time brokerage agreement ("TBA"), which DBBC and Mid-TN have agreed to enter into after the Commission issues the construction permit. Under the TBA, DBBC proposes to pay Mid-TN \$5,000 per month, plus Mid-TN's actual operating costs for the prior month, for a term of 5 years.

251 (1997), specifically, new Section 309(j)(6)(E) of the Communications Act,<sup>3</sup> they also argue that Congress wanted the Commission to resolve mutually exclusive licensing proceedings without resort to auctions where possible.

6. Review of the settlement agreement, including the declarations of the principals of GBC, Bledsoe and Bennis reflect that they have addressed the requirements of Section 73.3525 of the Commission's Rules, which implement Section 311(c) of the Communications Act of 1934, as amended. Specifically, the Joint Requesters have: submitted their agreement, albeit without the referenced schedules; proffered a public interest justification for grant of the Joint Request; affirmed that their applications were not filed for the purpose of reaching or carrying out a settlement agreement; and certified that their arrangement constitutes a *bona fide* merger. Nevertheless, as explained further herein, the proposed arrangement may conflict with the Communications Act and related Commission rules and policies.

7. In essence, the agreement contemplates combining three of the applicants so that they can act as agents for DBBC, a non-party. In this regard, DBBC has promised to provide at a minimum a sum which the parties to the agreement contemplate will be sufficient to prevail at an auction which pits Mid-TN against HSBC. In exchange, DBBC basically acquires an option to purchase all of Mid-TN's equity; *i.e.*, the rights to the construction

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<sup>3</sup> That subsection provides:

(6) Rules of Construction. - Nothing in this subsection, or in the use of competitive bidding, shall --

...

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

permit.<sup>4</sup> Moreover, in the event HSBC prevails in the auction, the agreement with DBBC obligates Mid-TN to file a petition to deny the HSBC application. The totality of the agreements indicates that DBBC's role goes well beyond that of a mere option holder and that it has become for all practical purposes a "white knight." However, in *Amendment of Parts 1, 73 and 74 - Competitive Bidding*, 13 FCC Rcd 15920, 15949-50 (1998), recon. FCC 99-74, released April 20, 1999 ("*Auction Order*"), the Commission determined that "white knight" settlements which did not resolve a proceeding and which allowed a non-party to acquire bidding rights were contrary to the spirit, if not the letter, of Section 309(1)(2) of the Communications Act, which limits participation in a broadcast auction involving pre July 1, 1997 applications only to those persons who had filed qualifying applications. Here, although DBBC does not directly acquire the right to bid against HSBC, the totality of the circumstances raises questions about the extent to which DBBC - and not the merged applicants - will control the merged applicants' bidding strategy as well as their behavior in the event they do not prevail at the auction. Under Section 309(1)(2), as interpreted by the Commission, DBBC has no right to "participate in an auction that is statutorily limited to pre-July 1st applicants. *Auction Order*, 13 FCC Rcd at 15942 (para. 57). Moreover, a second problem is posed in that the Commission stated that it was not inclined to waive any of its settlement rules and policies -- including those involving "white knights" -- beyond the 180-

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<sup>4</sup> The Bureau recognizes that Mid-TN can re-purchase the option. However, in light of the Joint Requesters' decision not to disclose the option fee paid by DBBC and their decision not to disclose with greater specificity the amount they might have to pay to re-purchase DBBC's option, the Bureau is in no position to assess whether the re-purchase option is realistic or illusory. Cf. *Gifford Orion Broadcasting, Ltd.*, 8 FCC Rcd 3577, 3579 (para. 10) (Rev. Bd. 1993), rev. granted, 9 FCC Rcd 314 (1993).

day period that ended February 1, 1998. *Auction Order*, 13 FCC Rcd at 15947-50 (paras. 73-79). Here, the proposed settlement was reached in April 1999, well after the February 1, 1998, deadline.

8. Accordingly, unless HSBC joins the settlement or unless the Commission determines that DBBC's role is not akin to that of a "white knight," the Joint Request should be denied insofar as the settlement agreement is inconsistent with the *Auction Order*. Should the Commission determine that DBBC has not become the equivalent of a "white knight," the Commission should withhold final action on the Joint Request until it has received the amendment which substitutes Mid-TN for Benns. *See Global Information Technologies, Inc.*, 12 FCC Rcd 11808, 11810 (1997).

Respectfully submitted,  
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May 14, 1999

**CERTIFICATE OF SERVICE**

Talya Lewis, secretary of the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has on this 14th day of May, 1999, sent by first class United States mail, copies of the foregoing "Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement" to:

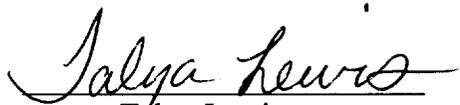
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