



Federal Communications Commission
Washington, D.C. 20554

December 4, 2008

In Reply Refer to:
1800B3-ATS

Rama Communications, Inc.
3765 N John Young Parkway
Orlando, Florida 32804

Genesis Communications I, Inc.
2110 Powers Ferry Road
Suite 198
Atlanta, Georgia 30339

Re: **AM Broadcast Auction 84**
MX Group 84-163A

Micanopy, Florida
Facility ID No. 161019
File No. BNP-20040130AFB

Application for New AM Station
Construction Permit

WHOO(AM), Kissimmee, Florida
Facility ID No. 54573
File No. BMJP-20040128AKY

Application for Major Change in
Licensed AM Station

Dear Applicants:

We have before us two mutually exclusive AM applications. Rama Communications, Inc. ("Rama") proposes a new AM station at Micanopy, Florida, and Genesis Communications I, Inc. ("Genesis") proposes to change the community of license of Station WHOO(AM) from Kissimmee, Florida, to Winter Park, Florida. As discussed below, we are unable to find a dispositive preference for either of the applicants under Section 307(b) of the Communications Act of 1934, as amended¹ (the "Act"), and the applications will therefore proceed to auction.

¹ 47 U.S.C. § 307(b).

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.² However, in the *Broadcast First Report and Order*, the Commission determined that competitive bidding requirements did not circumscribe its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.³ The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.⁴

Discussion. After careful consideration of both applications, we have determined that neither of the proposals is entitled to a dispositive Section 307(b) preference. Neither applicant proposes a first or second full-time aural service, or qualifies for a priority (3) preference by providing a first local transmission service to their respective community of license. There is currently one radio station licensed to Micanopy, Florida (population 653 persons), and three radio stations licensed to Winter Park, Florida (population 24,090 persons). Thus, both proposals were considered under priority (4), other public interest matters.

Under priority (4), the Commission has generally favored the provision of service to the greatest number of people.⁵ The applicants provided the following information regarding the number of persons served by their proposals: Rama states that its Micanopy, Florida, proposal will serve 442,720 persons within its 0.5 mV/m contour, 257,593 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 3,862 persons. Genesis states that the population within the current WHOO(AM) 0.5 mV/m daytime contour is 1,828,797, and the population within the proposed 0.5 mV/m daytime contour is 2,012,164 persons. Genesis further states that the population within the current WHOO(AM) 2 mV/m contour is 1,139,945 and the population within the proposed 2 mV/m contour is 1,187,951 persons. Finally, Genesis states that the population within the proposed nighttime interference-free contour is 193,095 persons.⁶

² See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* (“*Broadcast First Report and Order*”), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

³ *Broadcast First Report and Order* at 15964-65.

⁴ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

⁵ See *Nelson Enterprises, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13350 (2004) (finding no error in the use of population coverage to award a Section 307(b) preference under priority (4) and endorsing continued use of population coverage differentials in evaluating Section 307(b) analyses in AM auction applications). See also *Greenup, Kentucky and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493, 1497 (1991) (“[U]nder priority four, other public interest matters, we will first consider simple net differences in the number of persons newly served by each proposal”).

⁶ Genesis’ Section 307(b) showing only provides the population that would be encompassed by Station WHOO(AM)’s new Winter Park facility, failing to account for the population that would lose service as a result of the proposed relocation.

Staff analysis reveals that Rama's Micanopy proposal will serve 425,287 persons within its 0.5 mV/m contour, 241,513 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 4,956 persons.⁷ Staff analysis further reveals that Genesis' Winter Park proposal for WHOO(AM) would provide daytime service that overlaps much of WHOO(AM)'s licensed daytime coverage area, with relatively small areas of gain and loss. Accounting for those areas that would gain and lose daytime service from WHOO(AM), the staff finds a net daytime service gain of 33,805 persons. In contrast, the nighttime service areas for the licensed and proposed WHOO(AM) facilities are entirely separate. WHOO(AM)'s licensed facility provides a nighttime interference-free service to 34,067 persons; Genesis' proposed Winter Park facility would serve 190,523 persons at night, resulting in a net nighttime service gain of 156,456 persons.

Staff analysis illustrates that the Rama proposal for Micanopy would provide new daytime service to a greater number of persons. In contrast, Genesis' Winter Park proposal will provide new nighttime interference-free service to the greatest population.⁸ Genesis' superior Winter Park nighttime proposal therefore balances Rama's superior Micanopy daytime proposal. The communities of Micanopy and Winter Park are already provided abundant reception service.⁹ Given these circumstances, no dispositive Section 307(b) preference emerges between the parties. In the *Broadcast First Report and Order*, the Commission stated that, once the staff has undertaken the threshold Section 307(b) analysis, "if no Section 307(b) determination is dispositive (or if more than one application remains for the community with the greater need), the applicants must then be included in a subsequently scheduled auction."¹⁰ Accordingly, we find that the applicants in MX Group 84-163A should proceed to auction.

⁷ Pursuant to 47 C.F.R. § 73.182(d), the AM groundwave signal strength necessary to provide primary service to communities with populations of 2,500 or more persons is 2 mV/m, and the AM groundwave signal strength necessary to provide primary service to communities with populations less than 2,500 persons is 0.5 mV/m. Thus, when counting the population within an AM daytime 2 mV/m field strength contour, all communities, regardless of size, are included, but when counting the population within an AM daytime 0.5 mV/m field strength contour, communities with populations of 2,500 or more persons that are located inside the 0.5 mV/m contour but outside the 2 mV/m contour must be excluded from the population count. The practical effect of the rule is that an applicant is not recognized as serving the community if it fails to render the specified signal strength intensity to the community. See *Amendment of the AM Broadcast Station Rules with Respect to Signal Coverage Requirements over Community Business and Factory Areas*, Report and Order, 49 FR 23345 (1984) (amending rule to define primary service signal strength requirement based only on a population standard).

⁸ Currently, Station WHOO(AM) is a Class D station with limited nighttime operation. In *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rulemaking, 22 FCC Rcd 15890, 15891 (2007), the Commission recognized the importance of AM nighttime service and addressed the disparity between day and night service as one of the technical challenges specific to the AM band.

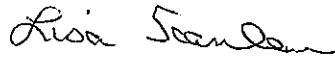
⁹ The Commission considers five or more reception services to be "abundant." *Family Broadcast Group*, 53 RR 2d 662 (Rev. Bd. 1983), *review denied*, FCC 83-559 (Comm'n Nov. 29, 1983). See also *LaGrange and Rollingwood, Texas*, Memorandum Opinion and Order, 10 FCC Rcd 3337 (1995).


¹⁰ *Broadcast First Report and Order*, 13 FCC Rcd at 15965. The Commission recently upheld this approach in *Sharon Berlin Inglis*, FCC 08-114 (Comm'n May 22, 2008) ("[w]hile the implementation of the Commission's competitive bidding authority under Section 309(j) of the Act accommodates the agency's statutory duty under that Section to effect an equitable distribution of stations, it does not mandate a dispositive Section 307(b) finding in all MX Groups. Often, no community merits a dispositive preference after a Section 307(b) analysis, and in such cases, the staff must resolve the application conflict through the auction authority granted by Congress.").

We find this approach consistent with our statutory directive to grant construction permits pursuant to our competitive bidding procedures.¹¹

Conclusion. Accordingly, IT IS ORDERED that the Rama Communications, Inc. application for Micanopy, Florida (File No. BNP-20040130AFB), and the Genesis Communications I, Inc. application to change the community of license of Station WHOO(AM) to Winter Park, Florida (File No. BMJP-20040128AKY), SHALL PROCEED TO AUCTION, the date of which will be announced by a subsequent Public Notice.

Sincerely,



Peter H. Doyle 
Chief, Audio Division
Media Bureau

cc: John C. Trent, Esq.
Christopher D. Imley, Esq.

¹¹ See 47 U.S.C. § 309(j)(1); *Broadcast First Report and Order*, 13 FCC Rcd at 15924, 15964.