



Federal Communications Commission
Washington, D.C. 20554
October 15, 2007

In Reply Refer to:
1800B3-LAS/JP

Capstar TX Limited Partnership
2625 S. Memorial Drive – Suite A
Tulsa, OK 74129

GHB of Augusta, Inc.
1776 Briarcliff Road, NE – Suite A
Atlanta, GA 30306

Fireside Media
P.O. Box 1161
Meridian, MS 39302

**Re: AM Broadcast Auction 84
MX Group 84-113**

WAAX(AM), Gadsden, Alabama
Facility ID No. 22996
File No. BMJP-20040130AXT

**Application for Major Change in
Licensed AM Station**

Mandeville, Louisiana
Facility ID No. 160395
File No. BNP-20040127AJY

Pass Christian, Mississippi
Facility ID No. 161128
File No. BNP-20040130APU

**Applications for New AM Station
Construction Permits**

Dear Applicants:

We have before us three mutually exclusive AM applications.¹ Capstar TX Limited Partnership (“Capstar”) proposes to change the community of license of Station WAAX(AM) from Gadsden, Alabama, to Mountain Brook, Alabama; GHB of Augusta, Inc. (“GHB”) proposes a new AM station at Mandeville, Louisiana; and Fireside Media (“Fireside”) proposes a new AM station at Pass Christian, Mississippi. These three applications were designated MX Group 84-113 in AM Auction No. 84. As discussed below, we find a dispositive preference for Capstar under Section 307(b) of the Communications Act of 1934, as amended² (the “Act”), and therefore direct Capstar to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

Background. On June 15, 2005, the Media Bureau released a *Public Notice* containing a list of 802 MX AM Auction No. 84 window-filed Form 301 tech box applications.³ The *AM MX Public Notice* defined three categories of MX applications, detailed the filings required for each category, and specified a September 16, 2005, deadline for submitting the required filings to the Commission. This filing deadline was extended to October 31, 2005, because of Hurricane Katrina.⁴ MX Group 84-113 was listed as a Category I MX group, eligible for settlement. Category I applicants were required to file a settlement agreement, an engineering solution resolving all mutual exclusivities, or a Section 307(b) showing by the filing deadline. On October 27, 2005, GHB filed a Section 307(b) showing and on October 31, 2005, Capstar and Fireside filed Section 307(b) showings.

In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.⁵ However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with 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)

¹ A fourth mutually exclusive applicant, 550 AM, Inc., filed a technical resolution (File No. BMJP-20051031AGW) on October 31, 2005, which removed the original major modification application (File No. BMJP-20040129ACJ) from MX Group 84-113. On February 5, 2007, the fifth mutually exclusive application filed by Pittman Broadcasting Services, LLC (File No. BMJP-20040126APJ) was dismissed as moot, because the underlying license for Station WMYQ(AM) was cancelled on November 7, 2006. The sixth mutually exclusive application filed by Buddy Tucker Association, Inc. (File No. BNP-20040130ADO) was dismissed on July 25, 2006, pursuant to the applicant’s request. The seventh and eighth mutually exclusive applications filed by Dowdy & Dowdy Partnership (File No. BNP-20040130AHC) and 610 AM, Inc. (File No. BMJP-20040130ATS) were dismissed on March 21, 2006. See *AM Auction No. 84 Mutually Exclusive Applications Dismissed for Either Failing to File or Untimely Filing of Section 307(b) Showing*, Public Notice, 21 FCC Rcd 2912 (MB 2006).

² 47 U.S.C. § 307(b).

³ See *AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction, Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions*, Public Notice, 20 FCC Rcd 10563 (MB 2005) (“*AM MX Public Notice*”).

⁴ See *Auction No. 84 Settlement Period and Section 307(b) Submission Deadline Extended to October 31, 2005*, Public Notice, 20 FCC Rcd 14492 (MB 2005).

⁵ 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).

analysis prior to conducting an auction for mutually exclusive AM applications.⁶ 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.⁷

Discussion. All three applications propose a first local transmission service to their respective communities and claim priority (3) under the applicable allotment priorities. Where, as in this instance, each proposed new AM station's 5 mV/m contour could cover a significant portion of an Urbanized Area, we do not automatically award a first local service preference. Rather, we have used the criteria set forth in *Faye and Richard Tuck* ("*Tuck*")⁸ as a guideline in determining whether the proposed community has an identity distinct from the Urbanized Area, and is therefore entitled to consideration for a first local transmission service. These criteria are: (1) the degree to which the proposed station will provide coverage to the Urbanized Area; (2) the size and proximity of the proposed community of license relative to the central city of the Urbanized Area; and (3) the interdependence of the proposed community of license and the Urbanized Area, utilizing the eight *Tuck* factors.⁹ Both Capstar and Fireside submitted information addressing the *Tuck* criteria in their 307(b) showings. GHB's proposed community of license, Mandeville, is the central city of the Mandeville-Covington Urbanized Area, thus a *Tuck* showing was not required.¹⁰

Mountain Brook proposal: Capstar's proposed station at Mountain Brook will place a daytime 5 mV/m contour over the entire Birmingham, Alabama, Urbanized Area. The record reflects that the population of Mountain Brook (20,604 persons) is 8.4 percent of the population of Birmingham (242,820 persons), and Mountain Brook is approximately five miles away from the center of the Birmingham Urbanized Area. However, these facts do not necessarily preclude a finding that Mountain Brook

⁶ *Broadcast First Report and Order* at 15964-65.

⁷ 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).

⁸ *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

⁹ The eight factors set forth in *Tuck* are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services.

¹⁰ We note that while Mandeville does not have a local transmission service, its sister city in the Urbanized Area, Covington, currently has one licensed broadcast station.

warrants a first local service preference.¹¹ While these two factors are pertinent, they are less significant than evidence substantiating the independence of Mountain Brook from Birmingham.

Capstar contends that, based on the *Tuck* factors, Mountain Brook is independent from Birmingham. In support, Capstar submits that Census Bureau statistics reflect that 15.5 percent of Mountain Brook's employed residents work in Mountain Brook (factor 1). Capstar states that Mountain Brook is served by a local quarterly newsletter, *The Reporter* (factor 2). Capstar states that Mountain Brook's incorporated status indicates that Mountain Brook's community leaders and residents perceive their community as being separate from the larger area of Birmingham (factor 3). Mountain Brook has its own local government, consisting of an elected mayor and city council, along with a city manager, and various other functionaries (factor 4). Mountain Brook has its own zip code and post office (factor 5). Capstar states that numerous commercial establishments exist within Mountain Brook, including professional offices, banks, grocery stores, and numerous retail establishments. In addition, Mountain Brook is home to a number of medical providers serving the residents (factor 6). Capstar states that Mountain Brook and Birmingham are not part of the same advertising market because Mountain Brook establishments can reach Mountain Brook residents directly through *The Reporter* (factor 7). Mountain Brook provides its residents with public schools, fire and police protection and an independent library (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Mountain Brook is independent of Birmingham. As such, Capstar's application meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Mountain Brook, Alabama.¹²

Pass Christian proposal: The record reflects that Fireside's proposed station at Pass Christian is located in and will place a daytime 5 mV/m contour over a significant portion of the Gulfport-Biloxi, Mississippi, Urbanized Area. The population of Pass Christian (6,579 persons) is 9.2 percent of the population of Gulfport (71,127 persons) and 12.9 percent of the population of Biloxi (50,644 persons), and Pass Christian is approximately thirteen miles away from the center of the Gulfport-Biloxi Urbanized Area. However, these facts do not necessarily preclude a finding that Pass Christian warrants a first local service preference.¹³ While these two factors are pertinent, they are less significant than evidence substantiating the independence of Pass Christian from Gulfport-Biloxi.

Fireside contends that, based on the *Tuck* factors, Pass Christian is independent from Gulfport-Biloxi. In support, Fireside states that Pass Christian has its own local economy and businesses which offer employment opportunities to its residents (factor 1). Pass Christian news and interests are served by the Chamber of Commerce newsletter, a website, and the *Seacoast Echo*, a newspaper published outside of Gulfport-Biloxi. Pass Christian news is also covered in Gulfport's large regional daily paper, the *Sun Herald* (factor 2). Fireside states that the use of Pass Christian in many of the town's business names and the strong presence of the Pass Christian Chamber of Commerce indicates that Pass Christian residents

¹¹ See *Bay St. Louis and Poplarville, Mississippi*, Report and Order, 10 FCC Rcd 13144 (MMB 1995) (first local service preference awarded when population difference was only 4.48 percent); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (first local service preference awarded when contour coverage of 85-95 percent of Urbanized Area and population difference of less than 1 percent); *Oraibi, Arizona*, Report and Order, 14 FCC Rcd 13547 (MMB 1999) (first local service preference awarded when contour coverage of 90 percent of Urbanized Area).

¹² Furthermore, we find that Mountain Brook, Alabama, constitutes a community suitable for licensing purposes. See *Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992).

¹³ See note 11 *supra*.

perceive their community as being separate from the larger area of Gulfport-Biloxi (factor 3). Pass Christian is incorporated and has its own local government, consisting of an elected mayor and five aldermen (factor 4). Pass Christian has its own zip code, post office and phone book independent of the Gulfport-Biloxi area (factor 5). Fireside states that numerous commercial establishments exist within Pass Christian, including restaurants, banks, retail stores, realtors, and other commercial establishments. Pass Christian is also home to a number of medical facilities serving the residents (factor 6). Fireside states that Pass Christian businesses can advertise directly to residents through the *Seacoast Echo* and the Chamber of Commerce newsletter, indicating that Pass Christian should be considered in a separate advertising market from Gulfport-Biloxi (factor 7). Pass Christian provides its own police and fire protection to its residents, along with an independent school and library system (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Pass Christian is independent of Gulfport-Biloxi.¹⁴ As such, Fireside's application meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Pass Christian, Mississippi.¹⁵

After careful consideration of all three applications, we have determined that the Capstar proposal is entitled to a dispositive Section 307(b) preference. Capstar, Fireside, and GHB each propose a first local transmission service and claim priority (3) under the applicable allotment priorities. Where, as in this instance, listeners in each of the communities receive five or more aural services,¹⁶ the Commission has consistently based its decision on a straight population comparison and preferred the community with the larger population.¹⁷ We therefore, find it in the public interest to give preference to a first local service to the larger community of Mountain Brook (with a 2000 U.S. Census population of 20,604 persons) over a first local service to the smaller communities of Pass Christian (with a 2000 U.S. Census population of 6,579) and Mandeville (with a 2000 U.S. Census population of 10,489).

¹⁴ While factor 2 indicates minimal dependence of Pass Christian on Gulfport-Biloxi, we have considered a community independent when evidence supporting a majority of these factors demonstrates that the proposed community of license is distinct from the Urbanized Area. Thus, not every factor must weigh in favor of independence. See, e.g., *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

¹⁵ Furthermore, we find that Pass Christian constitutes a community suitable for licensing purposes. See note 12 *supra*.

¹⁶ All three communities are well-served by at least five full-time aural services. See *Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd.), *rev. denied*, Order, FCC 83-559 (1983) (Commission considers areas that receive five or more services to be abundantly served).

¹⁷ See, e.g., *Cameron and Hackberry, Louisiana*, Report and Order, 20 FCC Rcd 16267 (MB 2005) (decision based on population difference of 266 people); *Rose Hill, North Carolina*, Memorandum Opinion and Order, 15 FCC Rcd 10739 (MMB 2000) (decision based on population difference of 370 people); *Blanchard, Louisiana and Stephens, Arkansas*, Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995) (decision based on population difference of 38 people).

Additionally, Capstar has demonstrated that changing Station WAAX(AM)'s community of license from Gadsden to Mountain Brook results in a preferential arrangement of assignments. Capstar's proposed major change to Station WAAX(AM) meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Mountain Brook, Alabama. Retaining a fifth local service at Gadsden, the current community of license, would be evaluated under Priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at Mountain Brook, under priority (3) is preferred to retaining a fifth local service under priority (4).¹⁸ For these reasons, Capstar will continue in the application process by filing a complete FCC Form 301 application.¹⁹

Conclusion. Accordingly, IT IS ORDERED that Capstar, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a major change to Station WAAX(AM), Gadsden, Alabama (File No. BMJP- 20040130AXT), pursuant to the procedures set forth in the Commission's Rules.²⁰ With its application, Capstar must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. Capstar must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.²¹ Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,²² and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the

¹⁸ See *Dundee and Odessa, New York*, Report and Order, 22 FCC Rcd 13734 (MB 2007) (preferential arrangement of allotments found when community of license change provided first local transmission service to community versus retaining second local transmission service at current community of license). Furthermore, there will not be removal of the sole local service at Gadsden. See also note 12 *supra*.

¹⁹ After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application, must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order*, 13 FCC Rcd at 15985. The staff will dismiss the applications filed by Fireside (File No. BNP-20040130APU) and GHB (File No. BNP-20040127AJY) upon action taken on the application filed by Capstar.

²⁰ See 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

²¹ See *id.* §§ 73.24, 73.37, and 73.182.

²² *Id.* § 73.3571.

electronic filing website at <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.²³

Sincerely,

A handwritten signature in blue ink that reads "Lisa Scanlan".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mark N. Lipp, Esq.
Matthew H. McCormick, Esq.

²³ *Id.* § 73.3568.