

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-580

In re Applications of

BOYCE DOOLEY File No. BPH-871021MA
(hereafter Dooley)

SAFE BROADCASTING File No. BPH-871022MC
CORPORATION
(hereafter Safe)

TRI-STATE File No. BPH-871023MJ
BROADCASTING COMPANY
(hereafter Tri-State)

LYNN S. GWYN File No. BPH-871023MM
(hereafter Gwyn)

KAY W. ABBOTT AND File No. BPH-871023MR
JOHN W. ABBOTT D/B/A
FAITH BROADCASTING
(hereafter Faith)

For Construction Permit
for a New FM Station on
Channel 239A, Trion, Georgia

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹

2. *Preliminary Matters.* Safe is the licensee of WSAF(AM), Trion, Georgia which operates as a daytime-only AM station. Safe has indicated that it and the officers, directors and shareholders of Safe, Terry R. Adams and Tony Wilkie, will divest themselves of any and all interest in and connection with WSAF(AM) in the event that Safe's application for the instant allocation is granted. Accordingly, an appropriate divestiture condition will be specified below.

3. Tri-State is the licensee of WGTA(AM), Summerville, Georgia. Tri-State has indicated that it and its principals, William B. Farrar, Charles C. Farrar, and Carolyn K. Farrar, will divest themselves of all interest in WGTA(AM) in the event that Tri-State's application for the instant allocation is granted. Accordingly, an appropriate divestiture condition will be specified below.

4. Section II, Item 4 of FCC Form 301 (October 1986) requires that a corporate applicant list its officers, directors and stockholders. Tri-State fails to list its directors in

Item 4, Section II. Consequently, Tri-State will be required to amend its application by disclosing its directors and, if its directors are not the same parties as its officers and stockholders, by providing the citizenship and media interests of these directors in accordance with Section II, Items 2,7,8.

5. Lynn S. Gwyn, the individual applicant for the instant allocation, and her husband, Charles Rich Gwyn, are the principals of Radix Broadcasting, Inc., proposed assignee of WLFA(AM) LaFayette, Georgia. WLFA(AM)'s call sign was changed to WQCH(AM) on May 1, 1988 and the assignment (BAL-880324EB) was approved on May 5, 1988. Gwyn has disclosed that she and her husband are presently the operations manager and general manager, respectively, of WQCH(AM). The Gwyns have indicated that they will divest themselves of their interests in WQCH(AM) in the event that Lynn S. Gwyn's application for new FM service in Trion, Georgia is granted as the result of a final comparative decision of the Commission. This divestiture pledge is deficient, since it is contingent on grant of the instant application pursuant to a decision following a comparative hearing. Gwyn's conditional divestiture pledge does not insure compliance with the Commission's cross-interest policy because there is no promise to divest in the event of grant pursuant to a means other than a hearing, *i.e.*, grant pursuant to a settlement agreement executed by mutually exclusive applicants. *See Reexamination of the Commission's Cross-Interest Policy*, 2 FCC Rcd 3699 (1981). Accordingly, an appropriate cross interest issue will be specified.

6. In response to Section VI, FCC Form 301, the applicant below has indicated that it will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396A, the 5-point model EEO Program. The EEO program submitted by the following applicant is incomplete or is otherwise deficient in the manner described. Accordingly, the listed applicant will be required to file an amended EEO Program with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANT

DEFICIENCY

Tri-State

Failed to identify specific publications which will be utilized to attract women and minority candidates.

7. Gwyn petitioned to amend her application on April 25, 1988. The accompanying amendment was filed after April 7, 1988, the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

8. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Gwyn has not completed Item 4 correctly. Gwyn's application gives a post office box number as the residence address for Lynn S. Gwyn. Accordingly, Gwyn must submit an amendment which gives all the informa-

tion required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Gwyn, whether the involvement of Lynn S. Gwyn and her husband Charles Rich Gwyn with Station WOCH(AM) is consistent with the Commission's cross-interest policy and, if not, whether a grant of the application would be in the public interest.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

12. IT IS FURTHER ORDERED, That in the event of grant of Safe's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that it, its principals and stockholders, Terry R. Adams and Tony Wilkie, have divested themselves of all interests in and severed all connections with Station WSAF(AM), Trion, Georgia.

13. IT IS FURTHER ORDERED, That, in the event of grant of Tri-State's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein pursuant to program test authority, the permittee shall certify to the Commission that it and its principals, William B. Farrar, Charles C. Farrar and Carolyn K. Farrar, have divested themselves of all interests in and severed all connections with Station WGTA(AM), Summerville, Georgia.

14. IT IS FURTHER ORDERED, That Tri-State submit an amendment in accordance with paragraph 4 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Tri-State shall submit Section VI information in accordance with the requirement of 47 C.F.R. § 73.2080(c) to the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Gwyn IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

17. IT IS FURTHER ORDERED, That Gwyn shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

18. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

19. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

20. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

¹ Faith's application, filed on October 23, 1987 (BPH-871023MR), was returned by the Commission's Fee Section. On November 27, 1987, Faith petitioned the Chief, Fee Section for reconsideration of this action. Faith also resubmitted its application with this petition, and this application was assigned the file number BPH-871123ME. The refiled application was returned by staff letter of December 9, 1987, as insufficient for tender, referencing tenderability defect code W, because the refiled application was filed after the window for the allotment was closed. On January 13, 1988, Faith filed a supplement to its petition for reconsideration, protesting the return of its refiled application. On February 23, 1988, The Managing Director

granted Faith's petition for reconsideration and reinstated its application *nunc pro tunc*. Therefore, Faith's application retains its original file number, BPH-871023MR.