

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

MM Docket No. 89-5

In re Applications of

SMITH File No. BPH-870629NL
BROADCASTING,
INC.
(hereafter SBI)

TENNESSEE File No. BPH-870630MO
BROADCAST
GROUP LIMITED
PARTNERSHIP
(hereafter TBG)

JAMES V. LONG File No. BPH-870630MR
(hereafter Long)

EATON P. GOVAN, JR. File No. BPH-870630ND
(hereafter Govan)

For Construction Permit for a
New FM Station in South Pittsburg, Tennessee on
Channel 247C2 (97.3 MHz).

HEARING DESIGNATION ORDER

Adopted: January 23, 1989; Released: February 6, 1989

By the Chief, Audio Services Division:

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

2. *SBI*. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although SBI has filed such a statement, it is deficient. SBI has not provided the name of any source to encourage the referral of female applicants. Accordingly, SBI will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order or an appropriate issue will be specified by the Judge.

3. 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. SBI has not completed Item 4 correctly. SBI's application gives a post office box number as the residence address for one of its principals, F. Ralph Dowdy. Accordingly, SBI must submit an amendment

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

4. *TBG*. In its application, TBG requested a height of 140 meters AGL (including obstruction lighting) for its proposed tower structure. This requested height does not agree, however, with the height of 137.8 meters AGL (including obstruction lighting) that was cleared by the FAA. Accordingly, due to this discrepancy, an issue with respect thereto will be included and the FAA made a party to the proceeding.

5. *Long*. The applicant has given a negative response to Section III, Item 1, FCC Form 301, pertaining to financial qualifications. Accordingly, an appropriate issue as to the applicant's financial qualifications will be specified below.

6. 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.

7. 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 whether there is a reasonable possibility that the tower height and location proposed by TBG would constitute a hazard to air navigation.
2. To determine with respect to Long, whether the applicant is financially qualified.
3. To determine which of the proposals would, on a comparative basis, best serve the public interest.
4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

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

9. IT IS FURTHER ORDERED, That SBI 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 of the release of this Order.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. 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.

12. 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 tripli-

cate, 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.

13. 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 prescribed in such Rule, 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