

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

MM Docket No. 89-6

In re Applications of

MICHAEL P. File No. BPH-871124MK
STEPHENS
(hereafter Stephens)

DAVID C. SIMPSON File No. BPH-871215MD
(hereafter Simpson)

MURRY File No. BPH-871216MF
BROADCASTING,
INC.
(hereafter Murry)

For Construction Permit for a New
FM Station on Channel 233A,
Locust Grove, Oklahoma.

HEARING DESIGNATION ORDER

Adopted: January 23, 1989; Released: February 8, 1989

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

2. *Preliminary Matters.* On February 16, 1988, William R. Williams, Trustee in Bankruptcy, the licensee of Station KNFB(FM), Nowata, Oklahoma, and Moran Broadcasting Company, the proposed assignee of KNFB(FM) (hereafter jointly "KNFB"), filed a Request to Stay the instant proceeding pending final resolution of MM Docket 85-156. See *Report and Order*, 2 FCC Rcd 5921 (1987).¹ In that Rule Making proceeding, the Commission allotted Channel 233A to Claremore, Oklahoma and Channel 233C2 to Barling, Arkansas; it also modified the license of Station KPHN(FM), Barling, Arkansas from Channel 233A to Channel 233C2. KNFB filed a petition for reconsideration directed against the Claremore allotment, claiming that the allotment was defective in that it created a 10.4 kilometer short-spacing with KNFB(FM), a licensed facility and with a proposed modification (BMPH-870213IB). On reconsideration, the Commission altered its allotment scheme, effective August 15, 1988, to allocate Channel 264A to Claremore and Channel 233A to Locust Grove. *Report and Order*, 3 FCC Rcd 4087 (1988). Since the Rule Making has solved the problem raised by KNFB, its request for stay will be dismissed as moot.

3. As a result of the change in the Table of Allotments promulgated in the reconsideration of MM Docket 85-156, each applicant here has become short-spaced to the reference coordinates for Channel 233C2 in Barling, Arkansas as specified in the *Order*. That reconsideration *Order*, therefore, requires the applicants for Channel 264A at Locust Grove, Oklahoma to amend their applications to reflect Channel 233A and indicates that the ap-

plicants will be permitted to amend to specify the new Channel and, if necessary, a new transmitter site. *Id.*, note 2. Accordingly, the applicants in this proceeding will be ordered to submit amendments in compliance with the *Report and Order* in MM Docket 85-156 to the presiding Administrative Law Judge within 30 days of the release of this Order.²

4. Data submitted by the applicants indicated that there would be a significant difference in the size of the area and population which would receive service from the proposals. Consequently, the area and population 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.

5. 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.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 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 which of the proposals would, on a comparative basis, best serve the public interest.
2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the Request to Stay filed by William R. Williams IS HEREBY DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, That each applicant here shall submit an amendment in accordance with paragraph 3 above within 30 days of the release of this Order.

9. 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 Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, 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.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, 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 Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

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

FOOTNOTES

¹ Stephens filed an opposition on February 29, 1988.

² Engineering review indicates that, as a result of the new reference coordinates specified for Locust Grove in the reconsideration *Order* (36 degrees, 10 minutes and 39 seconds north latitude; 95 degrees, 18 minutes, 28 seconds west longitude) the site specified by Stephens is 17.6 Km from the reference coordinates and that of Simpson is 13.9 Km from the coordinates. Because Locust Grove is a Class A allotment, these applicants should carefully evaluate prospective amendments for city-grade coverage under 47 C.F.R. § 73.315.