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Re: WZYQ(FM), Mound Bayou, MS
WZYQ-FM, Inc.
BLH-970910KG
Program Test Authority

WWUN(FM), Clarksdale, MS
Delta Christian Radio, Inc.
MM Docket 89-551

Dear Licensee/Permittee:

This is in reference to: (i) the above-captioned license application to cover construction permit BMPH-960708IB filed by WZYQ-FM Inc., permittee of new FM station WZYQ(FM), Mound Bayou, Mississippi ("WZYQ"); (ii) the September 11, 1997 Petition for Extraordinary Relief filed by WZYQ; and (iii) the November 10, 1997 Request for Issuance of Immediate Cease and Desist Order and For The Imposition of Sanctions filed on behalf of Delta Christian Radio, Inc., licensee of station WWUN(FM), Clarksdale, Mississippi ("Delta").

MM Docket 89-551

Pursuant to the *Report and Order* in MM Docket No. 89-551, 6 FCC Rcd No 7 (1991), the Commission ordered station WWUN(FM) to change Channels from 269A to 268C3. On August 15, 1994, the Commission granted a Construction Permit (File No. BPH-940105IF), authorizing Delta to construct Class C3 facilities. On October 28, 1997, Delta filed a modification application (File No. BMPH-961028IB) seeking to change transmitter location. Final action on the modification application, which specifies Channel 268C3, has been withheld pending Federal Aviation Administration/Tower Registration and final action on a co-pending FCC Form 307, Application for Extension of Construction Permit (BMPH-970903JA). We note that WZYQ has filed a *Petition to Deny* against the extension application.

License Application

On September 10, 1997, WZYQ filed license application BLH-970910KG to cover construction permit BMPH-960708IB. This construction permit authorizes WZYQ to construction a new FM station to serve Mound Bayou on Channel 270A. Our review indicates that WZYQ's construction permit contained the following special operating condition and restriction:

Program Tests for WZYQ(FM) will not commence on Channel 270A until Program Tests for WWUN(FM) commence on Channel 268C3 and a License will not be granted for WZYQ(FM) on Channel 270A until a License is granted for WWUN(FM) on Channel 268C3.

The condition specifically limits the operation of WZYQ on Channel 270A until WWUN commences operation of Channel 268C3. In Exhibit #1 of the license application, WZYQ acknowledges the fact that the condition has not been satisfied. In recognition, WZYQ states that concurrent with the filing of the license application, WZYQ has submitted a "Petition for Extraordinary Relief" in which the Commission is requested to issue an "Order to Show Cause" directing Delta to operate station WWUN(FM) on Channel 268A from its present site until Delta completes its upgrade to Channel 268C3.¹

Petition for Extraordinary Relief

WZYQ seeks relief so that it may begin operation with its newly constructed facilities. WZYQ states that it is currently prevented from beginning operation due to the continued operation of station WWUN on Channel 269A. WZYQ argues that Delta has made no progress towards the construction of WWUN on Channel 268C3. Thus, WZYQ argues that Delta is delaying commencement of operations of WZYQ. Therefore, WZYQ requests the Commission to order Delta to immediately commence operation on Channel 268A with its present facilities. WZYQ asserts this would enable WZYQ(FM), the only broadcast station licensed to Mound Bayou, Mississippi, to begin operation with their newly constructed and ready to go on-air facilities.

Delta's Cease and Desist Pleading

Delta states that sometime between September 9, 1997 and November 10, 1997, WZYQ began operations pursuant to construction permit BMPH-960708IB on Channel 270A. Delta argues that WZYQ's operation is in total disregard of a special operating condition which limited the commencement of operations on 270A until Delta commenced operation on channel 268C3. Delta claims that WZYQ is causing objectionable interference to the current operation of WWUN(FM) on channel 269A. To support its claim, Delta provides sworn statements from the President and the General Manager of WWUN(FM) which state that WZYQ's signal is "totally blanking out" the WWUN(FM) signal in Mound Bayou, Mississippi.

¹ The staff confirms that operation on Channel 268A would be acceptable at the WWUN licensed transmitter site.

Discussion

Based on information received, rather than wait for action on its petition for relief, WZYQ on its own volition has chosen to commence program test operations. Pursuant to 47 C.F.R. §73.1620(a), a permittee of an FM station, upon completion of construction of an FM station in accordance **with the terms** of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, may commence program tests. Since the terms of the construction permit have not been satisfied, **program test authority pursuant to §73.1620 IS HEREBY DENIED. Any operation at this time with the facilities authorized in construction permit BMPH-960708IB IS UNAUTHORIZED.** We are referring this matter to the Enforcement Division of the Mass Media Bureau for review.

Having thoroughly reviewed the pleadings before us, we are unwilling to permit continued delays in instituting new service to the public which would be realized by the commencement of operation by WZYQ. Accordingly, **it is Ordered that, effective the date of this letter, Delta will have fifteen days in which to commence operations on Channel 268A.² It is further Ordered that, on the fifteenth day, whether or not Delta has commenced operation on Channel 268A, WZYQ may commence program test operations in accordance with license BLH-970910KG on Channel 270A.**

In light of the above, the September 11, 1997 Petition for Extraordinary Relief filed by WZYQ IS HEREBY GRANTED to the extent indicated above. The November 10, 1997 Request for Issuance of Immediate Cease and Desist Order and For The Imposition of Sanctions filed on behalf of Delta Christian Radio, Inc., licensee of station WWUN(FM), Clarksdale, Mississippi IS HEREBY GRANTED to the extent indicated above. Further processing of BLH-970910KG will be withheld until Delta is granted a license application on Channel 268. This does not prejudice any action the Commission may take regarding the apparent unauthorized operation by WZYQ. Processing of Delta's modification and 307 applications will proceed independently.

Sincerely,



Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau

² Additionally, on our own motion, we grant special temporary authority to Delta for continued operation on Channel 268A for a period of six months.