

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

MM Docket No. 88-580

In re Applications of

SAFE BROADCASTING CORPORATION File No. BPH-871022MC

TRI-STATE BROADCASTING COMPANY File No. BPH-871023MJ

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

Appearances

Robert S. Stone, on behalf of Safe Broadcasting Corporation; *Dennis J. Kelly*, on behalf of Tri-State Broadcasting Company; and *Paulette Laden*, on behalf of the Chief, Mass Media Bureau.

**INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE JOSEPH CHACHKIN**

Issued: January 10, 1990; Released: January 18, 1990

PRELIMINARY

1. This proceeding involves two mutually exclusive applications for a new commercial FM radio station to serve the community of Trion, Georgia on FM Channel 239A. The two competing applicants are Safe Broadcasting Corporation (Safe) and Tri-State Broadcasting Company (Tri-State). A total of five applications were originally designated for hearing by the Chief, Audio Services Division. *Boyce Dooley (Hearing Designation Order)*, DA 88-1919, released January 17, 1989, 54 Fed. Reg. 3138 (published January 23, 1989) (HDO). Of those, Safe, Tri-State and Boyce Dooley filed notices of appearance. Subsequently, at Boyce Dooley's request, the Presiding Judge dismissed his application. *Order*, FCC 89M-934, released March 23, 1989. The two applicants who had not filed notices of appearance, Faith Broadcasting and Lynn S. Gwyn were also dismissed by *Order*, FCC 89M-744, released March 9, 1989 and *Order*, FCC 89M-669, released March 1, 1989, respectively. With respect to Safe and Tri-State, the HDO designated the following issues:

To determine which of the proposals would, on a comparative basis, best serve the public interest.

To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. The HDO also indicated that because of the apparent differences in the areas and populations to be served by the applicants, 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, would be considered under the standard comparative issue. This question was mooted by the parties' joint stipulation that there would be no significant differences in their respective areas and populations (Joint Ex. 1).

3. Hearing sessions were held on July 5, 1989 at the offices of the Commission in Washington, D.C., following which the record was closed (Tr. 107). The parties filed Proposed Findings and Conclusions on September 8, 1989, and replies on September 22, 1989.

**Findings Of Fact
Safe Broadcasting Corporation (Safe)**

4. Safe is a Georgia corporation organized for the purpose of engaging in the establishment, maintenance and operation of radio broadcasting facilities. The corporation is organized for profit and is authorized to issue 5,000 shares of common voting stock having a par value of \$1.00 per share. The corporation is not authorized to issue any other shares, voting or non-voting (Safe Ex. 1, p. 1).

5. Terry R. Adams, 499 Walnut Street, Summerville, Georgia, is President, Treasurer, Director and 100 percent shareholder of Safe (owner of 5,000 shares). Cheryl Adams, 499 Walnut Street, Summerville, Georgia is Vice-President, Secretary and Director of Safe, but is not a shareholder. Terry R. Adams and Cheryl Adams are husband and wife (*Id.*).

Diversification

6. Safe is licensee of WSAF(AM), a daytime-only AM station licensed to Trion, Georgia. Mr. Adams is general manager of that station, and is assisted by Cheryl Adams on an as-needed basis. Other than WSAF(AM), neither Safe, Terry Adams nor Cheryl Adams have any interest or connection with other broadcast stations or mass media outlets (Safe Ex. 2, p. 1). In the event that Safe's application in this proceeding is granted, Safe, Terry Adams and Cheryl Adams will divest their interests in WSAF(AM) prior to the time that the new FM station commences program tests (Safe Ex. 2, p. 1).

Integration

7. Terry Adams proposes to be the general manager of the proposed FM station, devoting full-time, a minimum of 40 hours per week to his duties. His duties will include ultimate responsibility for and direct oversight and supervision of all day-to-day operations of the station, including financing. He will be directly responsible for hiring, firing and supervising all station personnel. He will personally formulate and implement all station policy regarding programming, sales, engineering, public affairs, community service and employment practices (Safe Ex. 3, p. 1). Terry Adams proposes to withdraw from all employment at WSAF, and will hold no other outside employment, in order to work at the proposed FM station in the event Safe's application is granted (*Id.*).

8. At the time of the hearing in this case, Mr. Adams was 33 years old, and had lived within the primary service area of the proposed Trion station his whole life (Safe Ex. 3, p. 1; Tr. 104). He was born in the Trion Hospital and lived on Pine Street in Trion until age 5 (Tr. 104-105); he also resided in Trion between 1983 and 1987 at 755 Oak Hill Drive and 38 Moore Street (Safe Ex. 3, p. 1; Tr. 27, 105). At other times in his life, he has lived outside of Trion at 618 South Union Street, Summerville, Georgia; Route 1, Summerville; and 499 Walnut, Summerville (Safe Ex. 3, p. 1). Although Mr. Adams proposes to continue to live within the primary service contour, he does not propose to move to Trion in the event Safe's application is granted (Safe Ex. 3, p. 3).

9. Mr. Adams has served as General Manager of station WSAF since April 1, 1985. He also served as public affairs director and announcer for WRIP/WOWE radio in Rossville, Georgia between 1973 and 1976, and worked at WGTA, Summerville, for nine months in 1982 as a part-time announcer. He holds a third class radio telephone operator's permit and amateur technician's license (*Id.*).

10. Mr. Adams has actively participated in as a member of the Publicity Committee of the Chattooga County Historical Society (July, 1986-present); American Cancer Society (April, 1985-present); American Kidney Foundation (April, 1985-present), and the local Chamber of Commerce (June, 1986 to present). He is currently serving a two-year term on the Summerville city Board of Zoning Appeals, and is a charter member of the Leadership Chattooga Program (January, 1988-present). He is also affiliated with the local Optimist Club (June, 1985-present). From 1973-1983, he served as leader of the Royal Ambassadors with his church (Safe Ex. 3, p. 2). He has also been involved with various fund raising events since April, 1985 apparently as a part of his role as General Manager of WSAF (Safe Ex. 3, p. 3).

Auxiliary Power

11. Safe proposes to acquire and utilize emergency power generators at both its transmitter site and studio location for use in the event of either localized or area-wide power failures (Safe Ex. 4).

Tri-State Broadcasting Company (Tri-State)

12. Tri-State is a Georgia business corporation. It was formed on November 10, 1949 for the purpose of owning and operating radio broadcast stations and businesses related or connected therewith. It is authorized by its corporate charter to issue up to 1,000 shares of capital stock, each share with a par value of \$100 (Tri-State Ex. 1, p. 1). There are 160 shares of the capital stock of Tri-State issued and outstanding, fully-paid and nonassessable; each share bears one vote (*Id.*).

13. The officer, directors and shareholder of Tri-State are as follows: (*Id.*).

Name/Address	Office	Director ?	Shares Owned
William B. Farrar 10 Baker Street Summerville, Georgia	President/ Treasurer	Yes	160 (100%)
Carolyn K. Farrar 10 Baker Street Summerville, Georgia	Secretary	Yes	0 (0%)
Charles C. Farrar 7 Martin Street Summerville, Georgia	Vice-President	Yes	0 (0%)

14. William B. Farrar and Carolyn K. Farrar are husband and wife; Charles C. Farrar is the brother of William B. Farrar. (*Id.*).

Diversification

15. Tri-State has operated Standard Broadcast Station WGTA, Summerville, Georgia, since WGTA commenced operations on August 27, 1950. Other than Station WGTA, neither Tri-State nor any of its officer, directors, or shareholder have any interest, direct or indirect, in any other mass media outlet (Tri-State Ex. 1, p. 2). In the event Tri-State's application for a construction permit for a new FM Broadcast Station at Trion, Georgia is granted, Tri-State and its principals, William B. Farrar, Carolyn K. Farrar and Charles C. Farrar, will divest themselves of all of their respective interests in station WGTA prior to the time the new Trion FM station commences operation under program test authority (*Id.*).

Integration

16. William B. Farrar will serve as the General Manager of the Trion FM station, devoting full-time, a minimum of 40 hours per week, to his duties. Mr. Farrar will oversee construction of the proposed station and will oversee all of its operations, including programming, sales, business, and technical operations. He will be responsible for all financial matters regarding the station, all hiring and firing, and the administration of the station's EEO program (Tri-State Ex. 2, p. 1).

17. At present, William B. Farrar is employed full-time as the general manager of radio station WGTA(AM), Summerville, Georgia. In the event Tri-State's application is granted in this proceeding, Mr. Farrar would sever his ownership interest in station WGTA(AM) and would terminate his employment as general manager of WGTA(AM) in order to devote his full attention to the Trion FM station. Mr. Farrar's only other time commitments are his personal investments, which require an average of one hour per month maximum, and his role as President of the Chattooga Chamber of Commerce Foundation, which requires a maximum of 8 to 10 hours per month. Thus, Mr. Farrar will be able to effectuate his commitment to work a minimum of 40 hours per week to the proposed station (Tri-State Ex. 2, pp. 1-2).

18. William B. Farrar first came to live in Summerville, Georgia in 1919 at the age of three. He grew up in Summerville, residing at 500 East Washington Street, graduating from high school there in 1934. He left Summerville in 1934 to study at Duke University, receiving a bachelor of science degree (Chemistry) in 1938. Following employment for 10 years as a research chemist away from Summerville, he returned to Summerville in 1948. He has resided continuously in Summerville from 1948 to the present, having owned his current residence at 10 Baker Street, Summerville, Georgia, for almost 40 years (Tri-State Ex. 2, p. 2).

19. Summerville is approximately five miles south of Trion, Georgia, and is fully within the 1 mV/m contour of the proposed FM station. All of Mr. Farrar's residences in Summerville are within the 1 mV/m contour. Both Summerville and Trion are located in Chattooga County, in northwestern Georgia; Summerville is the county seat (*Id.*).

20. In 1949, William B. Farrar and E. C. Pesterfield organized Tri-State Broadcasting Company, each man owning 50 percent of the corporation. Tri-State applied to the Federal Communications Commission for and received a construction permit for a new daytime-only AM station to serve Summerville, Georgia. This station, WGTA, was constructed during 1950 and commenced operations August 27, 1950. William B. Farrar oversaw the construction of that station, and has served as full-time, day-to-day general manager of the station from August 27, 1950 to the present day. Mr. Farrar acquired Mr. Pesterfield's interest in March, 1961, and has been the sole owner of the licensee of station WGTA since that time (Tri-State Ex. 2, pp. 2-3).

21. At the present time, Mr. Farrar is a member and a Director of the Chattooga County Chamber of Commerce, and is the Chairman of the Board of Directors of the Chattooga Chamber Foundation, a charitable organization organized by the Chamber of Commerce. He is an Elder in the Summerville Presbyterian Church, P.C.U.S.A., and is Chariman of the Board of Trustees of that church (Tri-State Ex. 2, p. 3).

22. Mr. Farrar has also been a member of the Citizens Advisory Council of the Northwest Georgia Mental Health-Mental Retardation Center, and a member of the Citizens Advisory Council of the Northwest Georgia Mental Health Hospital in Rome, Georgia. Mr. Farrar was a member of the Chattooga County Board of Education during 1953-1959. He was a member of the Chattooga County Library Board during 1974-1986. He was President of the Chattooga County Chamber of Commerce for two years, 1981 and 1982 (*Id.*).

Auxiliary Power

23. Tri-State Broadcasting Company will install auxiliary power generation facilities at its studio and transmitter sites to ensure continued operation of the proposed FM broadcast station in the event of loss of regular electric utility service (Tri-State Ex. 3).

CONCLUSIONS

Diversification

24. Safe and Tri-State have no attributable media interests. Both have timely pledged to divest their existing broadcast stations. Safe does not question the unequivocal nature of Tri-State's divestiture commitment. It urges, however, that Tri-State's proposal to divest WGTA "casts substantial doubt as to whether there would be a true diversity of voices within the service area." (Safe Findings, par. 25). Safe premises its argument on Farrar's statement that although his plan is to sell WGTA, he would turn in the license if he was unable to find a buyer. Safe's argument is without legal basis. The method of divestiture has no bearing on the validity of Tri-State's divestiture commitment. Neither Safe nor Tri-State suffer a diversification demerit.

Integration

25. Safe and Tri-State receive 100% quantitative integration credit. Safe argues that Tri-State's 100% stockholder, William B. Farrar, only works 31.5 hours per week at station WGTA, and therefore should only be credited for a proposal to work 31.5 hours per week. Safe's contention is without factual or legal basis and is rejected. Contrary to Safe's assertion, the record reflects that Farrar works 40-50 hours per week at WGTA (Tr. 93-94). The fact that a part of this time is spent calling on clients is of no consequence. See *Debra D. Carrigan*, 100 FCC 2d 721, 738 (Rev. Bd. 1985). Farrar proposes to serve as General Manager of the proposed FM station, devoting full-time, a minimum of 40 hours per week to his duties. Safe has not offered any evidence undercutting that pledge. Safe also argues that Tri-State's integration credit should be diminished because Farrar is 73 years old and has Parkinson's Disease. However, Farrar testified that the medical problem is "well under control" (Tr. 92) and Farrar's physician has not suggested that Farrar curtail his work week (Tr. 97). Safe has not proffered medical evidence raising a doubt as to Farrar's ability to fulfill his integration commitment. Therefore, Safe's contention is rejected. See *Vacationland Broadcasting Company, Inc.*, 97 FCC 2d 485 (Rev. Bd. 1984). In sum, Safe has provided no basis for reducing Tri-State integration credit and 100% quantitative integration credit will be awarded.

26. Since quantitative integration credit is even, the award of an integration preference turns on the qualitative attributes of the applicants. Tri-State's qualitative attributes are superior under the local residence, civic participation and broadcast experience criteria. Safe does not exceed Tri-State in any criterion. Tri-State's Farrar has lived within the service area for approximately 56 years, the last 41 years continuously. Safe's principal, Adams, has resided within the service area for approximately 33 years, including 9 years in Trion (although only 4 years as an adult). Farrar's longer residence in the service area warrants the award to Tri-State of a slight preference under the local residence criteria. See *Vacationland Broadcasting, supra*, 97 FCC 2d at 496; *Marlin Broadcasting of Central Florida, Inc.*, 4 FCC Rcd. 7945 (Rev. Bd. 1989). Also, Tri-State receives a moderate civic participation preference. Farrar has a record of local civic activities dating back to 1953; by contrast, with the exception of Adams' church activities, Adams' involvement in civic activities dates back only to 1985. In addition, Farrar's civic involvement has been more extensive and Farrar has held more leadership positions. Finally, Farrar receives a

broadcast experience preference. Farrar has been an owner and general manager of a radio station for more than 39 years. By contrast, Adams has been an owner and general manager for 4 1/2 years and has 8 years of commercial radio experience overall. Tri-State therefore receives a slight to moderate "overall" integration preference over Safe.

Comparative Summary

27. Neither Safe nor Tri-State receives a diversification demerit. Tri-State receives a slight to moderate "overall" integration preference over Safe. Since both applicants propose auxiliary power, that factor is of no consequence. Tri-State's application will be granted.

Accordingly, That unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules,¹ the application of Tri-State Broadcasting Company for a construction permit for a new FM station on Channel 239A in Trion, Georgia IS GRANTED; and the application of Safe Broadcasting Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

FOOTNOTE

¹ In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).