

# ROBINSON BRADSHAW & HINSON

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February 22, 2008

## VIA E-MAIL AND U.S. MAIL

The Honorable Sarah E. Parker  
Chief Justice, North Carolina Supreme Court  
c/o David F. Hoke  
Justice Building  
Post Office Box 1841  
Raleigh, North Carolina 27602

Re: *Wachovia Bank, National Association, Wachovia Investment Holdings, LLC and Wachovia Capital Markets, LLC*

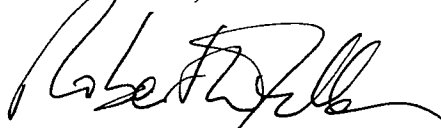
Dear Chief Justice Parker:

We are counsel for the Plaintiffs in this action. Pursuant to N.C. Gen. Stat. § 7A-45.4 and Business Court Rule 3, enclosed please find Plaintiffs' Notice of Designation of Action as a Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4. We are simultaneously delivering this Notice to Chief Business Court Judge Tennille (by email) and to the Defendants' registered agents.

With best regards,

Sincerely,

ROBINSON, BRADSHAW & HINSON, P.A.



Robert W. Fuller

RWF/jjo

Enclosures

cc (w/enc): The Honorable Ben F. Tennille (via email)  
Providence Equity Partners Inc. (via Federal Express)  
Newport Television LLC (via Federal Express)

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February 22, 2008

## VIA E-MAIL

The Honorable Ben F. Tennille  
North Carolina Business Court  
211 N. Greene Street  
Greensboro, North Carolina 27401

Re: *Wachovia Bank, National Association, Wachovia Investment Holdings, LLC and Wachovia Capital Markets, LLC;*  
Action Brought in Mecklenburg County Superior Court

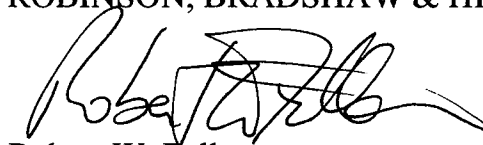
Dear Judge Tennille:

We are counsel for the Plaintiffs in this action. Pursuant to N.C. Gen. Stat. § 7A-45.4 and Business Court Rule 3, enclosed please find Plaintiffs' Notice of Designation of Action as a Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4. We are simultaneously delivering this Notice to the Chief Justice of the Supreme Court (by email to David Hoke) and to the Defendants' registered agents.

With best regards,

Sincerely,

ROBINSON, BRADSHAW & HINSON, P.A.



Robert W. Fuller

RWF/jjo

Enclosure

cc (w/enc): The Honorable Sarah E. Parker, c/o David F. Hoke (via email and U.S. Mail)  
Providence Equity Partners Inc. (via Federal Express)  
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STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CIVIL ACTION NO. 08-cvs-4056

FILED  
22 PM 3:37  
MECKLENBURG COUNTY, C.S.C.

WACHOVIA BANK, NATIONAL  
ASSOCIATION, WACHOVIA  
INVESTMENT HOLDINGS, LLC and  
WACHOVIA CAPITAL MARKETS, LLC,

Plaintiffs,

v.

NEWPORT TELEVISION LLC and  
PROVIDENCE EQUITY PARTNERS INC.,

Defendants.

NOTICE OF DESIGNATION OF ACTION AS  
MANDATORY COMPLEX BUSINESS CASE  
UNDER N.C. GEN. STAT. § 7A-45.4  
BY PLAINTIFFS

Pursuant to N.C. Gen. Stat. § 7A-45.4, Plaintiffs Wachovia Bank, National Association, Wachovia Investment Holdings, LLC, and Wachovia Capital Markets, LLC (collectively, the "Plaintiffs"), hereby designate the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, the Plaintiffs, through counsel, hereby certify that this action meets the following criteria for designation as a mandatory complex business case pursuant N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- (2) Securities law.
- (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (5) Intellectual property law.
- (6) The Internet, electronic commerce, and biotechnology.

Briefly explain (attach additional sheets if necessary) why the action falls within the specific categories of N.C. Gen. Stat. § 7A-45.4(a) checked above, as well as any additional information you believe may be helpful to the Court in determining whether the Business Court should retain jurisdiction of this matter:

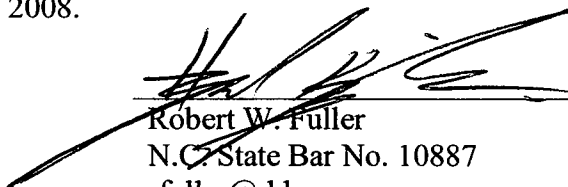
PLEASE SEE ATTACHED PAGE WITH EXPLANATION

The above listing of the reasons supporting designation is not exhaustive of the issues and defenses in this case and is furnished for illustrative purposes only.

A copy of the pleadings that have been filed to date in this action is attached hereto as Exhibit A for the convenience of the Court.

In accordance with N.C. Gen. Stat. § 7A-45.4(b), this Notice of Designation is being forwarded simultaneously by email transmission to the Honorable Ben F. Tennille, Chief Special Superior Court Judge for Complex Business Cases and by email transmission to the Honorable Sarah E. Parker, Chief Justice of the Supreme Court. In addition, this Notice of Designation is being served on the registered agents for the parties to this action.

This 22nd day of February, 2008.



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**Attorneys for Plaintiffs Wachovia Bank,  
National Association, Wachovia Investment  
Holdings, LLC and Wachovia Capital Markets,  
LLC**

**PLAINTIFFS' ATTACHMENT TO NOTICE OF DESIGNATION OF ACTION AS  
MANDATORY COMPLEX BUSINESS CASE UNDER N.C. GEN. STAT. § 7A-45.4**

The Complaint, included in Exhibit A attached hereto and served on Defendants contemporaneously with this Notice of Designation, alleges that the Defendants entered into an acquisition transaction to acquire certain broadcast television assets for One Billion Two Hundred Twenty-Five Million Dollars (\$1,225,000,000.00) and that Plaintiffs are lenders who agreed, subject to certain terms and conditions, to provide or arrange financing for this acquisition. (Complaint ¶ 2.) In the Complaint, Plaintiffs further allege that certain actions on behalf of Defendants and certain materially changed circumstances have resulted in the Plaintiffs having no obligations under the Commitment Letter. (Complaint ¶¶ 3-4.) In fact, Defendants and the Seller are currently engaged in litigation in the Delaware Court of Chancery (Clear Channel Broadcasting, Inc. v. Newport Television, LLC) to which Plaintiffs are not parties concerning whether Seller is obligated to close the transaction. Plaintiffs bring this action to obtain a judicial declaration of their rights and obligations pursuant to the Commitment Letter including a decree that the Plaintiffs have no obligations to provide the financing contemplated in the Commitment Letter. (Complaint ¶ 5.) This action involves the law governing corporations and limited liability companies, including issues involving mergers and acquisitions and the interpretation of business agreements relating thereto, falls within the jurisdiction of the Business Court, and adjudication of this action in the Business Court is completely consistent with the purposes for which the Business Court was established.

# **EXHIBIT**

**A**

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Civil Action No: 08-CvS- 4056

WACHOVIA BANK, NATIONAL  
ASSOCIATION, WACHOVIA  
INVESTMENT HOLDINGS, LLC and  
WACHOVIA CAPITAL MARKETS, LLC,

Plaintiffs,

v.

NEWPORT TELEVISION LLC  
(FORMERLY KNOWN AS TV  
ACQUISITION LLC) AND PROVIDENCE  
EQUITY PARTNERS INC.,

Defendants.

COMPLAINT

BY

FILED  
2008 FEB 22 PM 3:35  
MECKLENBURG COUNTY, N.C.

Plaintiffs Wachovia Bank, National Association (“Wachovia Bank”), Wachovia Investment Holdings, LLC (“Wachovia Investments”), and Wachovia Capital Markets, LLC (“Wachovia Securities”), allege:

1. Plaintiffs seek a declaration that Plaintiffs and other lenders (the “Initial Lenders”) have no obligation to provide or arrange secured financing for an acquisition transaction (the “Acquisition”) whereby defendant Providence Equity Partners Inc. (“Providence”), through an entity created and controlled by Providence known as Newport Television LLC (“Newport” or “Buyer”), agreed to acquire the broadcast television station assets of Clear Channel Broadcasting, Inc. (“Clear Channel” or “Seller”) for a Base Purchase Price of \$1.225 billion (subject to certain adjustments) pursuant to the terms of an Asset Purchase Agreement dated as of April 20, 2007 between Newport and Seller (the “Asset Purchase Agreement”).

2. Plaintiffs' obligations with respect to such financing are set forth in a Commitment Letter (the "Commitment Letter") attached hereto as Exhibit A and incorporated herein by reference.<sup>1</sup> The Commitment Letter provides and envisions that, upon satisfaction of certain "Conditions," the Plaintiffs (with Wachovia Bank and Wachovia Investments, as Administrative Agents), along with the other Initial Lenders, will fund and syndicate Senior Credit Facilities in connection with the Acquisition. Among those Conditions are: (i) each Loan Party shall have executed and delivered definitive Credit Documentation; (ii) the Acquisition shall have been consummated pursuant to the Asset Purchase Agreement, and that no provision of the Asset Purchase Agreement shall have been amended or waived in any respect materially adverse to Plaintiffs without the prior written consent of Wachovia Bank and Wachovia Investments, as Administrative Agents, not to be unreasonably withheld; and (iii) since April 20, 2007 there shall not have occurred a Material Adverse Effect on the Business with respect to the Acquired Business.

3. The Conditions (the "Conditions") have not been satisfied. To the contrary, among other things and as is detailed below, Defendants have informed Plaintiffs that they have agreed to alter materially the terms of the Asset Purchase Agreement. As a result, any financing would require substantial modifications to the capital structure of the Business about which the Defendants and Initial Lenders have been unable to reach agreement. In addition, Plaintiffs have not been fully apprised of the reasons for such modifications, which could indicate that a Material Adverse Effect on the Business with respect to the Acquired Business has occurred.

4. Further, Defendants agreed in the Commitment Letter "actively to assist the Lead Arrangers [including Wachovia Securities] in completing a syndication reasonably satisfactory to

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<sup>1</sup> As used herein, unless otherwise defined, capitalized terms shall have the meanings set forth in the Commitment Letter and Asset Purchase Agreement referred to herein.

the Lead Arrangers [including by, among other things] direct contact between senior management of the Borrower and the proposed [syndicate members], assistance . . . in the preparation of one or more confidential information memoranda [“CIM”] and other marketing materials to be used in connection with the syndication, the hosting . . . of one or more meetings of prospective Lenders [and] using . . . commercially reasonable efforts to obtain [applicable credit ratings from Moody’s and S&P].” Defendants also agreed in the Commitment Letter to provide for the Lenders’ due diligence investigation “all customary information” including “all historical financial information” concerning the Borrower. Defendants have not fulfilled these obligations. In fact, Defendants specifically requested on numerous occasions that work on the Acquisition be delayed for various reasons – and then abruptly reversed course and insisted that Plaintiffs fund the Acquisition on modified terms even though no CIM has been prepared, no Lenders’ meetings have occurred, and Defendants have not fully responded to requests for information and have not provided an executed amendment to the Asset Purchase Agreement.

5. Plaintiffs have not provided written consent to any modification of the Asset Purchase Agreement.

6. In summary, notwithstanding that the Conditions have not been satisfied and will not be satisfied in the foreseeable future, Defendants have demanded that the Plaintiffs and the other Initial Lenders fund the closing of the Acquisition on modified terms on Monday, February 25, 2008. Plaintiffs do not believe the Initial Lenders have any obligation to fund the Acquisition upon the terms as unilaterally modified by Defendants, and Plaintiffs have refused to do so. Accordingly, Plaintiffs ask that this Court enter a declaration of their rights and obligations under the Commitment Letter decreeing that (a) Defendants have materially breached their obligations under the Commitment Letter, (b) the Conditions have not been satisfied, (c)

Defendants have waived and are estopped from attempting to enforce the Commitment Letter, and (d) Plaintiffs have no obligations thereunder.

### **Parties and Jurisdiction**

7. Plaintiff Wachovia Bank is a national banking association organized and existing under the laws of the United States of America, with its main office and principal place of business located in Charlotte, Mecklenburg County, North Carolina.

8. Plaintiff Wachovia Investments is a limited liability company organized under the laws of the state of Delaware, with its main office and principal place of business located in Charlotte, Mecklenburg County, North Carolina. A Delaware corporation is a member of Wachovia Investments.

9. Plaintiff Wachovia Securities is a limited liability company organized under the laws of the state of Delaware, with its main office and principal place of business located in Charlotte, Mecklenburg County, North Carolina. A Delaware corporation is a member of Wachovia Securities.

10. Upon information and belief, Defendant Newport is a limited liability company created by Providence for the purposes of the Acquisition and organized under the laws of Delaware, with offices c/o Providence Equity Partners, Inc., at 50 Kennedy Plaza, 18th Floor, Providence, Rhode Island 02903.

11. Upon information and belief, Defendant Providence is a corporation organized under the laws of Delaware, with its principal place of business at 50 Kennedy Plaza, 18th Floor, Providence, Rhode Island 02903.

12. In connection with the Acquisition, each of the defendants has engaged in business in North Carolina through substantial dealings with, and requests and overtures

purposefully directed to, representatives of Plaintiffs located at the Charlotte offices of Wachovia Bank, Wachovia Investments and Wachovia Securities. All or substantially all of the communications, interaction, and correspondence concerning the Acquisition and involving Plaintiffs has occurred between Defendants and representatives of Plaintiffs located in Charlotte. Further, Providence (which acts in all respects for Newport, an entity created by Providence solely for purposes of the Acquisition) has a longstanding relationship with the Plaintiffs and regularly calls on Plaintiffs with regard to a variety of services and transactions.

### **General Background Allegations**

13. Plaintiffs incorporate here the allegations in paragraphs 1-6 above concerning the execution of the Asset Purchase Agreement in April of 2007 and the execution of the Commitment Letter in May of 2007.

### ***The Asset Purchase Agreement***

14. The Asset Purchase Agreement is attached hereto as Exhibit B and incorporated herein by reference. Plaintiffs are not parties to the Asset Purchase Agreement, but the definitions and provisions of the Asset Purchase Agreement are explicitly referenced in the Commitment Letter.

15. The Asset Purchase Agreement is a fully integrated agreement and constitutes the entire agreement and understanding among the parties thereto, and it provides that no amendment thereto can be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment is sought. (*See* Sections 11.4 and 11.5.)

16. The Asset Purchase Agreement provides that “[s]ince the date of this Agreement [April 20, 2007], there shall have not occurred a Material Adverse Effect on the Business.” (*See* Section 7.9.) Under the Asset Purchase Agreement, “Material Adverse Effect on the Business”

is defined as: “any event, state of facts, circumstance, development, change, effect or occurrence (an “Effect”) that, individually or in the aggregate with any other Effect, has had or would reasonably be expected to have a materially adverse effect on the business, properties, assets, financial condition or results of operations of the Business, taken as a whole, other than any Effect resulting from (a) changes in general economic conditions or the securities, credit or financial markets in general, in each case, generally affecting the broadcast television industry, (b) general changes or developments in the broadcast television industry, (c) the execution and delivery of this Agreement, the announcement of this Agreement and the transactions contemplated hereby, the consummation of the transactions contemplated hereby, the compliance with the terms of this Agreement or the taking of any action required by this Agreement or consented to by Buyer, (d) any acts of terrorism or war (other than any of the foregoing that causes any damage or destruction to or renders unusable any facility or property of Seller or any of its subsidiaries), or (e) changes in generally accepted accounting principles or the interpretation thereof, except, in the case of the foregoing clauses (a) and (b), to the extent such changes or developments referred to therein would reasonably be expected to have a materially disproportionate impact on the Business, taken as a whole, relative to other for profit participants in the industries and in the geographic markets in which Seller operates the Stations after taking into account the size of the Business relative to such other for profit participants.” (See Section 11.6.)

17. Buyer represents in the Asset Purchase Agreement that it has, or will have prior to Closing, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to pay the Purchase Price. (See Section 3.6.)

18. Buyer acknowledges and agrees in the Asset Purchase Agreement that its obligation to consummate the transactions contemplated by the Asset Purchase Agreement is not conditioned upon Buyer's obtaining financing. (See Section 3.6.)

19. Although Buyer's obligations under the Asset Purchase Agreement are not conditioned on its ability to obtain financing, the Asset Purchase Agreement requires the Buyer to use its commercially reasonable efforts to arrange and obtain financing. (See Section 5.14(a).)

20. The Asset Purchase Agreement further contemplates that the Buyer and the Seller will provide information to the Lenders to facilitate syndication of any financing. (See Section 5.14(a) and 5.14(b).)

#### ***The Commitment Letter***

21. The Commitment Letter amends and restates a commitment letter dated April 18, 2007.

22. In the Commitment Letter, each Plaintiff is referred to as a Commitment Party, as are the other Initial Lenders.

23. The Commitment Letter may not be amended or waived except by an instrument in writing signed by Newport and each Commitment Party.

24. The Commitment Letter states that Initial Lenders intend to syndicate the Credit Facilities, and that Newport agrees actively to assist Initial Lenders in completing a syndication reasonably satisfactory to them.

25. The Commitment Letter requires Newport promptly to prepare and provide Initial Lenders with all customary information with respect to the Borrower, the Acquired Business and Borrower's and the Acquired Business's subsidiaries and the Acquisition, including all historical

