

BEASLEY BROADCAST GROUP INC
Form S-8
July 10, 2017

As filed with the Securities and Exchange Commission on July 10, 2017.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BEASLEY BROADCAST GROUP, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

65-0960915
(I.R.S. Employer Identification Number)

3033 Riviera Drive, Suite 200

Naples, FL 34103

(Address of Principal Executive Offices)

Beasley Broadcast Group, Inc. 2007 Equity Incentive Award Plan

(Full title of the plan)

Caroline Beasley

Chief Executive Officer

Beasley Broadcast Group, Inc.

3033 Riviera Drive, Suite 200

Naples, FL 34103

(239) 263-5000

(Name, address, and telephone number, including area code, of agent for service)

Copies to:

Brian D. Miller, Esq.

Latham & Watkins LLP

555 Eleventh Street, NW, Suite 1000

Washington, DC 20004

(202) 637-2200

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company, and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be Registered⁽¹⁾	Proposed maximum offering price per share⁽²⁾	Proposed maximum aggregate offering price⁽²⁾	Amount of registration fee
Class A Common Stock, \$0.001 par value	3,500,000	\$8.98	\$31,430,000	\$3,642.74

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the Securities Act), this registration statement also covers an indeterminate number of shares of Class A common stock, \$0.001 par value (the Common Stock), that may be offered or issued under the Beasley Broadcast Group, Inc. 2007 Equity Incentive Award Plan as a result of a stock split, stock dividend, or similar transaction.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rules 457(h) and (c) of the Securities Act. The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices per share for the Common Stock as reported on the Nasdaq Global Market on July 5, 2017.

EXPLANATORY NOTE

REGISTRATION OF ADDITIONAL SECURITIES

Pursuant to General Instruction E of Form S-8 under the Securities Act of 1933, as amended (the Securities Act), Beasley Broadcast Group, Inc. (the Company) is filing this registration statement to register an additional 3,500,000 shares of Class A common stock pursuant to the 2007 Equity Incentive Award Plan, as amended and restated (and as may be further amended from time to time, the Plan), not previously registered, including awards that may be issued after the date of this registration statement. The Board of Directors of the Company recommended for approval and, on June 8, 2017, the stockholders of the Company approved an amendment and restatement to the Plan that, among other things, increased the number of Class A common stock available for issuance under the Plan from 4,000,000 to up to 7,500,000 shares, plus any shares that return to the Plan as a result of outstanding awards that expire or lapse for any reason, pursuant to the Plan, and extended the term of the Plan.

The contents of the registration statement on Form S-8 of the Company (SEC File No. 333-145455), filed on August 15, 2007, relating to the Plan are incorporated by reference into this registration statement, except that the provisions contained in Part II of such earlier registration statement are modified as set forth in this registration statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the Commission) by the Company are incorporated herein by reference:

- (a) the Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission on March 23, 2017;
- (b) the quarterly report on Form 10-Q for the three months ended March 31, 2017, filed with the Commission on May 9, 2017;
- (c) the Current Reports of the Company on Form 8-K filed with the Commission on June 12, 2017; and
- (d) the description of the Company's Class A common stock incorporated by reference to the Company's registration statement on Form 8-A filed with the Commission on January 31, 2000 (File No. 000-29253).

All documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement, which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such document.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or included in future filings, that are not deemed filed with the Commission.

Any statement contained in this Registration Statement or in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document that also is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The legality of the securities offered pursuant to this Registration Statement has been passed on by Joyce Fitch, who serves as General Counsel to the Company. Ms. Fitch is a shareholder of the Company's Common Stock and is eligible to receive grants under the Plan, which may include awards with respect to the shares being registered by this registration statement.

Item 6. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware (the "DGCL") allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of the DGCL or obtained an improper personal benefit.

Section 145 of the DGCL provides, among other things, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding other than an action by or in the right of the Company by reason of the fact that the person is or was a director, officer, employee or agent of the Company, or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding. The power to indemnify applies (a) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding or (b) if such person acting in good faith and in a manner such person reasonably believed to be in the best interest, or not opposed to the best interest, of the Company, and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. The power to indemnify applies to actions brought by or in the right of the Company as well as but only to the extent of defense expenses, including attorneys' fees but excluding amounts paid in settlement, actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of liability to the Company, unless the court believes that in light of all the circumstances indemnification should apply.

Article VIII of the Company's Amended and Restated Certificate of Incorporation and Article V of the Company's Third Amended and Restated Bylaws provide for indemnification to the fullest extent authorized by the DGCL for any person who was or is made party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Company or, while a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer.

The foregoing is only a general summary of certain aspects of the DGCL, the Company's Amended and Restated Certificate of Incorporation and the Company's Third Amended and Restated Bylaws dealing with indemnification of directors and officers, and does not purport to be complete. It is qualified in its entirety by reference to the detailed provisions of Section 145 of the DGCL, Article VIII of the Company's Amended and Restated Certificate of Incorporation and Article V of the Company's Third Amended and Restated Bylaws.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit

No.	Description
4.1	Amended and Restated Certificate of Incorporation of Beasley Broadcast Group, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on May 25, 2012).
4.2	Third Amended and Restated Bylaws of Beasley Broadcast Group, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000 filed with the SEC on February 16, 2001).
5.1*	Opinion of Joyce Fitch, General Counsel of the Company.
23.1*	Consent of Joyce Fitch, General Counsel of the Company (included in Exhibit 5.1).
23.2*	Consent of Crowe Horwath LLP.
24.1*	Power of Attorney (included in the signature page hereto).
99.1	2007 Equity Incentive Award Plan, as amended and restated (Incorporated by reference to Appendix A to the Company's Definitive Proxy Statement dated April 24, 2017).

* Filed herewith.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by

reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the District of Columbia, on this 10th day of July, 2017.

BEASLEY BROADCAST GROUP, INC.

By: /s/ Caroline Beasley
 Name: Caroline Beasley
 Title: Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned directors and officers of Beasley Broadcast Group, Inc., do hereby constitute and appoint Joyce Fitch and Marie Tedesco, and each of them, our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, to do any and all acts and things in our names and on our behalf in our capacities as directors and officers and to execute any and all instruments for us in the capacities indicated below, which said attorney and agent may deem necessary or advisable to enable said corporation to comply with the Securities Act and any rules, regulations and agreements of the Securities and Exchange Commission, in connection with this Registration Statement, or any registration statement for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act, including specifically, but without limitation, any and all amendments (including post-effective amendments) hereto; and we hereby ratify and confirm all that said attorney and agent shall do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ GEORGE G. BEASLEY George G. Beasley	Chairman of the Board	July 10, 2017
/s/ CAROLINE BEASLEY Caroline Beasley	Chief Executive Officer and Director (Principal Executive Officer)	July 10, 2017
/s/ BRUCE G. BEASLEY Bruce G. Beasley	President and Director	July 10, 2017
/s/ BRIAN E. BEASLEY Brian E. Beasley	Chief Operating Officer and Director	July 10, 2017
/s/ MARIE TEDESCO Marie Tedesco	Chief Financial Officer (Principal Financial and Accounting Officer)	July 10, 2017

/s/ ALLEN B. SHAW
Allen B. Shaw

Vice-Chairman of the Board

July 10, 2017

/s/ PETER A. BORDES
Peter A. Bordes

Director

July 10, 2017

<i>/s/</i> JOE B. COX Joe B. Cox	Director	July 10, 2017
<i>/s/</i> MARK S. FOWLER Mark S. Fowler	Director	July 10, 2017
<i>/s/</i> HERBERT W. MCCORD Herbert W. McCord	Director	July 10, 2017

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