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FILE

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APR 11 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)
)
Charley Cecil & Dianna Mae White)
d/b/a WHITE BROADCASTING PARTNERSHIP,)
et al.)
)
NORTHEAST FLORIDA BROADCASTING CORP.)
)
For Construction Permit to Build)
a New FM Station on Channel 289A)
in Baldwin, Florida)

MM Docket No. 91-10 ✓

File No. BPH-891214MM

File No. BPH-891214NA

To: Honorable Edward Luton
Administrative Law Judge

MOTION FOR SUMMARY DECISION

Northeast Florida Broadcasting Corp. ("Northeast Florida"), by its counsel and pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. § 1.251, hereby moves for summary decision on the air hazard issue specified against it in the Hearing Designation Order, DA 91-122 (released February 11, 1991). In support thereof, Northeast Florida states the following:

1. In December 1989, Northeast Florida filed with the Federal Aviation Administration ("FAA") a Notice of Proposed Construction or Alteration. In response, Northeast Florida received a notice from the FAA that its proposed antenna may create a potential for electromagnetic interference ("EMI") to air navigation systems. See FAA Letter to Northeast Florida, dated June 26, 1990 (attached hereto as Exhibit A).

2. The FAA's air hazard determination did not find that Northeast Florida's proposed structure would pose any physical hazard to air navigation. The FAA's finding was predicated solely on a determination that Northeast Florida's proposed tower site would create a potential for EMI with aeronautical navigation equipment at the local Jacksonville International Airport. Northeast Florida has sent a letter to the FAA requesting a clarification of whether the potential for EMI is the only hazard to aeronautical operations that would be posed by the proposed construction.

3. Because the potential for EMI is the only known threat presented by its proposed structure, Northeast Florida would consent to the imposition of the following condition upon grant of its construction permit in order to meet the air hazard issue.

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

4. The imposition of this condition would require Northeast Florida to, inter alia, take corrective action should its proposal cause EMI. This condition has been used to resolve similar EMI issues. See Texas Communications Limited Partnership, 5 FCC Rcd 1592 (ALJ 1990), aff'd, 5 FCC Rcd 5876 (Rev. Bd. 1990). In fact, the Bureau has supported a request for summary decision in this proceeding based upon the applicant's consent to use this

conditional clause. See Mass Media Bureau's Comments in Support of Motion for Summary Decision, dated April 4, 1991 (attached hereto as Exhibit B).

5. As set forth in the "Contingent Motion for Summary Decision" filed in this proceeding by Peaches Broadcasting, Ltd., all the applicants' proposals for facilities in Baldwin will pose EMI problems under the FAA's current prediction program. See Peaches Broadcasting, Ltd.'s Contingent Motion for Summary Decision, dated March 13, 1991. Furthermore, Peaches represented therein that there is no possible site which would meet FCC coverage, spacing and interference requirements, that would also resolve the FAA's EMI questions. Id. Northeast Florida concurs with this analysis.

6. EMI problems have been the subject of controversy between the Commission and the FAA. However, in cases where EMI is the sole navigational problem, the FCC has permitted applications to be granted with a condition that any harmful interference be eliminated. Indeed, imposition of such a condition is consistent with the interim procedures agreed to between the FCC and the FAA in 1985, relating to the establishment of technical criteria for siting of broadcast facilities with respect to aeronautical navigation and communication facilities. As set forth in a July 12, 1985 letter from then-FCC Chairman Mark S. Fowler to then-FAA Administrator Donald Engen, the FCC and FAA would, as an interim matter, not preclude the grant of broadcast authorizations as to which the FAA believed there to be some electromagnetic

interference question. Instead, the interim policy called for the FAA to advise the FCC of those applications which the FAA identified as raising potential EMI questions, and the FCC would add appropriate limited conditions on any such authorizations.

7. In proceedings where the FAA does not oppose the use of a conditional grant clause, the Commission has granted the construction permit subject to the conditional clause set forth above. Accordingly, a copy of this motion has been served upon the FAA for its review and comment.

8. Grant of summary decision on the air hazard issue will promote the public interest by reducing the issues in this proceeding, and by permitting the construction of Northeast Florida's new FM facility at Baldwin, Florida at the earliest possible date, after a construction permit is granted by the Commission. Grant of summary decision with the conditional clause will moot the air hazard issue, and will thus promote administrative convenience.

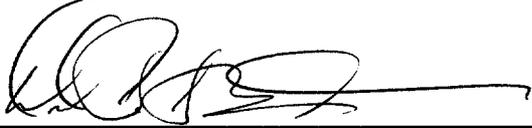
9. Summary decision on the air hazard issue specified against Northeast Florida is therefore warranted. See 47 C.F.R. § 1.251(a)(1). The structure proposed by Northeast Florida complies with all FAA regulations and will not pose a physical hazard to air navigation. The potential for EMI interference may be adequately met through the imposition of a condition on Northeast Florida's construction permit, a procedure which has been utilized in other proceedings, and is appropriate here. Consequently, no material

question of fact remains to be decided at a hearing regarding the air hazard issue against Northeast Florida.

WHEREFORE, having shown good cause, Northeast Florida Broadcasting Corp. respectfully requests that the Presiding Judge grant this Motion for Summary Decision.

Respectfully Submitted,

**NORTHEAST FLORIDA
BROADCASTING CORP.**

By: 

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Walter E. Diercks
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Its Attorneys

Dated: April 11, 1991

EXHIBIT A

8/7/90
All 3 have EMI problems



U.S. Department
of Transportation
**Federal Aviation
Administration**

Southern Region

P. O. Box 20836
Atlanta, Georgia 30320

June 26, 1990

NORTHEAST FLORIDA BROADCASTING CORP.
c/o Ms. Lillian Holt
7235 Sharbeth Dr., South
Jacksonville, Florida 32210

Attachment

Dear Ms. Holt:

Stokesville, FL

This is in response to your FAA Form 7460-1, Notice of Proposed Construction or Alteration, dated December 12, 1989, proposing a new FM radio station near Stokesville, Georgia. Specific information is as follows:

AERONAUTICAL STUDY NO. 89-ASO-2592-0E

SPONSOR	:	Northeast Florida Broadcasting Corp.
STRUCTURE	:	FM Antenna Tower (105.7mHz/6kW)
LOCATION	:	Stokesville, Georgia
LATITUDE/LONGITUDE	:	30°22'28"N./82°01'36"W.
HEIGHTS	:	350 feet AGL, 412 feet AMSL.

The preliminary review revealed a potential Electromagnetic Interference (EMI) problem with respect to intermodulation interference with the Craig Airport (CRG) and Jacksonville International Airport (CZH) Localizer facilities.

A copy of the Spectrum Management and Systems Support Section evaluation report is enclosed for your information. Unless this potential EMI problem can be resolved the above tower location would have substantial adverse effect upon aeronautical operations and would receive a Determination of Hazard to Air Navigation.

Should you require additional information please let me know.

Sincerely,

RONALD T. NIKLASSON
Airspace Specialist
System Management Branch
Air Traffic Division

ENCLOSURE

REVIEW OF AIRSPACE STUDY
 89-ASO-2592-0E
 STOKESVILLE, GA
 ANTENNA TOWER, FREQ. 105.7MHz

An analysis of airspace study 89-ASO-2592-0E (coordinates listed as 30-22-28 latitude and 82-01-38 longitude) revealed intermodulation interference with the Jacksonville, FL 108.9MHz and 111.7MHz, CRG and C2H Localizers. The application was analyzed using a 3 Bay FM antenna type with an ERP of 8kW and the overall height above mean sea level (MSL) of 412'.

INTERMODULATION INTERFERENCE:

The Spectrum Engineering Section, ASO-483 object to this proposal based on our analysis which indicates that aircraft operating in the frequency protect service volume (FPSV) making an instrument landing system (ILS) approach to Runways 14 and 31 at Jacksonville International Airport will be subject to hazardous two signal/third order intermodulation interference of type (A) $2f_1 - f_2$ and hazardous three signal/third order intermodulation interference of the type (B) $f_1 + f_2 - f_3$ resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (A).

$2(2(WCRJ, 107.3MHz)) - (PROP, 105.7MHz) = 228, 108.9MHz$

Type (B).

$PROP(105.7MHz) + WIVY(102.3MHz) - WKQL(098.3MHz) = CRG(111.7MHz)$

$PROP(105.7MHz) + WIVY(102.3MHz) - WKQL(098.3MHz) = CRG(111.7MHz)$

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum difference frequencies through heterodyne action.

Eased on our analysis of the subject airspace study we cannot concur with the proponent's request.

Freddie T. Massey

Freddie T. Massey, Supervisor
 Spectrum Engineering Section, ASO-483

Date: 6/7/90

EXHIBIT B

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Before the
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Washington, D.C. 20554

APR 5 1991

RUBIN, WINSTON,
DIERCKS & HARRIS

In re Applications of)
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WHITE BROADCASTING PARTNERSHIP)
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)
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For a Construction Permit for)
A New FM Station)
Baldwin, Florida)

MM DOCKET NO. 91-10

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S COMMENTS
IN SUPPORT OF MOTION FOR SUMMARY DECISION

1. On March 21, 1991, White Broadcasting Partnership ("White"), an applicant in the above-captioned proceeding, filed a Motion for Summary Decision. The Mass Media Bureau supports the motion and we submit the following comments.

2. White's motion seeks summary decision of an air hazard issue specified against it. White appends letters from the Federal Aviation Administration ("FAA") which show that, although White's proposed antenna would not pose a structural hazard, White's proposal has the potential of causing electromagnetic interference ("EMI"). White agrees to the imposition of the following condition upon its construction permit:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

3. Absent an objection by the FAA, which is a party in the instant proceeding, and which has been served a copy of the motion, the Bureau supports summary decision in White's favor, and the imposition of the foregoing condition upon any construction permit issued to White¹.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziejcz
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Federal Communications Commission

April 4, 1991

¹ White's motion does not suffer, in our view, from the deficiencies which prompted the Bureau, on March 27, 1991, to oppose a Contingent Motion for Summary Decision filed on White's behalf, inter alia, by Peaches Broadcasting, Ltd. on March 13, 1991.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 4th day of April, 1991, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments in Support of Motion for Summary Decision" to:

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Michelle C. Mebane

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks & Harris, hereby certify that a copy of the attached **MOTION FOR SUMMARY DECISION** was served this 11th day of April 1991, to the following persons by first class mail, postage prepaid:

Honorable Edward Luton
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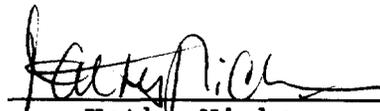
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Kathy Nickens