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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: New FM Application
BPH-901219MD; Clemson Broadcasting, Inc.
Clemson, SC
M&A #15120

Dear Ms. Searcy:

On behalf of Clemson Broadcasting, Inc., Applicant for a new FM Station at Clemson, South Caroline, there is transmitted herewith an original plus three (3) copies of a Petition for Leave to Amend and Amendment to the above-referenced Application.

Should there be any question regarding the attached Petition or Amendment, please contact the undersigned.

Very truly yours,

Denise B. Moline

Denise B. Moline

DBM:wp
Attachment

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FM EXAMINERS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Application of	)	
	)	
CLEMSON BROADCASTING, INC.	)	FCC FILE NO. BPH-901219MD
	)	
For Construction Permit for	)	
a New FM Station,	)	
Channel 285A, Clemson, SC	)	

To: The Commission

PETITION FOR LEAVE TO AMEND AND AMENDMENT AND REQUEST FOR IMPOSITION OF CONDITION

Clemson Broadcasting, Inc. ("CBI") by Counsel, and pursuant to §73.3522(a) of the Commission's Rules, hereby submits the instant Petition for Leave to Amend and requests that the Commission accept the Amendment attached hereto. Additionally, CBI requests that the Commission impose the following condition on any construction permit that may be issued to CBI, in the event its application for a new FM Station at Clemson, South Carolina is granted:

> 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.

Good Cause for Acceptance of the Amendment

1. The attached amendment provides a copy of a notification from the Federal Aviation Administration that CBI's proposal would cause a hazard to air navigation from the

Clemson-Oconee County Airport. The instant information is submitted pursuant to 1.65 of the Commission's Rules. No party will be prejudiced thereby, and no comparative advantage will be gained thereby. Good cause for acceptance of this amendment is thus demonstrated.

Request for Imposition of Condition

2. The attached FAA Notification provides that CBI is <u>not</u> expected to pose a physical obstruction hazard to air navigation, provided the licensee provides a certified survey of at least a 2C accuracy (+/- 50 ft. Horz. and +/- 20 ft. Vert.). In that case, the proposal would not necessitate raising the Minimum Descent Altitude for the Clemson-Oconee County Airport. CBI has agreed to supply a certified site survey to at least a 2C accuracy. Therefore, the FAA does not consider that CBI will cause any physical obstruction to air navigation.

3. However, the FAA is of the opinion that the proposal would cause EMI interference, and that, for that reason, the proposal would constitute a hazard to air navigation. Pursuant to the opinion of CBI's engineering and airspace consultants, there are no other sites available which would avoid such EMI interference. Accordingly, in order to avoid the necessity for designation of an air hazard issue against CBI for hearing, CBI hereby requests imposition of the following condition, in the event CBI's application for Clemson is granted:

> 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. EMI problems in general 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 by the licensee. 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 Fowler to then-FAA Administrator Donald Engen, the FCC and FAA would, as an interim matter, <u>not</u> 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. Those conditions were fully acceptable to the FAA.

5. Moreover, the Communications Act grants the FCC sole

jurisdiction over communications frequencies and communications towers. See 47 U.S.C. §303(c),(f),(q). The FCC is empowered to assign bands of frequencies to the various classes of stations, and to assign frequencies for each individual station and determine the power which each station shall use, and is empowered to make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations. The FAA on the other hand, is authorized to make recommendations regarding tower structures when such pose possible physical hazards to air navigation, and to require the painting and or illumination of radio towers if and when in its judgment such towers constitute, or there is reasonable possibility that they may constitute, a menace to air navigation. There is no such danger here, with respect to CBI's proposed facility.

6. The imposition of the condition set forth above in ¶ 1 previously 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); Q Prime, Inc., Memorandum Opinion and Order, FCC 91M-817 (Released March 4, 1991) (copy attached, Attachment 1); Roxanne Givens, FCC 89M-2754 (Released December 7, 1989) (copy attached, Attachment 1); Charley Cecil & Dianna Mae White d/b/a White Broadcasting Partnership, FCC 91M-1317 (Released April 16, 1991) (copy attached, Attachment 1); Topp Broadcasting Limited Partnership, FCC 91M-1255 (Released April 11, 1991) (copy

attached, Attachment 1). Where the FAA did not oppose the use of the conditional grant clause, the Commission and the Presiding Judges in those cases granted the construction permit subject to the conditional clause set forth above.

7. The Bureau itself has supported summary decision through the use of the conditional clause. As recently as April 4, 1991, the Bureau has stated its willingness to accept such a clause as a condition to a construction permit where the EMI issue had been raised. (See, Mass Media Bureau Comments on Motion for Summary Judgment, attached hereto as Attachment 3.)

8. Imposition of a condition in the Hearing Designation Order, should CBI's application be designated for Hearing with the other competing applicants for Clemson, would avoid the necessity of designation of an air hazard issue against Clemson, would reduce the number of issues for Hearing, and would thus promote administrative convenience, conserve agency and applicant resources, and would be in the public interest.

9. CBI recognizes that it may be obliged to resolve the EMI problem with the FAA at a later date, and intends to do so, if possible, prior to the construction of its proposed facility. However, imposition of the above condition will permit construction and new service, while allowing the FAA the opportunity to object to the Commission, in the event of any actual, perceived interference to local air navigational systems.

WHEREFORE, the foregoing considered, CBI respectfully requests that the Commission ACCEPT the instant amendment, and IMPOSE the Condition set forth above on the proposed operation of CBI's FM Station at Clemson, South Carolina, in the event CBI's application is eventually granted.

Respectfully submitted,

CLEMSON BROADCASTING, INC.

By: Denise B. Moline
Denise B. Moline
Its Attorney

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Manassas Park, VA 22111

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June 4, 1991