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JUN 16 1992

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)
)
BROWN COMMUNICATIONS)
)
Licensee of Radio Station)
WKIJ (AM),)
Parrish, Alabama)
)
Order to Show Cause Why the)
License for Station WKIJ (AM),)
Parrish, Alabama, Should)
Not be Revoked)

MM DOCKET NO. 92-35

To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S
TRIAL BRIEF AND EXHIBIT EXCHANGE

1. Pursuant to the Presiding Judge's Prehearing and Trial Order, FCC 92M-413, released April 1, 1992, the Mass Media Bureau hereby submits its trial brief and proposed hearing exhibits.

2. The Bureau intends to prove that WKIJ (AM) has been silent without Commission authority since January 21, 1991. Brown Communications has neither requested Commission permission to remain off the air nor turned in its license, in violation of Sections 73.1740 and 73.1750 of the Commission's Rules.

3. The Bureau does not anticipate calling any witnesses. We intend to introduce the attached documents into

No. of Copies rec'd 076
List A B C D E

evidence. They consist of:

MMB Ex 1 - Letter dated June 25, 1990, whereby Jimmy D. Brown notified the Commission that WKIJ(AM) was silent, and requested permission to remain silent.

MMB Ex 2 - Letter dated July 9, 1990, whereby the Commission granted WKIJ(AM) temporary authority to remain silent until October 9, 1990.

MMB Ex 3 - Letter dated October 8, 1990, whereby Brown Communications requested an extension of authority to remain silent.

MMB Ex 4 - Letter dated October 30, 1990, whereby the Commission granted WKIJ(AM) temporary authority to remain silent through January 21, 1991.

MMB Ex 5 - Letter dated December 18, 1990, whereby the Commission granted Brown Communications' request for special field test authorization in order to determine soil conductivity.

MMB Ex 6 - Letter dated April 25, 1991, wherein Jimmy D. Brown requests more time for field test measurements.

MMB Ex 7 - Commission Letter dated May 16, 1991, extending field

test authorization through August 31, 1991.

MMB Ex 8 - Letter dated August 16, 1991, wherein Jimmy D. Brown requests a further extension of the field test authorization.

MMB Ex 9 - Letter dated August 29, 1991, wherein the Commission indicated that the extension of field test authorization would not be granted absent an acceptable status report regarding progress.

MMB Ex 10 - Letter dated June 24, 1991, whereby the Chief, Audio Services Division, Mass Media Bureau, requested Brown Communications to submit information concerning its compliance with Commission requirements for a minimum operating schedule and discontinuance of operation, Sections 73.1740 and 73.1750 of the Commission's Rules.

MMB Ex 11 - Change in Official Mailing Address for Broadcast Station, submitted to the Commission by Brown Communications in December, 1988.

MMB Ex 12 - Mass Media Bureau's Request for Admissions, filed May 1, 1992.

MMB Ex 13 - Brown Communications' May 6, 1992, response to the above.

MMB Ex 14 - Change in Official Mailing Address filed with the Commission by Brown Communications on April 27, 1992.

MMB Ex 15 - Copy of Return Receipt Card received by the Commission on April 28, 1992.

MMB Ex 16 - Copy of Return Receipt Card received by the Commission on May 21, 1992.

4. All of the documents described above are relevant. They consist primarily of correspondence between the licensee and the Commission regarding WKIJ(AM)'s silence, and regarding Brown Communications' plans for field tests. The relevance of the Bureau's Request for Admissions and Brown's response is self-evident. In addition, the Bureau intends to offer documents to show that the June 24, 1991, letter at MMB Ex.10 was sent to the correct address. These consist of MMB Ex. 11, which shows that the address provided to the Commission by Brown is the address to which the June 24, 1991, letter was sent. MMB Ex. 14 shows that it was not until April 27, 1992, that Brown requested the Commission to change Brown's mailing address. MMB Exs 15 and 16 show that other correspondence has been received by Brown, as recently as May 16, 1992, at the address to which the June 24,

1991, letter was mailed.¹

5. The Bureau does not contemplate extensive discussion of evidentiary or procedural issues. Official notice of the Bureau's exhibits will be requested. We note that in Brown's May 6, 1992, response to the Bureau's Request for Admissions, Brown states that it did not receive the Commission letters which constitute MMB Exs. 9 and 10. We do not believe that this fact renders those exhibits inadmissible. Brown will have the opportunity to show its non-receipt of this correspondence, and how it affects its conduct². At the same time, we intend to show that any non-receipt of MMB Ex 9 is immaterial, and that any non-receipt of MMB Ex 10 resulted from Brown's failure to maintain a current mailing address in the Commission's official records for WKIJ(AM). See Section 1.5 of the Commission's Rules.

6. The only substantive issues concern compliance with Sections 73.1740 and 73.1750 of the Commission's Rules. The

¹ Although the June 24, 1991, letter indicates that it was sent via certified mail, return receipt requested, the Bureau is not in possession of a return receipt card for that letter.

² Indeed, MMB Ex 13 consists of Brown's response to admissions, wherein Brown states it did not receive the subject correspondence. Thus, the Bureau intends to introduce that statement into evidence via Ex 13.

Bureau will primarily rely upon those Rule sections as authority. If Brown cites the freeze on the acceptance of AM applications to justify its conduct, the Bureau may rely upon the Commission action imposing the freeze, and the exceptions to the freeze listed therein. See 5 FCC Rcd 2136 (1990).

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


Charles E. Dziejcz
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

June 16, 1992

MMB Ex 1 / 239

RECEIVED BY

JUN 26 1990

FCC MAIL BRANCH

JUN 27 10 30 AM '90

June 25, 1990

AUDIT SERVICES

Mr. William J. Tricarico
Secretary
Federal Communications Commission
Washington, D.C. 20554

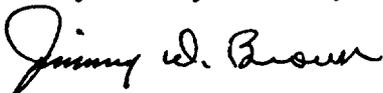
Re: WKIJ AM
Gone Silent 5PM EDT
June 24, 1990
Parrish, Alabama

Dear Mr. Tricarico:

Transmitted herewith on behalf of Brown Communications Three (3) copies of a request for WKIJ to remain silent until we, Brown Communications can restructure our finances, and or sale WKIJ. We are requesting call letters be left in tact at this time. Every effort will be to expedite this matter as soon as possible.

Should further information be desired respecting this matter, please communicate with Jimmy D. Brown at P.O. Box 1332 Jasper, Alabama 35501 or you may reach me at one of these numbers 901 577-0169 or 901 375-0971.

Very Truly Yours,



Jimmy D. Brown
P.O. Box 1332
Jasper, Alabama 35501

MMB Ex 2

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**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN REPLY REFER TO:

July 9, 1990

**Brown Communications
Radio Station WKIJ(AM)
c/o Jimmy D. Brown
P. O. Box 1332
Jasper, Alabama 35501**

Ref. 8910-MM. Relet Brown 6/25/90. Temporary authority granted WKIJ(AM), Parrish, Alabama remain silent thru 10/9/90 pending resolution of financial problems, and to allow time to locate a qualified buyer. Station should file assignment application prior to expiration of this authority. Any further request for extension must be accompanied by a detailed report of specific steps taken to resume operation.

**Stuart B. Bedell
Acting Chief, AM Branch
Mass Media Bureau, FCC**

**Mary C. McDonald
Comms. Analyst**

EIC-Atlanta, Georgia

**MM:afz/asd/mmb/wkij
(1)**

MMB Ex 3

239

Copy 1 100

October 8, 1990

Federal Communications Commission
Washington D.C. 20554
Mary C. McDonald
Comms. Analyst

OCT 01 1990

Ref. 8910-mm Brown Communications Radio Station WKIJ as of this writing no qualified buyer has been obtained for WKIJ Radio. A 1kw AM daytime only there is no market. Therefore, we are asking for extension of the authority granted WKIJ (AM) to remain silent.

ECC MAIL BRANCH

On 5, October 1990 WKIJ was notified by phone that WKIJ's transmitter site land lease had expired, and there would be no renewal of the contract. A written notice will follow. Therefore, we are filing a request with the Field Test Division Mass Media Bureau, requesting authority to construct a test tower for the purpose of relocating the tower, on our own property and increasing the power to 5kw. A request to waver the freeze on the AM band will also be filed with the Commission. The request should be completed and filed by 15, October 1990.

Jimmy D. Brown
Jimmy D. Brown
Brown Communications
WKIJ Radio AM
Jasper, AL 35501
Phone 205-384-0914

10/15/90

MMB EX 4

239

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Nov 6 3 52 PM '90

RECEIVED BY

IN REPLY REFER TO:

October 30, 1990

Brown Communications
Radio Station WKIJ(AM)
c/o Jimmy Brown
P. O. Box 1332
Jasper, Alabama 35501

Ref. 8910-MM. Relet Brown 10/8/90. Temporary authority granted WKIJ(AM), Parrish, Alabama to remain silent thru 1/21/91, to allow time to locate a qualified buyer, and relocate tower on your own property. FCC Form 301 must be filed for relocation of tower and increase of power. Any further request for extension must be accompanied by report of progress toward resumption of operation.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Mary C. McDonald
Comms. Analyst

EIC-Atlanta, Georgia

MM:afr/asd/mb/wkij
(2)

MMB EX 5

239

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN REPLY REFER TO:

December 18, 1990

Jimmy D Brown
Brown Communications
Radio Station WKLJ(AM)
P.O. Box 1332
Jasper, Alabama 35501

Ref. 8910-MB. Relet 11/9/90. Special field test authorization in accordance with Section 73.1515 FCC Rules granted to operate daytime hours on frequency 1130 kilohertz with a power of 1,000 watts into a 155 ft antenna. The maximum expected RMS will be 287.4 mV/m/kW at 1 km. Transmitter to be located in the vicinity of Jasper, Alabama. Geographic coordinates: NL: 33° 51' 07" WL: 87° 13' 33". Your obligation, if any, to notify regional FAA of proposed test tower and any possible lighting and marking requirements governed by Part 17, FCC Rules with which you must comply as a precondition to use this authority, Carrier shall be unmodulated except for voice identification call sign KPI-203 (Kapa Papa India-Two Zero Three) each hour. Test purpose to determine soil conductivity. Authority expires 2/28/91. Necessary to submit results of measurements and analysis to this office within 60 days of expiration this authority.



May Bradfield
Comms. Analyst

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Atlanta

MMB Ex 6

FEDERAL COMMUNICATIONS COMMISSION
MASS MEDIA SERVICES
P. O. Box 351890
PITTSBURGH, PA. 15251-5190

APRIL 25, 1991

REF. 8910-MM RELET BROWN COMMUNICATIONS
RADIO STATION WKIJ-AM

MAY 13 1991

AM BRANCH

THE PURPOSE OF THIS REQUEST IS FOR A NINETY (90) DAY EXTENTION TO DO MORE FIELD STRENGTH MEASUREMENTS. BECAUSE OF THE RAINEY SEASON WE HAVE HAD, FIELD STRENGTH MEASUREMENTS CAN NOT BE MADE TO DETERMINE SOIL CONDUCTIVITIES, THEREFORE FUTHER TESTING IS NEEDED.

WE BELIEVE THAT IF WE CAN GET A FEW DAYS OF GOOD DRY WEATHER CONDITIONS THESE TEST CAN BE CONCLUDED AND A APPLICATION FILED WITHIN NINETY (90) DAYS.

JIMMY D. BROWN
BROWN COMMUNICATIONS
P. O. Box 1332
JASPER, ALABAMA 35501

MMB Ex 7

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

239

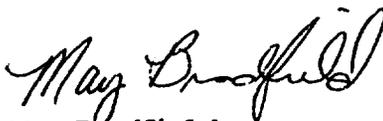
MAY 17 11 09 AM '91

May 16, 1991

IN REPLY REFER TO:

Jimmy D Brown
Brown Communications
Radio Station WKIJ(AM)
P.O. Box 1332
Jasper, Alabama 35501

Ref. 8910-MB. Relet Brown 4/25/91. Authority and terms comtel 12/18/90 reinstated & extended through 8/31/91. You are cautioned to more closely observe the expiration dates of temporary authorizations.



May Bradfield
Comms. Analyst

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Atlanta

MMB EX 8

RECEIVED

AUG 22 1991

FEE SECTION

FCC/MELON AUG 21 1991

AUGUST 16, 1991

AUG 26 1991

E. NCI

FEDERAL COMMUNICATIONS COMMISSION
MASS MEDIA SERVICES
P.O. Box 351890
PITTSBURGH, PA. 15251-5190

REF. 8910-MB BROWN COMMUNICATIONS RADIO STATION WKIJ AM ROUTE 10, Box 138 JASPER, ALABAMA 35501. SPECIAL FIELD TEST TO DETERMINE SOIL CONDUCTIVITY TO RELOCATE TRANSMITTER SITE IS A MAJOR CHANCE TO EXISTING STATION. THEREFORE WITH THE AM FREEZE ON AND THE FCC NOT EXCEPTING APPLICATIONS FOR MAJOR CHANGES, WE ARE ASKING FOR AN EXTENSION UNTIL THE FREEZE IS LIFTED AND TO BE NOTIFIED OF ANY CHANGES. I TALKED TO SOMEONE AT THE FCC OFFICE AND THEY SAID THE FREEZE WOULD BE LIFTED BEFORE THE END OF THE YEAR 1991.

SINCERELY,

Jimmy D. Brown

JIMMY D. BROWN
WKIJ RADIO AM
BROWN COMMUNICATIONS

MMB Ex 91

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

FCC MAIL SECTION

229

IN REPLY REFER TO:

AUG 30 12 08 PM '91

August 29, 1991

Jimmy D Brown
Brown Communications
Radio Station WKIJ(AM)
Route 10, Box 351890
Pittsburg, Pennsylvania 15251-5190

Ref. 8910-MB. Relet Brown 8/16/91. Your temporary authority for special field test for Radio Station WKIJ (AM) will not be extended unless you submit an acceptable status report outlining your progress. Ten (10) days allowed for response.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Kim P. Nguyen
for May Bradfield
Comms. Analyst

EIC- Atlanta

MMB EX 10

FCC MAIL SERVICE

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 24 9 09 AM '91

JUN 24 1991

IN REPLY REFER TO:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Brown Communications
314 Highway 78 By-Pass
Jasper, Alabama 35501

In re: WKIJ
Parrish, AL
Authority to Remain Silent

Dear Licensee:

Commission records show that the above-referenced station has been off the air without authority since January 21, 1991.

To verify our records, you are required to submit the following information, as applicable:

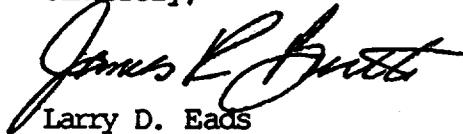
1. If the station is operating, state when the station resumed operations and whether it is operating in compliance with the minimum schedule of operation set forth in Section 73.1740 of the Commission's Rules. Provide a copy of any letter which notified the Commission that the station had returned to the air.
2. If the station is off the air but a current request for authority to remain silent was filed and acted upon, submit a copy of the Commission's authorization granting the request. If a request to remain silent was filed but has not been acted upon and the request is 120 days or older, submit up-dated justification for continuing to remain off the air.
3. If the station is off the air and has not filed a current request for an extension of silence authority and resumption of operations is contemplated, submit a request for authority to remain silent which includes a detailed explanation as to why the station has not yet resumed operations, why additional time is needed for continuing to remain off the air, and the prospects and time as to when resumption

of operations is anticipated. If the station has permanently discontinued operations, the Commission must be so notified and the station's license and other instruments of authorization must be forwarded to the Commission for cancellation, pursuant to Section 73.1750 of the Commission's Rules.

The requested information is required to be submitted to the Commission, in accordance with Section 73.1015 of the Rules, within thirty days from the date of this letter. Failure to respond or to submit a showing sufficient to justify an extension of silence authority may result in the cancellation of your license. Your response should be mailed to:

Federal Communications Commission
AM Branch
Room 342
Washington, DC 20554
Attention: James R. Burtle

Sincerely,



Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

Registered

MMB Ex 11

RECEIVED BY
DEC 25 1988
AM BRANCH

CHANGE IN OFFICIAL MAILING ADDRESS FOR BROADCAST STATION

Mail to: Federal Communications Commission
Mass Media Bureau
Audio Services Division
Washington, D. C. 20554

DEC 21 1988
COMMUNICATIONS SECTION

| |
|---|
| 1. Licensee's Name: Brown Communications |
| 2. Street Address or Post Office Box: 314 Highway 78 By-Pass |
| 3. City, State, and ZIP Code: Jasper, Alabama 35501 |
| 4. Call Sign and Type of Service: WKIJ AM RADIO |

Section 1.5 of the Commission's Rules requires a permittee/licensee to keep the Commission informed of any change in mailing address in order that the station may be served documents or other official papers without delay.

Only **one** mailing address can be maintained for each broadcast station.

Due to lack of space the mailing address cannot contain an individual name (unless the licensee is an individual).

MMB Ex 12

RECEIVED

MAY - 1 1992

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

Federal Communications Commission
Office of the Secretary

| | | |
|--------------------------------|---|---------------------|
| In the Matter of |) | MM DOCKET NO. 92-35 |
| |) | |
| BROWN COMMUNICATIONS |) | |
| |) | |
| Licensee of Radio Station |) | |
| WKIJ (AM), |) | |
| Parrish, Alabama |) | |
| |) | |
| Order to Show Cause Why the |) | |
| License for Station WKIJ (AM), |) | |
| Parrish, Alabama, Should |) | |
| Not be Revoked |) | |

To: Brown Communications

MASS MEDIA BUREAU'S
REQUEST FOR ADMISSIONS

1. The Chief, Mass Media Bureau, pursuant to Section 1.246 of the Commission's Rules, hereby requests that, within 10 days of the service of this request, Brown Communications (hereinafter "Brown") admit to the truth of the following facts, as set forth in the following numbered paragraphs. Each response should be labeled with the same number as the subject admission request and should be made under oath or affirmation of the person providing the response. In addition, respondent is reminded that Section 1.246(b) of the Rules provides that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is

requested, he shall specify so much of it as is true and deny only the remainder."

Admissions

1. WKIJ(AM) is silent.
2. WKIJ(AM) has been silent since June 25, 1990.
3. Attachment A is a true and accurate copy of a letter, dated August 16, 1991, submitted to the Commission on Brown's behalf.
4. Brown received a letter from the Commission, dated August 29, 1991, reproduced herein as Attachment B.
5. Brown has not responded to Attachment B.
6. Brown received a letter from the Commission, dated June 24, 1991, reproduced herein as Attachment C.
7. Brown has not responded to Attachment C.
8. Brown did not submit any document to the Commission between August 29, 1991 and March 26, 1992.
9. WKIJ(AM) has been silent without Commission authority since January 21, 1991.
10. Subsequent to January 21, 1991, Brown has not requested Commission permission for WKIJ(AM) to remain off the air.
11. Brown has not submitted its license for WKIJ(AM) to the Commission for cancellation.

12. WKIJ(AM) is incapable of operation at this time.

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

Charles E. Dzedzic
Charles E. Dzedzic
Chief, Hearing Branch

Y Paulette Laden
Y. Paulette Laden
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

May-1, 1992

Attachment A

AUGUST 16, 1991

FEDERAL COMMUNICATIONS COMMISSION
MASS MEDIA SERVICES
P.O. Box 351890
PITTSBURGH, PA. 15251-5190

REF. 8910-MB BROWN COMMUNICATIONS RADIO STATION WKIJ AM ROUTE 10, Box 138 JASPER, ALABAMA 35501. SPECIAL FIELD TEST TO DETERMINE SOIL CONDUCTIVITY TO RELOCATE TRANSMITTER SITE IS A MAJOR CHANGE TO EXISTING STATION. THEREFORE WITH THE AM FREEZE ON AND THE FCC NOT EXCEPTING APPLICATIONS FOR MAJOR CHANGES, WE ARE ASKING FOR AN EXTENSION UNTIL THE FREEZE IS LIFTED AND TO BE NOTIFIED OF ANY CHANGES. I TALKED TO SOMEONE AT THE FCC OFFICE AND THEY SAID THE FREEZE WOULD BE LIFTED BEFORE THE END OF THE YEAR 1991.

SINCERELY,

Jimmy D. Brown

JIMMY D. BROWN
WKIJ RADIO AM
BROWN COMMUNICATIONS

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Attachment B

IN REPLY REFER TO:

August 29, 1991

Jimmy D Brown ..
Brown Communications
Radio Station WKLJ(AM)
Route 10, Box 351890
Pittsburg, Pennsylvania 15251-5190

Ref. 8910-MB. Relet Brown 8/16/91. Your temporary authority for special field test for Radio Station WKLJ (AM) will not be extended unless you submit an acceptable status report outlining your progress. Ten (10) days allowed for response.

James R. Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau

Ken P. ...
for May Bradfield
Comms. Analyst

EIC- Atlanta

Attachment C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 24 1991

IN REPLY REFER TO:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Brown Communications
314 Highway 78 By-Pass
Jasper, Alabama 35501

In re: WKIJ
Parrish, AL
Authority to Remain Silent

Dear Licensee:

Commission records show that the above-referenced station has been off the air without authority since January 21, 1991.

To verify our records, you are required to submit the following information, as applicable:

1. If the station is operating, state when the station resumed operations and whether it is operating in compliance with the minimum schedule of operation set forth in Section 73.1740 of the Commission's Rules. Provide a copy of any letter which notified the Commission that the station had returned to the air.
2. If the station is off the air but a current request for authority to remain silent was filed and acted upon, submit a copy of the Commission's authorization granting the request. If a request to remain silent was filed but has not been acted upon and the request is 120 days or older, submit up-dated justification for continuing to remain off the air.
3. If the station is off the air and has not filed a current request for an extension of silence authority and resumption of operations is contemplated, submit a request for authority to remain silent which includes a detailed explanation as to why the station has not yet resumed operations, why additional time is needed for continuing to remain off the air, and the prospects and time as to when resumption

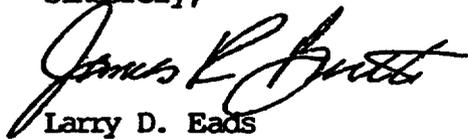
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of operations is anticipated. If the station has permanently discontinued operations, the Commission must be so notified and the station's license and other instruments of authorization must be forwarded to the Commission for cancellation, pursuant to Section 73.1750 of the Commission's Rules.

The requested information is required to be submitted to the Commission, in accordance with Section 73.1015 of the Rules, within thirty days from the date of this letter. Failure to respond or to submit a showing sufficient to justify an extension of silence authority may result in the cancellation of your license. Your response should be mailed to:

Federal Communications Commission
AM Branch
Room 342
Washington, DC 20554
Attention: James R. Burtle

Sincerely,



Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau