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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: Administrative Law Judge  
Richard L. Sippel

**MASS MEDIA BUREAU'S REPLY**  
**TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS**  
**OF LAW OF BROWN COMMUNICATIONS**

1. On September 2, 1992, Brown Communications filed its Proposed Findings of Fact and Conclusions of Law (hereinafter "Brown's PFCs") in the above-captioned proceeding. The Bureau hereby replies to Brown's PFCs. Our failure to reply to any particular finding and/or conclusion should not be construed as a concession to its accuracy or completeness. Indeed, the Bureau submits that its proposed findings of fact are an accurate and complete presentation of the relevant record evidence and that its conclusions of law properly apply Commission precedent in light of

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the record.

2. At p. 5, ¶ 26, Brown's PFCs state that WKIJ went silent on January 21, 1992. This is simply wrong. The record establishes that the station went silent on June 24, 1990, and has been silent continuously thereafter. Tr. 230; See Brown's PFCs at p. 8, ¶ 45. WKIJ's permission to remain silent expired on January 21, 1991. Thus, it might be said that WKIJ has been silent without Commission authority since January 21, 1991. See Mass Media Bureau Exs. 1 and 4.

3. At Pp. 6-7, ¶ 37, Brown's PFCs state that Jimmy D. Brown did not know there was a limit on how long he had permission to remain silent. This is absurd. The Commission's October 30, 1990, letter, which Mr. Brown acknowledged receiving, explicitly granted WKIJ authority to remain silent "thru 1/21/91." The letter further stated: "Any further request for extension must be accompanied by report of progress toward resumption of operation." Mass Media Bureau Ex. 4; Tr. 236. In view of the clear language of that letter, any assumption by Mr. Brown that WKIJ had permission to remain silent beyond January 21, 1991, is completely unreasonable. At the very least, a reasonable person would have made a specific

inquiry of Commission staff, which the evidence does not indicate was done. Indeed, at Pp. 8-9, ¶ 48, Brown's PFCs concede that permission to remain silent was to end on January 21, 1991, and would not be extended without a progress report.

4. In its conclusions, Brown Communications argues, for the first time, that the Commission's rules regarding silence are too vague to be understood. Brown's PFCs imply that permission to remain silent is normally for thirty days. A reading of Section 73.1740(a)(4) makes clear that a station may remain silent upon notification for up to thirty days without specific Commission authority. However, "[i]f the causes beyond the control of the licensee make it impossible to comply with the allowed period [obviously, thirty days], informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary." There is nothing vague about this rule. Brown Communications seems to be arguing that no further written requests were required because the Commission had earlier granted WKIJ requests to remain silent for periods of longer than thirty days. This is preposterous. The fact remains that, on several occasions, Brown Communications requested permission to remain silent but did not attempt to do so after January 21, 1991,

when the last period of authorized silence expired. Moreover, the Commission explicitly warned Brown Communications that no further extensions would be entertained absent a progress report. Mass Media Bureau Ex. 4. Again, any assumptions to the contrary are simply not justified. Moreover, the facts were known by Mr. Brown, if for no other reason than because the Commission made the situation clear in its October 30, 1990, letter. Mass Media Bureau Ex. 4. Thus, Mr. Brown's continuing insistence that he was not aware of any problem is not plausible.

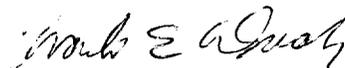
5. The Bureau further disagrees with the statement in Brown's PFCs that, once Brown Communications learned of "the problem," it complied with all requirements. Pp. 14, 16. The short answer is that WKIJ is silent without Commission authority, in contravention of Sections 73.1740 and 73.1750 of the Commission's Rules.

6. Finally, we submit that the public interest is harmed by WKIJ's abandonment of its broadcast obligations. There is no showing of any attempt by Brown Communications to resume broadcasting, either by effecting a minor change, which would have been acceptable even during the freeze on AM applications, or by seeking a waiver of the freeze. Brown Communications' choice of

pursuing a major change in its facilities was purely voluntary. Significantly, moreover, the freeze on AM applications was lifted on April 20, 1992, with no showing of a subsequent attempt to resume service by Brown Communications.

7. The Bureau once again submits that revocation is warranted in the instant case.

Respectfully submitted,  
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October 2, 1992

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 2nd day of October, 1992, sent by regular United States mail, U. S. Government frank, copies of the foregoing **"Mass Media Bureau's Reply to Proposed Findings of Fact and Conclusions of Law of Brown Communications"** to:

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Michelle C. Mebane