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BEFORE THE

**Federal Communications Commission**

JUN 15 1993

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Application of	)	MM DOCKET NO. 93-127 /
	)	
JANICE M. SCANTLAND	)	File No. BPH-920113MC
	)	
ROBERT G. CASAGRANDE	)	File No. BPH-920115ME
	)	
For a Construction Permit for	)	
New FM Station on 104.3 MHz	)	
at Richwood, Ohio	)	

To: Administrative Law Judge Arthur I. Steinberg

**MOTION FOR SUMMARY DECISION**

Janice Scantland ("Scantland"), by her counsel, pursuant to Section 1.251 of the Commission's Rules, hereby moves for summary decision of the air navigation hazard issue designated against her above-captioned application. In support thereof, the following is shown:

Section 1.251(a)(1) of the Commission's Rules requires that a motion for summary decision be filed at least 20 days prior to the date set for the commencement of the hearing. The hearing date in this proceeding is September 21, 1993. Therefore, this motion is timely filed.

By Hearing Designation Order, DA93-477 (released May 15, 1993), the Assistant Chief, Audio Services Division, Mass Media Bureau, specified the following issue:

To determine whether there is a reasonable possibility that the tower height and location proposed by Scantland would constitute a hazard to air navigation.

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2.

Scantland, however, has received the Federal Aviation Administration's formal determination that her proposed tower will not constitute a hazard to air navigation. See Attachment A hereto.

Section 17.4(d) of the Commission's Rules states that:

Whenever a "no hazard determination" is received from the FAA concerning any proposed antenna structure, the antenna structure is deemed not to involve a hazard to air navigation and the antenna aspect of the application for radio station authorization will be processed accordingly; provided that the FAA "no hazard determination" has not expired.

The FAA "no hazard determination" with regard to Scantland's application is to expire on December 16, 1993 unless "application for a construction permit is made to the FCC on or before" that date. Of course, Scantland already had filed her application for a construction permit. Thus, the "no hazard determination" will not expire.

Summary decision should be granted on the air navigation hazard issue specified against Scantland's application. The attached form evidencing the FAA's "no hazard determination" precludes the need for further inquiry into the air hazard issue with respect to Scantland's application. According to Section 17.4(d) of the Commission's Rules, the FAA's determination is conclusive. See Southern Capital Television, Inc., 45 FCC 2d 197, 29 RR 2d 511 (1974); Adirondak Television Corp., 5 FCC 2d 172, 8 RR 2d 784 (Rev. Bd. 1966). Therefore, no genuine issue as to a material fact remains as to whether Scantland's proposed tower height and location would constitute a hazard to air navigation.

3.

WHEREFORE, THESE PREMISES CONSIDERED, this Motion for Summary

Decision should be GRANTED and Issue 2 should be RESOLVED in Scantland's favor.

ATTACHMENT A

FEDERAL AVIATION ADMINISTRATION  
Great Lakes Region, AGL-530  
2300 East Devon Avenue  
Des Plaines, IL 60018

In Reply Refer To  
AERONAUTICAL STUDY NO.  
93-AGL-1400-0E

## ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

## PROPONENT:

Ms. Janice Scantland  
c/o Aviation Systems Assoc.  
23430 Hawthorne Blvd.  
Suite 200-Skypark Bldg 3  
Torrance, CA 90505

CONSTRUCTION LOCATION (MAD 83):  
Magnetic Springs, OH

LATITUDE : 40-21- 51.  
LONGITUDE: 83-15- 35.3

	AGL	AMSL
HEIGHT:	341. ft	1276. ft

CONSTRUCTION PROPOSED: Steel Antenna Tower.  
FREQUENCY: 104.3 MHz.  
EFFECTIVE RADIATED POWER (ERP): 3 kW.

The Federal Aviation Administration acknowledges receipt of notice dated 02/22/93, concerning the proposed construction or alteration described above.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction is not identified as an obstruction under any standard of FAR, Part 77, Subpart C and would not be a hazard to air navigation.

The structure should be obstruction marked and lighted per FAA Advisory Circular AC 70/7460-1, "Obstruction Marking and Lighting", Chapters 3, 4, 5 & 13.

Supplemental notice is required at least 0 hours before the start of construction and within 5 days after construction reaches its greatest height (Use enclosed FAA Form 7460-2).

This determination expires on 12/16/93 unless:

- (a) extended, revised or terminated by the issuing office;
- (b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for a construction permit is made to the FCC on or before the above expiration date. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or on the date the FCC denies the application.

NOTE: Any request for extension of the effective period of this determination must be postmarked or delivered to the issuing office at least 15 days prior to the expiration date.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

>>>> NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED <<<<

## Remarks:

Study included sponsor's letter certifying horizontal and vertical accuracy. This notice supersedes the ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION dated April 16, 1993 and revises the coordinates and determination.

Signed:   
Manager, System Management Branch

Issued In: Des Plaines, Illinois  
On: 06/09/93

**CERTIFICATE OF SERVICE**

I, Pamela R. McKethan, hereby certify that on this 15th day of June, 1993, copies of the foregoing **MOTION FOR SUMMARY DECISION** were hand delivered and mailed, first class, postage prepaid, to the following: