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July 12, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket No. 93-178
Howard B. Dolgoff
(File No. BPH-911223ME)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Howard B. Dolgoff, an applicant in the above-referenced comparative hearing proceeding (MM Docket No. 93-178), are an original and six (6) copies of his Motion For Partial Summary Decision in the proceeding. Kindly refer this submission to Administrative Law Judge John M. Frysiak.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By: _____
Irving Gastfreund

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 93-178
	)	
HOWARD B. DOLGOFF and	)	File No. BPH-911223ME
	)	
MARK AND RENEE CARTER	)	File No. BPH-911224MD
	)	
For a Construction Permit For a New FM Radio Station on Channel 292A in Miramar Beach, Florida	)	

TO: Administrative Law Judge John M. Frysiak

MOTION FOR PARTIAL SUMMARY DECISION

HOWARD B. DOLGOFF ("Dolgoff"), by his attorneys, pursuant to Section 1.251(a)(1) of the Commission's Rules, hereby respectfully requests that the Presiding Judge grant summary decision in Dolgoff's favor on the air hazard issue specified against him in the Hearing Designation Order, ___ FCC Rcd ___, DA 93-700 (Mass Media Bureau released June 28, 1993), at ¶¶4 and 7. In support hereof, it is shown as follows:[1]

In Paragraph 4 of the Hearing Designation Order, the Mass Media Bureau stated as follows:

> "Since no determination has been received from the FAA as to whether the antenna proposed by Dolgoff would

---

[1] 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 commencement of the hearing. The hearing in this proceeding is presently scheduled to begin on October 26, 1993. See Order, FCC 93M-431 (Chief Administrative Law Judge released July 1, 1993). This Motion is therefore timely filed.

constitute a hazard to air navigation, an issue with

application at the processing line was not aware of the FAA's determination of no hazard.

Based on the foregoing, it is manifest that there is no genuine issue of material fact as to whether Dolgoff's proposed antenna structure would constitute a hazard to air navigation and, therefore, consistent with Commission policy, summary decision in Dolgoff's favor on the air hazard issue designated against him is warranted. "The function of [a] summary decision rule, in its broadcast application, is to avoid a useless hearing." Summary Decision Procedures, 34 FCC 2d 485, 488 (1972). Section 1.251 of the Commission's Rules vests authority on a Presiding Administrative Law Judge in hearing proceedings to grant a motion for summary decision on a given issue where, as here, there is no genuine issue as to any material fact. See generally, Midwest St. Louis, Inc., 79 FCC 2d 519, 529 (1980). Here, it is clear that "... there is not the slightest doubt as to the facts and that only the legal conclusion remains to be resolved." Midwest St. Louis, Inc., supra, 79 FCC 2d at 529, citing Telecorpus, Inc., ___ FCC 2d ___, 30 RR 2d 1641, 1644 n. 3 (ALJ 1974).

Since there is no genuine issue of material fact as to the air hazard issue to be resolved at hearing in this proceeding, a grant of summary decision on that issue in Dolgoff's favor is warranted under Section 1.251(a)(1) of the Commission's Rules.

Accordingly, Dolgoff respectfully requests that his instant Motion For Partial Summary Decision be granted.

Respectfully submitted,

HOWARD B. DOLGOFF

By: _____
Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler
The McPherson Building
901 15th Street, N.W.
Suite 1100
Washington, D.C. 20005

His Attorneys

July 12, 1993

Exhibit 1

U.S. Department of Transportation
Federal Aviation Administration

Southern Region

P. O. Box 20636
Atlanta, Georgia 30320

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE		MSL	AGL	AMSL
MIRAMAR BEACH	FL	30-23-31.00	086-18-25.00	10	340	350

WUMX-FM
HOWARD B. DOLGOFF
P. O. BOX 13549
TALLAHASSEE, FL 32317

AERONAUTICAL STUDY
No: 92-ASO-0942-OE

CERTIFICATE OF SERVICE

I, Mary Odder, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that on this 12th day of July, 1993, have caused a copy of the foregoing "Motion For Partial Summary Decision" be hand-delivered or to be sent via first-class United States mail, postage prepaid, to the following: