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March 6, 1998

Mr. James T. Whitaker
Crestview Broadcasting, Inc.
P.O. Box 267
Crestview, FL 32536

In re: WAAZ-FM, Crestview, FL
Crestview Broadcasting, Inc. ("Crestview")
BPH-971114IE

Dear Mr. Whitaker:

This letter refers to the above-captioned minor change application to change the transmitter location, effective radiated power and antenna height.

The application failed to include Section VII, Page 22, "Certifications" page.[1] Lack of this section, signed by an authorized officer of Crestview, constitutes a "Tier 1" minimum filing requirement defect (*See* Appendix C, Item 2 and Appendix D, Page 23 of the *Report and Order* in MM Docket 91-347, 57 Fed. Reg. 34872, August 7, 1992).[2] Pursuant to 47 C.F.R. § 73.3564(a), applications which fail to meet any <u>one</u> of the items in "Tier 1" will be returned.[3] Accordingly, the application will be returned.

Had the application been otherwise acceptable for tender, we note that pursuant to the *Memorandum Opinion and Order* in MM Docket 90-91, 8 FCC Rcd 347 (1993), effective February 25, 1993, the Commission modified the allotment for WAAZ to permit the station to specify Class C1 facilities on its present channel (284). Channel 284C2 was deleted from the Table of Allotments (47 C.F.R. § 73.202), and Channel 284C1 was substituted therein. WAAZ was afforded a period of 90 days from the February 25, 1993 effective date to file a construction permit application for Class C1 facilities. Although the old Class C2 allotment was deleted, WAAZ was permitted to continue operating on the old channel pending the grant of a Class C1 construction permit and the implementation of Class C1 operations.

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[1]This section also includes the required Anti-Drug Abuse and Site Availability Certifications.

[2]In Appendix D, Page 23 it is stated ". . . because of the critical importance of the applicant's certification of the correctness of the data contained in the application as of the date of filing, unsigned applications will not be accepted for tender."

[3]Although the "cover page" of the application was signed by the president of Crestview, this signature does not address the certifications of Section VII and is therefore not sufficient for the "Tier 1" requirement.

As of this date, a construction permit application for Class C1 facilities has not been received. In the above-captioned application it is stated:

> WAAZ-FM has been previously authorized to upgrade to class C1 service (MM Docket No. 90-91). Construction of the new class C1 facility will be applied for, upon location of suitable real estate to accommodate tower construction. In the interim Crestview Broadcasting requests authorization to improve the current class C2 rated facility to its maximum potential (50 kilowatts at 150 meters) but states it's intention to construct the new class C1 facility as soon as it is able to do so.

A Class C1 station, being larger than a Class C2 station, requires greater protection from encroachment by other stations. Thus, WAAZ is presently receiving the benefit of Class C1 protection while only providing the service of a Class C2 station. Failure to implement Class C1 facilities in a timely manner constitutes "warehousing" of unused spectrum to the preclusion of other potential users seeking to provide additional broadcast service to the public. Therefore, the grant of the above-captioned Class C2 application without also downgrading the allotment would have been contradictory to the policy objective of efficient use of spectrum and would not have been in the public interest. Accordingly, Crestview must either file an application specifying Class C1 facilities or request a downgrade to a Class C2 facility.

Please note, the unused Class C1 allotment could result in WAAZ being made a party to an allocation rulemaking seeking to downgrade the Crestview, Florida Channel 284 allotment. If Crestview intends to apply for Class C1 facilities, a construction permit application (FCC Form 301) must be filed. If this application is filed before any conflicting rulemaking is initiated, the application will take precedence. If filed later, the application will be subject to the outcome of the rulemaking proceeding. *See* the *Report and Order* in MM Docket 91-348, 7 FCC Rcd 4917 (1992). If Crestview wishes to downgrade WAAZ a statement specifically stating this must be included with any application.

In light of the above, Application File No. BPH-971114IE, being inadvertently accepted for tender and filing, IS HEREBY RETURNED.

Sincerely,

Dennis Williams

Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau

enclosure

cc: du Treil, Lundin & Rackley, Inc.