



Federal Communications Commission
Washington, D.C. 20554

November 20, 2000

1800E3-JLB

The Atlanta Channel, Inc.
c/o Henry A. Solomon, Esq.
Garvey, Schubert & Barer
1000 Potomac Street, N.W.
Fifth Floor
Washington, D.C. 20007

Re: Statement of Eligibility for
Class A Television Status
WTHC-LP, Atlanta, Georgia
Facility ID 65409

Dear Licensee:

This is with respect to the petition filed by The Atlanta Channel, Inc. (ACI), licensee of low power television station WTHC-LP, channel 42, Atlanta, Georgia, seeking reconsideration of the Commission's dismissal of its Statement of Eligibility for Class A Low Power Television Station Status.¹

The Community Broadcasters Protection Act of 1999 (CBPA),² which was signed into law November 29, 1999, provides that an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low power stations that carry common local programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations. 47 U.S.C. § 336(f)(2)(A). The CBPA further states that licensees intending to seek Class A designation shall submit a certification of eligibility within 60 days after the date of enactment of the Act, *i.e.*, January 28, 2000.

While the Commission received a signed statement for station WTHC-LP on December 29, 1999, well in advance of the January 28, 2000 deadline, none of the certification questions had been completed, and accordingly, the Commission dismissed

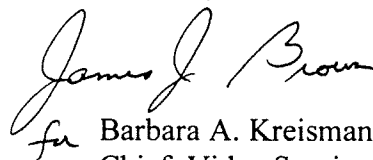
¹ See Public Notice, DA 00-1227, June 9, 2000.

² Pub. L. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

the statement in June 2000 as materially deficient. On reconsideration, ACI states that its failure to certify was due to "clerical error" and complains that the Commission's dismissal of its statement of eligibility is unduly harsh. We disagree. Because the January 28th certification deadline was statutory, the Commission does not have general authority to waive or extend the deadline, absent extraordinary circumstances. See *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6361 (2000); see also *Reuters Ltd. v. FCC*, 781 F.2d 946 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). Here, ACI has failed to demonstrate extraordinary circumstances which would justify a waiver to permit it to certify its qualifications for the first time almost five months after the statutory deadline.³ ACI also asserts that rather than dismiss the statement, the Commission should have given ACI an opportunity to cure its "minor defect," citing Commission policy to return defective or incomplete AM and FM applications at the time of tender to give applicants an opportunity for correction and resubmission. *Commission Statement of Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, 56 RR 2d 776 (1984). While these 1984 guidelines do not apply to the processing of Statements of Eligibility for Class A Low Power Television Station Status, we note that the Commission indicated that where an application was patently defective – as ACI's statement was here – "we will not allow the applicant to remedy the omission and have its application accepted nunc pro tunc . . . if a cut-off date was passed by the time of resubmission." *Id.* at 777.

In view of the foregoing, the petition for reconsideration filed by The Atlanta Channel, Inc. IS HEREBY DENIED.

Sincerely,

A handwritten signature in cursive script, appearing to read "James J. Brown".

for Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

³ While ACI asserts that acceptance of its late certifications will have no impact on other low power television licensees, the Commission has allotted DTV channels *41 and 43 to the Atlanta market, and awarding Class A status to ACI on channel 42 could have future impact on DTV facilities on those channels.