

FEDERAL COMMUNICATIONS COMMISSION
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November 30, 2010

MEDIA BUREAU
AUDIO DIVISION
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Woodward Communications, Inc.
P.O. Box 1519
Appleton, WI 54912 – 1519

Re: WAPL(FM), Appleton, WI
Facility ID No. 73659
Woodward Communications, Inc.
BPH-20081017ABP
BMLH-20050610AGX

Dear Applicant:

This letter is in reference to: (1) the above-captioned minor change application to modify the antenna height and location to specify Class C facilities;¹ (2) the February 25, 2010 Informal Objection filed by Northern Radio of Michigan, Inc. ("Northern"); and (3) all other related pleadings.

Background. On June 14, 2007, Northern, licensee of station WSRJ(FM), Honor, MI, filed a minor change construction permit application (BPH-20070914ACN) to modify effective radiated power and upgrade its facility from Class C3 to Class C2. In addition, the Northern application proposed that Woodward's license and assignment be modified to specify Class C0 in lieu of Class C in accordance with the reclassification procedures set forth in Note 4 of 47 C.F.R. § 73.3573.² By staff letter dated March 21, 2008, Woodward was directed to show cause why its license should not be modified to specify Channel 289C0 in lieu of Channel 289C. On April 18, 2008, Woodward stated its intention to file a construction permit application to specify minimum Class C facilities. On October 17, 2008, Woodward filed its application specifying Class C facilities with a tower height of 457 meters.

¹ WAPL is currently licensed as a Class C facility with an effective radiated power ("ERP") of 100 kilowatts and a height above average terrain ("HAAT") of 358 meters. Pursuant to 47 C.F.R. § 73.211, this corresponds to Class C0 facilities. The October 17, 2008 application specifies full Class C facilities with an ERP of 100 kilowatts and a HAAT of 496 meters.

² See 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Second Report and Order, FCC 00-368, 15 FCC Rcd 21649 (2000) ("Streamlining Item").

Untimely Updates Filed. By letter dated May 11, 2009, Woodward was informed that if the antenna structure could not be registered within 60 days of the date of that letter, the Audio Division must be notified in writing, concerning the delay. Furthermore, the letter stated that in the event that further delays in the registration process occur, the applicant must provide the Audio Division with written updates every 60 days thereafter. The letter concluded that failure to respond within this time period or to provide the written updates every 60 days would result in the dismissal of the application for failure to prosecute pursuant to 47 C.F.R. § 73.3568(a)(1).

On August 16, 2010, Woodward filed an update stating Woodward was continuing its pursuit of obtaining radar traffic data from the Federal Aviation Administration (“FAA”) to establish that air traffic is already being radar vectored around the area of the proposed antenna tower. On November, 10, 2010, Woodward filed a further update reporting its efforts in obtaining this information from the FAA. This particular filing was filed 86 days after the last update, or 26 days overdue. Furthermore, this untimely update failed to provide sufficient justification for the delay in its response. Accordingly, the application is subject to dismissal for failure to file a timely update.

Unable to Complete the Tower Registration Process. Pursuant to Paragraph 32 of the Streamlining Item, Class C licensees subject to reclassification that fail to prosecute construction permit applications by foot dragging in the FAA approval process will be subject to dismissal of their applications.³ The original 457 meter tower was proposed to the FAA on October 8, 2008 in aeronautical study number 2008-AGL-6747-OE. On December 15, 2009, the FAA issued a Determination of Hazard to Air Navigation for this proposed structure. On January 29, 2010, Woodward proposed to the FAA an increase in height to 458 meters in aeronautical study number 2010-AGL-519-OE. On September 22, 2010, the FAA issued a Notice of Presumed Hazard for this modified tower height. As of the date this letter, the proposed structure has not been approved by the FAA. Furthermore, the documents released by the FAA indicate that the tower height must be significantly reduced before they would issue a determination of no hazard. This reduced tower height would impede Woodward’s ability to construct minimum Class C facilities.

To date, over two years have passed since Woodward’s initial request to the FAA and construction permit application were filed. Furthermore, since the initial hazard determination, Woodward has filed updates describing the efforts taken to acquire video data from the FAA to demonstrate that the air traffic in the area is already self-avoiding the area of the proposed tower due to the presence of seven tall existing towers. However, over the last ten months, Woodward has failed to obtain this data from the FAA or even provide an update with a response from the FAA addressing Woodward’s requests. Therefore, these updates provide no reason to suggest that FAA approval will be forthcoming in the near future. In sum, no tangible evidence has been presented showing that the proposed antenna structure will be registered at the proposed site with a height high enough to implement minimum Class facilities.

³ See 47 C.F.R. § 73.3568(a)(1).

Conclusion. In light of the above, Woodward's application BPH-20081017ABP IS HEREBY DISMISSED for failure to prosecute pursuant to 47 C.F.R. § 73.3568(a)(1). In addition, the February 25, 2010 Informal Objection filed by Northern IS HEREBY DISMISSED AS MOOT.

Furthermore, pursuant to the authority found in Sections 4(i), 5(c)(1), 303, and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, as amended, IT IS ORDERED, that effective the date of this letter, the FM assignment IS MODIFIED, as follows:

<u>Community</u>	<u>Channel No.</u>
Appleton, WI	Add: 289C0 Delete: 289C

IT IS FURTHER ORDERED, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, License File Number BMLH-20050610AGX, IS MODIFIED to specify operation on Channel 289C0 in lieu of Channel 289C (copy enclosed).

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Marissa G. Repp
Harry C. Martin