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March 6, 2009

Larry D. Perry, Esq.
11464 Saga Lane
Knoxville, TN 37931-2819

Re: WQKR(AM), Portland, Tennessee
Venture Broadcasting LLC
Facility ID Number 6663
File No. BL-20090202CFA
PTA Request 20090202CFB

Dear Counsel:

This letter is in reference to the above captioned FCC 302-AM, Application for AM Broadcast Station License (the "Application"), to cover construction permit BP-20050720ADU, and the associated request for Program Test Authority ("PTA"), 20090202CFB, filed by Venture Broadcasting LLC ("Venture"), licensee of Class D AM broadcast station WQKR, Portland, Tennessee. For the reasons set forth below, we deny the request for PTA, dismiss the Application as patently defective, and declare the WQKR(AM) construction permit expired.

Background. On February 1, 2006, Venture was granted a construction permit, File No. BP-20050720ADU (the "Permit"), which authorized changes to the licensed WQKR(AM) transmitter location, operating power, operating hours and directional antenna pattern. The Permit specifies a construction deadline of February 1, 2009, for the authorized WQKR(AM) facilities. Special Operating Condition 1 of the Permit requires Venture to submit complete nondirectional and directional proofs of performance before program tests for the modified WQKR(AM) facilities are authorized.

Discussion. Pursuant to Section 73.151 of the Rules,[1] the proofs of performance required by Special Operating Condition 1 of the Permit must be submitted with the FCC 302-AM, Application for License, covering the Permit. Although Venture affirmatively certified in the Application that it met all the terms, conditions, and obligations set forth in the Permit,[2] it did not submit the required proofs of performance nor any of the other data required to be filed with the Application by Section 73.151 of the Rules.[3] Venture's failure to submit the required proofs of performance, which contain data required to evaluate the operation of the authorized WQKR directional antenna system, renders the Application patently defective and unprocessable.

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[1] 47 C.F.R. § 73.151.

[2] *Id.*

[3] In WQKR Exhibit 3 of the Application, Venture states "that proof has been completed and the results are filed with this application."

Section 73.3566(a) of the Rules directs the staff to dismiss nonconforming applications.[4] Consistent with this directive, the staff routinely dismisses defective applications,[5] and the Commission has affirmed this practice.[6] This rule makes clear that an applicant may not – as attempted by Venture in this case – "file a grossly defective and incomplete application as a mere placeholder and shift to the staff the full burden of ensuring the technical integrity and safety of allegedly constructed facilities."[7]

Venture filed a seriously deficient application, omitting critical data necessary for evaluating the operation of the WQKR(AM) directional antenna system. The filing of such a patently defective license application does not constitute the timely completion of station construction in accordance with the conditions set forth in the construction permit. To permit such filings would undermine the Commission's strict construction permit requirements. Accordingly, we find that WQKR(AM) construction permit BP-20050720ADU has automatically expired.

Conclusions/Actions. For the reasons set forth above, IT IS ORDERED that Venture's PTA request, 20090202CBF, IS DENIED, and that Venture's Application for License, BL-20090202CFA, IS DISMISSED as patently defective pursuant to Section 73.3566(a) of the Rules.[8] Construction Permit BP-20050720ADU for Station WQKR(AM), Portland, Tennessee, EXPIRED BY OPERATION OF LAW on February 1, 2009, without further action by the Commission. This action has no effect on the currently licensed WQRK(AM) facilities.

Sincerely,

Susan N. Crawford
Assistant Chief
Audio Division
Media Bureau

cc: Venture Broadcasting LLC

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[4] *See* 47 C.F.R. § 73.3566(a).

[5] *See, e.g., KZTY(AM), Winchester, Nevada,* Letter (M.M. Bur. Dec. 21, 2000); *WWRU(AM), Jersey City, New Jersey,* Letter (M.M. Bur. Feb. 15, 2000); and *KAPM(AM), Bakersfield, California*, Letter (M.M. Bur. Oct. 29, 1999). Each of these cases involved a staff dismissal of a defective AM license application without an opportunity to amend. *See also Wauchula Educational Broadcasting Corp.,* Letter, DA 09-237, 24 FCC Rcd ___ (MB Feb. 13, 2009) (dismissing license application and finding that construction permit had expired by operation of law based on failure to timely submit required AM station proof of performance).

[6] *See, e.g., Bobby Duffy*, Memorandum Opinion and Order, 7 FCC Rcd 1734 (1992) ("the initial finding of acceptability is a provisional determination. When the Bureau later determined that Duffy's application was not in compliance with Section 73.211 of the Commission's Rules and was not supported by a grantable waiver request, the application could properly be dismissed.") *See also Dasan Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 7550, 7551 (1992) n.3; and *Special Markets Media, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 5753, 5754 (1989) (Commission affirms dismissal of application, rejects applicant's claim that it should have been given a chance to amend).

[7] *Aerco Broadcasting Corporation*, Memorandum Opinion and Order, 18 FCC Rcd 24417, 24419-20 (2003).

[8] 47 C.F.R. § 73.3566(a).