

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-6

In re Applications of

NORMANDY File No. BRH-910129UR  
BROADCASTING CORP.

For Renewal of License of  
Station WYLR(FM) (95.9 MHz),  
Glens Falls, New York

and

LAWRENCE N. BRANDT File No. BPH-910430MB

For a Construction Permit for  
a New FM Station on 95.9 MHz  
at Glens Falls, New York

#### HEARING DESIGNATION ORDER

Adopted: January 7, 1992; Released: January 21, 1992

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration: (a) the application of Normandy Broadcasting Corp. ("Normandy") for renewal of license of Station WYLR(FM), Glens Falls, New York; and (b) the application of Lawrence N. Brandt ("Brandt") for a construction permit for a new FM broadcast station at Glens Falls, New York. The applications are mutually exclusive because Brandt proposes to operate on 95.9 MHz, the frequency on which WYLR(FM) presently operates.

2. Normandy is an applicant for a construction permit for a new FM station on Channel 289B1 at Queensbury, New York. See MM Docket No. 90-181. In his *Initial Decision*, 6 FCC Rcd 2221 (ALJ 1991), the Presiding Judge ultimately concluded, *inter alia*, that "Normandy is disqualified to operate the proposed Queensbury facility because it has not established that it can be relied upon to provide truthful information to the Commission." 6 FCC Rcd at 2232. This conclusion was based, in part, on representations that Normandy had made in the Queensbury proceeding about its operation and programming of WYLR(FM), the station for which Normandy is seeking the renewal of license.

3. In *Barry Skidelsky*, FCC 91R-115 (released January 2, 1992), the Review Board also disqualified Normandy, albeit on the basis of Normandy's lack of reasonable assurance of the availability of a transmitter site.<sup>1</sup> The Review Board decision has not become final. However, if a final adjudication is rendered in which it is determined that Normandy lacks the requisite character qualifications to be a Commission licensee, such a determination would raise substantial and material questions about Normandy's basic qualifications to remain the licensee of WYLR(FM). Therefore a *contingent* issue will be specified herein against Normandy. In the event that Normandy's captioned application for renewal of license of WYLR(FM) is granted prior to the issuance of a final decision in the Queensbury proceeding, such grant shall be conditioned upon the outcome of the Queensbury case.

4. The Commission's Antenna Survey Branch has not received a final airspace determination from the Federal Aviation Administration ("FAA") with respect to Brandt's proposal. Consequently, an appropriate air hazard issue will be specified against Brandt, and the FAA will be made a party to this proceeding.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and/or operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. ACCORDINGLY, IT IS ORDERED, That, pursuant to § 309(e) of the Communications Act of 1934, as amended, the above-captioned applications ARE DESIGNATED FOR HEARING IN A COMPARATIVE PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether there is a reasonable possibility that the tower height and location proposed by Brandt would constitute a hazard to air navigation.

(b) If a final decision is rendered in the Queensbury, New York, proceeding (MM Docket No. 90-181) in which it is determined that Normandy lacks the basic qualifications to be a Commission permittee or licensee, to determine the effect(s) thereof on Normandy's basic qualifications to remain the licensee of Station WYLR(FM), Glens Falls, New York.

(c) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

7. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue.

8. IT IS FURTHER ORDERED, That, for the reasons discussed in 2 and 3, above, in the event Normandy's application for renewal of license of WYLR(FM), Glens

<sup>1</sup> The Board stated that "[b]ecause Normandy is disqualified on the basic site issue, we need not go further to determine whether Normandy's conduct [in the Queensbury proceeding]

amounted to misrepresentation." *Barry Skidelsky, supra*, FCC 91R-115 at § 35.

Falls, New York, is granted prior to the issuance of a final decision in the Queensbury, New York, proceeding (MM Docket No. 90-181), such grant SHALL BE CONDITIONED upon the outcome of that proceeding.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service SHALL BE ADDRESSED to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order also SHALL BE SERVED on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, N.W., Room 350, Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, Normandy and Brandt, pursuant to § 1.221(c) of the Commission's Rules, in person or by their respective attorneys, within 20 days of the release of this Order, SHALL FILE in triplicate, A WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That Normandy and Brandt, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed, and SHALL ADVISE the Commission of the publication of such notice, as required by § 73.3549(g) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau