

B. 11

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-121  
01558

In re Application of	)	MM DOCKET NO. 92-6 <sup>4</sup>
	)	
NORMANDY BROADCASTING CORP.	)	File No. BRH-910129UR
	)	
For Renewal of License of	)	
Station WYLR(FM)	)	
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	)	

PREHEARING CONFERENCE ORDER

Issued: January 27, 1992;

Released: January 28, 1992

A prehearing conference is scheduled for **March 24, 1992**, commencing at 9:00 a.m., at which the counsel shall be prepared to discuss designated and proposed issues, the evidentiary scope of this proceeding, additional discovery needed, and the estimated time required to complete all discovery and to try this case.

Counsel or parties appearing pro se<sup>1</sup> shall be prepared at this conference to address the following specific matters:

1. Appearance and Publication

Each counsel or party appearing pro se shall be prepared to show compliance with 47 C.F.R. §1.221(c) (written notice of appearance), 47 C.F.R. §73.3594(g) (publication of notice of hearing), and 47 C.F.R. §1.221(F) (hearing fee). The notice of appearance must be filed within twenty (20) days of the mailing of the Hearing Designation Order. See Establishment of Fee Collection Program, 2 F.C.C. Rcd 947, 966, as supplemented at 2 F.C.C. Rcd 1882-83 (1987).

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<sup>1</sup> Counsel and parties appearing pro se are presumed conclusively to have full knowledge of the Commission's rules concerning its hearing process. See Silver Beehive Telephone Co., 34 F.C.C. 2d 738 (Comm'n 1972).

2. Integration and Diversification Statement <sup>2</sup>

(a) Integration

On or before **February 21, 1992**, the applicants shall file with the Secretary and serve upon each other, Mass Media Bureau counsel and the Presiding Judge a full, complete and definitive statement of their integration proposal, identifying the principals proposed to be integrated into the day-to-day operation of the proposed station, the number of hours per week such principals propose to work at the station, the positions to be held, a brief statement of the duties to be performed, and their intentions to leave current employment. The Statement must also describe in full any qualitative credit sought for local residence, civic involvement, daytimer preference, and former broadcast experience, including dates, addresses and former broadcast positions and the years that such positions were held. Claimed gender or racial enhancement must be disclosed, with a specific factual basis presented for any credit sought for Native American heritage. This statement shall also set forth the names of all principals (voting and non-voting shareholders or general and limited partners), the percentage of each principal's ownership interest, the percentage of any contemplated future shareholder or partner (including non-voting principals) and, in the case of a corporation, offices and directorships held or to be held. This statement must be signed by a principal of the applicant. <sup>3</sup>

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<sup>2</sup> Any failure to exchange integration proposals on the designated date may result in the loss of integration credits. See Northland Communications, et al., 100 F.C.C. 2d 914 (Rev. Bd. 1985), aff'd \_\_\_ F.C.C. 2d \_\_\_, 60 Radio Reg. 2d (P&F) 776 (1986). The parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and other business positions and ventures (service on boards of directors, ownership of businesses). Failure to do so may result in denial or may diminish the credit sought for integration. See Kennebec Valley Television, Inc., 2 F.C.C. Rcd 1240 (1987). Part-time integration will be weighed under the Hirschman-Herfindahl Index ("HHI"). See Omaha TV 15, Inc., et al., 4 F.C.C. Rcd 730, Slip Op. FCC 88-371, released December 19, 1988 at 10-13, 65 Radio Reg. 2d (P&F) 1019 (Comm'n 1988).

<sup>3</sup> Any failure to exchange integration proposals on the designated date may result in the loss of integration credits. See Northland Communications, et al., 100 F.C.C. 2d 914 (Rev. Bd 1985), aff'd \_\_\_ F.C.C. 2d \_\_\_, 60 Radio Reg. 2d (P&F) 776 (1986). Also, the parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and/or business. Failure to do so may result in denial or may diminish the credit sought for integration. See Kennebeck Valley Television, Inc., 2 F.C.C. Rcd 1240 (1987).

(b) Diversification

Each applicant shall review its application to ensure that all information relevant to the diversification criteria has been fully reported. Possible future media interests also must be included. The applicant will then state, as a separate part of the statement, that its diversification showing is complete, accurate and current.<sup>4</sup>

3. Pending and Contemplated Issues

All questions raised by any pending motions or pleadings insofar as they relate to procedures governing the future course of this hearing and any pending perfecting amendments shall be discussed at the prehearing conference with a view towards facilitating their resolution.

4. Discovery

There shall be no discovery initiated prior to the exchange of integration and diversification statements. All foreseeable discovery on the standard comparative issue (document request, notices to depose, requests to admit) must be commenced no later than **March 2, 1992**, including the noticing of the depositions of all identified principals.<sup>5</sup> The parties are encouraged to agree on places and dates for depositions. Concerning documents, the parties shall agree on a Joint Document Production Request which will apply to all parties on the standard comparative issue. The parties shall be guided by the standard documents made available as a matter of right in new comparative cases. See 47 C.F.R. §1.325(c). But document requests specifically related to the renewal applicant (e.g. renewal expectancy) or other specific requests for documents shall be separately made by a Document Request that may be filed after the Prehearing Conference. The form of document requests shall be subject to the new document discovery procedures and §1.325(a) of the Commission's rules shall apply [47 C.F.R. §1.325(a)].

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<sup>4</sup> This up-date of diversification data is solely to facilitate the parties' preparations for hearing. There will be no post "B" upgrade as a result of this disclosure. Daytona Broadcasting Co., Inc., 97 F.C.C. 2d 212, 214-17 (Review Bd 1984).

<sup>5</sup> Unforeseen discovery needs, such as possible undisclosed principals whose identities are learned through document discovery or through depositions of proposed integrated principals, or failure to fully comply with document production, may be pursued in a second-wave of discovery provided that sufficient cause is shown in a motion for leave to seek such discovery. The parties must await the Prehearing Conference for a ruling on the scope of depositions of non-integrated principals.

Except for Bureau Counsel, there shall be no interrogatories without first obtaining leave from the Presiding Judge.

Full and complete compliance with document production is essential and counsel are expected to obtain reasonable assurance of compliance at depositions. Completeness of document production and accuracy in representations about the production may be a factor for adverse findings on an applicant's reliability and truthfulness.

5. Renewal Expectancy

Normandy Broadcasting Corp. is entitled to assert a claim for a renewal expectancy. If it intends to do so, a Statement Of Intent must be filed by **February 21, 1992**, with an estimate of the number of witnesses expected to be called.<sup>6</sup> Also, any party intending to oppose renewal expectancy must file by **March 16, 1992**, an estimate of the number of witnesses expected to be called to testify on the negative of the issue. Rebuttal witnesses will not be allowed without a specific showing of need after a witness has finished testifying. There will be document and frozen testimony exchange and admission dates set at the prehearing conference. The parties also will be required to submit the sworn written testimony of each proposed witness expected to testify on renewal expectancy.<sup>7</sup> Unless a specific showing of cause is made, or unless the parties intend to introduce the testimony of public witnesses through deposition testimony, there will be no deposing of renewal expectancy witnesses since their testimony will be exchanged in advance of trial. The parties will have ample time to argue relevancy at the admission session and to conduct cross-examination.<sup>8</sup>

6. Protective Order

The following protections are afforded to documents which are produced in this proceeding, whether the production is voluntary or pursuant to order.

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6 In the interest of administrative efficiencies, there will be no repetitious testimony permitted. See FRE 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time). Unless a convincing need is shown, witnesses will be limited to 15 for the expectancy and 10 (total) against the expectancy, and the parties are encouraged to use even fewer witnesses.

7 There will also be a requirement to exchange sworn written testimony on the comparative issue which will be received in evidence on the admission date.

8 But principals intended to be integrated into management may be deposed on all issues.

- (a) Documents which are responsive but which are on file with the Commission in this proceeding need only be identified. Although copies of such documents need not be furnished, counsel are encouraged to cooperate if the request is reasonable.
- (b) A party need not produce documents which are privileged lawyer-client communications or attorney work product documents.
- (c) Documents containing materials which are claimed in part to be privileged must be produced initially with the claimed privileged matter masked. If protection is sought, an unmasked copy must be submitted simultaneously to the Presiding Judge with points and authorities for determination in camera of the availability of a privilege. The statement for the basis for the privilege asserted must be sufficiently precise to enable the discovering party to evaluate its merits. Metroplex Communications, Inc., 2 F.C.C. Rcd 4513 (Review Bd 1987). Any party opposing the privilege shall file and submit a written opposition with points and authorities in **4 business days** and shall serve other counsel by hand or fax to out-of-town counsel.
- (d) Documents which are claimed to be privileged in their entirety shall be described for the requesting counsel by date, sender, receiver, persons noted for copies ("cc"), and a brief description of the subject matter. The list must be accompanied with a statement of the precise basis for the privilege(s) asserted. See Tri-State Community Development and Communications Corp., 4 F.C.C. Rcd 2402 (Review Bd 1989); and LJN Communications, 3 F.C.C. Rcd 2745 and 4411 (Review Bd 1988). Any party may request in camera inspection if the documents appear to be relevant. Any party opposing the privilege shall file and submit a written opposition in **4 business days** and shall effect service as indicated above.

7. Discovery Efforts

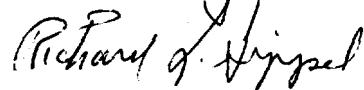
Cooperative discovery is to be fully explored after the exchange of integration statements and the parties shall meet for the purpose of discussing the scope of discovery and place of hearings in advance of the prehearing conference. A written report of that meeting, the status of discovery, schedule of depositions to be taken, and agreement reached on joint engineering evidence, agreements reached on number of public witnesses and the proposed form of their testimony (live testimony and/or depositions) shall be filed and submitted to the Presiding Judge on **March 19, 1992**.

8. Procedural Dates

Procedural dates shall be set at the conference for the following: completion of discovery; production of engineering data to Bureau counsel; exchange of exhibits and sworn written testimony; document and frozen testimony admission session; <sup>9</sup> commencement of trial in Washington, D.C.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>9</sup> A related ruling shall be made on the scope of public witnesses to be heard on the renewal expectancy issue and the form of testimony to be utilized (live testimony and/or deposition transcripts).