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

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MM Docket No. 92-6

Federal Communications Commission
Office of the Secretary

In re Applications of

NORMANDY
BROADCASTING CORP.

)
)
) File No. BRH-910129UR
)
)

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

To: Administrative Law Judge
Richard L. Sippel

PETITION TO MODIFY AND ENLARGE ISSUES

Lawrence N. Brandt ("Brandt"), by his attorney and pursuant to Section 1.229 of the Commission's Rules, hereby petitions for the Enlargement of Issues in this proceeding to include the following issue with respect to the application of Normandy Broadcasting Corporation ("Normandy") for renewal of license of Station WYLR:

To determine whether Normandy misrepresented facts to the Commission when it certified in its renewal application that it had placed in WYLR's public file, at the appropriate times, the information required by Section 73.3526 of the Commission's Rules.

Normandy also requests that issue (b) specified by the Hearing Designation Order, DA92-11 released January 21, 1992 ("HDO")

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List A B C D E

relating to Normandy's character qualifications be modified to read as follows:

- (b) To determine the effect of the findings and conclusions regarding the basic qualifications of Normandy that were reached in the Initial Decision in Barry Skidelsky, 6 FCC Rcd. 2221 (ALJ 1991), on Normandy's basic qualifications to continue as the licensee of Station WYLR.

**A Misrepresentation Issue Should
Be Added Against Normandy**

Attached hereto as Exhibit 1 are WYLR's Issues/Programs lists from 1987 through the first quarter of 1990.^{1/} Below is a summary of these lists which demonstrate that for six quarters during WYLR's last renewal period, Normandy placed no information in its public file pertaining to issue oriented programming broadcast over WYLR and during one quarter, it placed no list in the public file at all.

1987

1st Quarter	:	No FM programs
2nd Quarter	:	No FM programs
3rd Quarter	:	One 2-1/2 hour program and public service announcements (PSAs) over the July 4th holiday
4th Quarter	:	No FM programs

1988

1st Quarter	:	No FM programs
2nd Quarter	:	Two hour broadcast of radiothon and promotions about the event during one month
3rd Quarter	:	No FM programs
4th Quarter	:	PSAs; one live simulcast of a benefit concert

^{1/} The attached Issues/Programs lists for WYLR were submitted with the Petition that led to the addition of an issue in MM Docket No. 90-181 to determine whether Normandy's programming record as licensee of WYLR was unusually bad and are part of the record in that proceeding.

1989

1st Quarter : No list exists for this quarter
2nd Quarter : PSAs; no substantive FM programs
3rd Quarter : PSAs; one live simulcast of a rock concert
4th Quarter : PSAs; one 4 hour live remote

1990

1st Quarter : PSAs; live remotes totalling less than 25 hours

The foregoing chart shows that during at least seven calendar quarters of the last license term, Normandy did not place in WYLR's public file the information that it was required to place in the file pursuant to Section 73.3526(a)(9) of the Commission's rules. Moreover, as reflected on the face of the attached lists, the Issues/Programs lists covering WYLR's public file for the last three quarters of 1989 and the first quarter of 1990 were not prepared until June 12, 1990. Thus, even assuming that the content of those Issues/Programs lists met the minimum requirements of Section 73.3526(9), Normandy's certification that it had placed the lists in WYLR's public file at the appropriate time was clearly false since Section 73.3526(9) of the Rules requires that lists be placed in the public file by the tenth day of the succeeding calendar quarter.

**The Issue of Normandy's Character
Qualifications Should be Modified Accordingly**

In Barry Skidelsky, 6 FCC Rcd. 2221 (released April 29, 1991), Administrative Law Judge Kuhlmann held that Normandy was disqualified to operate a proposed FM facility in Queensbury, New York, under three issues:

1. Normandy has not demonstrated that it had reasonable assurance for its first antenna site,

2. Normandy's Threshold Showing on its non-entertainment programming could not be relied on and was in material respects untruthful and
3. Normandy failed to report a contingent ownership interest.

Overall, Normandy was disqualified because "it has not established that it can be relied upon to provide truthful information to the Commission." 6 FCC Rcd. at 2232.

The Review Board upheld the disqualification of Normandy based on the lack of a transmitter site, but it did not address the other two issues raised in the Initial Decision regarding Normandy's character qualifications. Barry Skidelsky, FCC 91R-115 (released January 2, 1992)(the "Queensbury Decision").

The HDO thus stated that because the Review Board's decision in Queensbury was not yet final, there remained the possibility that the Commission would find that Normandy lacks the requisite character qualifications to be a Commission licensee and that such a finding would raise material and substantial questions concerning Normandy's qualifications to continue as the licensee of WYLR. Therefore, the HDO specified the following contingent issue in this case:

- (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.

On January 24, 1992, the Mass Media Bureau filed a Petition for Reconsideration ("Petition") of the Queensbury Decision, wherein the Bureau asked the Review Board to make a final determination regarding Normandy's character qualifications under

the two issues that the Board had not resolved in the Queensbury Decision, since the resolution of these issues might have a significant impact on Normandy's renewal qualifications as an applicant in this proceeding. In response to the Mass Media's Petition, the Board issued a Memorandum Opinion and Order, FCC 92R-16 released February 19, 1992, wherein it declined to reconsider its prior decision in Queensbury, but proposed to "treat the matter in a manner we believe will alleviate all legitimate concerns." The Board's proposed resolution was that "an issue should be framed exactly as it was in Ocean Pines."

In Ocean Pines, Administrative Law Judge Kuhlmann added an issue against Ocean Pines based on the release of an Initial Decision in another proceeding which found that Ocean Pines' 100% shareholder was the real party-in-interest in one of the competing applicants for a Fenwick Island facility. Thus the ALJ framed the issue as follows:

To determine whether the findings and conclusions about the conduct of Leonard Berger, as a real-party-in-interest in Key Broadcasting Corporation, 3 FCC Rcd. 6587 (ALJ 1988), should disqualify Ocean Pines LP Broadcast Corp. 4 FCC Rcd. at 3490.

As the Mass Media noted, the ALJ in the Glens Falls renewal proceeding should not relitigate the issue of Normandy's character qualifications as this would be a waste of Commission resources. However, because of the importance of the issues involved - the basic character of a licensee - a final determination is necessary. Thus, the most logical solution is to frame the issue as it was in Ocean Pines:

To determine whether the findings and conclusions about the character qualifications of Normandy in Barry Skidelsky, 6 FCC Rcd. 2221 (ALJ 1991), should disqualify Normandy in the Glens Falls renewal proceeding.^{2/}

WHEREFORE, for the foregoing reasons, Brandt respectfully requests that this Petition to Enlarge and Modify Issues be granted.

Respectfully submitted,



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& KAHN**
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Counsel for Lawrence N. Brandt

Date: February 24, 1992

^{2/} In the event that the presiding judge believes that he is without authority to modify issue (b) in the manner proposed herein, Brandt hereby requests, pursuant to 47 C.F.R. Section 1.106(a)(2), that the presiding officer certify to the Commission the question of reformulating issue (b) in the manner suggested by the Board.

CERTIFICATE OF SERVICE

I, Alethea R. Wilson, a secretary in the law office of Arent, Fox, Kintner, Plotkin & Kahn do hereby certify that a copy of the foregoing **PETITION TO MODIFY AND ENLARGE ISSUES** has been sent via U.S. Mail, First-Class postage prepaid this 21st day of February, 1992 to the following:

*Administrative Law Judge
Richard L. Sippel
Federal Communications Commission
2000 L Street, N.W., Room 212
Washington, D.C. 20554

*Paulette Laden, Esq.
Federal Communications Commission
Hearing Branch, Enforcement Division
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Christopher P. Lynch, President
Normandy Broadcasting Corp.
217 Dix Avenue
Glens Falls, NY 12801



Alethea R. Wilson

*Hand Delivered

EXHIBIT A

3C-AM (Glens Falls, N.Y.)

QUARTERLY ISSUES/PROGRAMS LIST

Date: 4/10/87 For period: Jan.-Mar.1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Fire Prevention	Speak Up (Call-in Talk Show)	Fire Marshall appeared, discussing preventative methods of fire in regard to woodstoves, and answering questions regarding fire prevention.	10-10:30AM	2/27/87	1/2 hr.
Governmental (State)	Speak Up	New York State Assemblyman appeared giving current information and answering questions and complaints from listeners in regard to State matters.	10-11AM 10-11AM	2/25/87 3/27/87	1 Hr. 1 Hr.
Dredging of PCB's	Speak Up	Representatives from CEASE, opposing dredging of PCB'S by New York State from Hudson River.	10-11AM	2/13/87	1 Hr.

WWSU-AM (Glens Falls, N.Y.)

QUARTERLY ISSUES/PROGRAMS LIST

Date: 4/10/87 For period: Jan.-Mar. 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Governmental (City)	Speak Up	The Mayor of Glens Falls tells	10-11AM	1/20/87	1 Hr.
	(Call in Talk Show)	residents of City what is going	10-11AM	3/17/87	1 Hr.
		on, takes suggestions and			
		complaints from listeners.			
New income tax laws	Speak Up	Don Roberts of the IRS answers	10-11AM	1/26/87	1 Hr.
		questions and gives out all	10-11AM	2/23/87	1 Hr.
		information to prepare income			
		tax returns.			
Commercial radio	Speak Up	"Ask the Managers" with President	10-11AM	1/14/87	1 Hr.
services to public		and Station Manager both discussing	10-11AM	2/11/87	1 Hr.
		policies of station in regard to	10-11AM	3/11/87	1 Hr.
		programming, p.s.a.'s, and asking			
		audience for suggestions and/or			
		complaints of services.			
Consumer Frauds	Speak Up	Assistant to New York State Attorney	10-11AM	1/28/87	1 Hr.
		General's office answers questions	10-11AM	2/23/87	1 Hr.
		and gives advice on consumer problems	10-11AM	3/26/87	1 Hr.
		from audience.			

W5SC-AM (Glens Falls, N.Y.)
 QUARTERLY ISSUES/PROGRAMS LIST

Date: 4/10/87 For period: Jan. - March, 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Animal Pound	Newscasts	Residents of Kingsbury and Fort Edward heard several interviews on issues surrounding a local dog pound. State inspection practices came into question as did the level of care for dogs at the unheated barn. News of the situation helped to shape plans for a new pound.	hourly	1/14/87	1-2 mins.
Earltown Project	Newscasts	Coverage of announcement of 880 acre "planned unit development" in Queensbury included interview with the developer and environmentalists fearing the project will harm sensitive wetlands.	hourly	3/7/87	1-2 mins.

EXHIBIT B

3C-AM (Glens Falls, N.Y.)

QUARTERLY ISSUES/PROGRAMS LIST

Date: 7/10/87 For period: April-June 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Mental Health	Speak Up	Local psychologist discusses	10-11AM	4/8/87	1 Hr.
	(Call-in Talk Show)	divorce, children's problems	10-11AM	6/2/87	1 Hr.
		and a variety of other mental	10-11AM	6/29/87	1 Hr.
		health problems. Listeners call in for advice.			
Consumer Frauds	Speak Up	Assistant to Attorney General of	10-11AM	4/22/87	1 Hr.
		New York State appears to answer	10-11AM	5/20/87	1 Hr.
		questions and give current data on consumer problems.	10-11AM	6/22/87	1 Hr.
Drug Abuse	Remote	Full broadcast of substance abuse program with Robert Eckert from Paul Smith's, N.Y. at the Queensbury Hotel, Glens Falls, N.Y., sponsored by the Glens Falls Substance Abuse Task Force. Approx- imately 70 people attended.	7-9PM	6/6/87	2 Hrs.
Women's rights	Speak Up	President of the International Federa- tion of Women appeared to answer questions and give out new information on the rights of women, especially in the employment field.	10-10:30AM	5/5/87	½ Hr.

WVSC-AM (Glens Falls, N.Y.)
 QUARTERLY ISSUES/PROGRAMS LIST

Date: 7/10/87 For period: April - June, 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Moratorium	Newscasts	Examination of reasons the Town of Queensbury imposed a moratorium on new subdivisions. The fast-growing community's residents voice concern the quality of living might be harmed without tighter controls.	hourly	4/30/87	1-2 mins.
Milfoil	Newscasts	After 24 days of testimony, coverage of the permit hearing on chemical control of milfoil weeds in Lake George concluded. During the hearing, interviews were conducted with state and local parties on both sides of the issue.	hourly	5/5/87	1-2 mins.
Flight Service	Newscasts	Local pilots say closing the airport Flight Service Station will make local aviation unsafe. County and local commerce/ tourism/ aviation officials offered their opinions of the closing's effect on safety and airport use.	hourly	6/13/87	1-2 mins.

EXHIBIT C

QUARTERLY ISSUES/PROGRAMS LIST

Date:10/10/87 For period: July-September 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
(Cont.) BLOODMOBILE (WWS)		and encouraging. Reports from the bloodmobile dealt with consciousness of the issue--need, in addition to more education and encouragement. 117 donors, 7 deferrals.			
Heart Disease	Speak Up	The Chief Therapeutic Dietitian of the local hospital appeared to give information regarding dietary needs, along with other information from the American Heart Assoc.	11-11:30AM	9/14/87	½ Hr.
Problems of the elderly	Speak Up	Director of Glens Falls Transit Co. discussed transportation available to elderly and handicapped. Also advised of new schedules.	11AM-Noon	9/18/87	1 Hr.
Drugs	Speak Up	A volunteer and the director of Giant Step Hotline appeared to promote the hotline, especially for area youth.	11-11:30AM	9/21/87	½ Hr.
Consumer Frauds	Speak Up	Assistant to State Attorney General appeared, answering complaints and questions regarding consumer frauds.	11AM-Noon	9/23/87	1 Hr.

QUARTERLY ISSUES/PROGRAMS LIST

Date: 10/10/87 For period: July - September 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Government	Speak Up	New York State Assemblyman gives audience latest information and answers pertinent questions.	11AM-Noon	8/27/87	1 hr.
City Government	Speak Up	City of Glens Falls Mayor answers complaints and questions regarding city problems.	11AM-Noon	8/28/87	1 hr.
Diabetes	Speak Up	Discussion of the disease, research into the cure, with by phone, an MD who is an expert on the topic, and in the studio, two people who are diabetics.	11AM-Noon	8/31/87	1 hr.
Economy	Speak Up	Representative from stock brokers firm discussing best way to invest and answering questions from audience.	11AM-Noon	9/3/87	1 hr.
Blood shortage	WASC Bloodmobile	Announcements	24 hrs/	8/23-9/4/87	250:60:30 announcements
		Live Reports	10AM-4PM	9/4/87	3-5Min.
		Bloodmobile: WASC sponsor a bloodmobile annually. This year three types of blood were totally depleted in the Albany blood bank. Announcements pointed out the safety in giving blood with the general overall intent of educating			

QUARTERLY ISSUES/PROGRAMS LIST

Date:10/10/87 For period: July - Sept. 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Unemployment	Speak Up	Representative from Department of Labor discussing Shared Work Program and answering questions about unemployment insurance	11-11:30AM	8/3/87	½ hr.
Garbage disposal & controversy surrounding a proposal to build a mass-burn plant in listening area.	Public Affairs	An information forum with an audience with a panel of Encon Director, Executive Director of the State Legislative Commission on Solid Waste Management, vice-president of the company proposing the burning plant, representatives of local groups opposed to the plant, and others.	6:30PM to 9PM	8/11/87	2½ hrs.
Elderly activities	Speak Up	Representative from the Senior Games discussing and urging senior citizens to participate and/or become involved with this sports program for Senior Citizens, locally.	11-11:30AM	8/17/87	½ hr.
Government	Speak Up	Senator Joe Bruno answered questions and gave out information to the audience on state government issues.	11AM-Noon	8/14/87	1 hr.

QUARTERLY ISSUES/PROGRAMS LIST

Date: 10/10/87 For period: July - Sept. 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Mental Health	Speak Up	Listeners may call in with questions regarding mental health problems. A local psychologist gives the latest information on stress, divorce, children's behavior, etc.	10-11AM	7/7/87	1 Hr.
Drunk Driving	P.S.A.'s	35 p.s.a.'s covering 4th of July Drunk Driving info.		7/3 to 7/6	
Governmental	Speak Up	New York State Assemblyman appeared giving information and answering questions from the audience relative to state and local matters.	10-11AM	7/9/87	1 Hr.
Consumer Frauds	Speak Up	Assistant to Attorney General of N.Y. State appeared answering questions from audience and helping them with their inquiries regarding complaints and consumer problems.	11AM-Noon	7/20/87	1 hr.

EXHIBIT D

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/88 For period: October-December 1987

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<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Local Elections	Speak Up	Republican candidate for Queensbury Town Supervisor gave his platform and answered questions from audience.	1-2PM	10/2/87	1 Hr.
Mental Health	Speak Up	Local psychologist discusses health problems; such as depression, marital, children's & teen-ager's problems, etc. Takes calls from listeners, voicing their own particular problems.	1-2PM	10/6/87	1 Hr.
Finances/Stocks and Bonds	Speak Up	Local stockbroker discusses recent troubles in stock market. Advises and informs listeners who call in various ways of investing.	1-2PM	10/7/87	1 Hr.
Local Elections	Speak Up	Citizens Party Candidate for Queensbury Town Supervisor gave his platform and answered questions from audience.	1-2PM	10/16/87	1 Hr.

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/87 For period: October-December 1987

(2)

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
Youth Activities	Speak Up	Dr. Rick Herlinger, Sports Psychologist, talked about the psychology of athletes in high school sports activities. Answered questions from audience.	1-2PM	10/19/87	1 Hr.
Poverty	Speak Up	Representatives from Operation Santa Claus appeared, explaining their annual fund-raisers to obtain funds for needy families of the tri-Counties. Food, clothing and toys are distributed during Christmas.	1-2PM	10/28/87	1 Hr.
Governmental	Speak Up	State Assemblyman, Bobby D'Andrea appeared, giving latest info re N.Y. State laws, answering questions from audience.	1-2PM	10/29/87	1 Hr.
Finances/Stocks and Bonds	Speak Up	Local stockbroker discussed stock market problems and took calls from concerned listeners.	1-2PM	11/4/87	1Hr.
Poverty & Learning (See next page for continuation!)	WVSC Garage Sale and More	The annual WVSC Garage Sale and More, held at the Glens Falls Civic Ctr. and broadcast from 9:30 AM to	9:30AM to 6PM	11/8/87	8½ Hrs. Plus 4 weeks campaign.

QUARTERLY ISSUES/PROGRAMS LIST

Date: 1/10/87 For period: October-December 1987

<u>Issue</u>	<u>Program</u>	<u>Description</u>	<u>Time</u>	<u>Date</u>	<u>Duration</u>
<u>Cont.</u>	<u>WASC Garage Sale & More</u>	Proceeds from entrance fee (\$1.00) and the exhibitor's booth rental fees are applied to WASC's charitable project, which provides food for less fortunate families at Christmas, distributed by the local Voluntary Action Center, and for WASC's scholarships in journalism, given to 15 area high school students. WASC this year received President Reagan's C-Flag Award for this project.			
<u>Problems of Elderly</u>	<u>Speak Up</u>	<u>Administrator for Social Security</u> appeared giving latest info on benefits, etc. and answering questions from audience on personal problems.	1-2PM	11/12/87	1 Hr.
<u>Local Government</u>	<u>Speak Up</u>	<u>Glens Falls Mayor</u> appeared giving updates of City's problems and ventures. Answered questions from audience.	1-2PM	11/17/87	1 Hr.
<u>Consumer Problems</u>	<u>Speak Up</u>	<u>Representative from N.Y. State</u> Atty.'s General's office discussed consumer problems and timely Christmas purchases (exchanges, etc). Took calls from audience answering their personal questions.	1-2PM	11/25/87	1 Hr.

