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

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

**REPLY TO MASS MEDIA BUREAU COMMENTS ON
THRESHOLD SHOWING CONCERNING BROADCAST RECORD**

On March 4, 1992, the Mass Media Bureau filed Comments in response to a Threshold Showing Concerning Broadcast Record ("Showing"), filed by Lawrence N. Brandt ("Brandt") on February 24, 1992. The Showing filed by Brandt asked for leave to adduce evidence regarding the poor past broadcast record of Normandy Broadcasting Corp. ("Normandy"), under the Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 398 (1965).

The Bureau argues that while Brandt is entitled to rebut Normandy's claim for a renewal expectancy, Brandt's Showing which seeks leave to adduce evidence against Normandy under the Policy

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Statement is inappropriate. The Bureau states that the Policy Statement does not apply to license renewals:

This statement of policy does not attempt to deal with the somewhat different problems raised where an applicant is contesting with a licensee seeking renewal of license.

Policy Statement, n. 1.

Contrary to the Bureau's Comments, the Policy Statement is applicable to this case. Once an applicant for a broadcast station is denied a renewal expectancy, the Commission must decide the case as it would any other comparative initial licensing proceeding, by using the criteria set forth in the Policy Statement. Simon Geller, 90 FCC 2d 250 (1982). The Court of Appeals for the District of Columbia also recently explained the connection between renewal proceedings and the Policy Statement:

When one applicant already has a license for the station in issue, and is seeking renewal of its license, the Commission may grant that applicant a "renewal expectancy," which may be sufficient to outweigh the advantages a challenger may have with respect to diversity and integration [the Policy Statement criteria].

Monroe Communications Corp. v. FCC, 67 RR 2d 843 (D.C. Cir. 1990). It logically follows that, in our case, if Normandy is not granted a renewal expectancy, then the hearing becomes a standard comparative hearing in which the two mutually exclusive applicants - Brandt and Normandy - must be evaluated under the Policy Statement to determine which will better serve the public interest. Therefore, Brandt's Showing to request leave to adduce

evidence under the Policy Statement, to show that Normandy's broadcast record was substandard, was procedurally correct.

Brandt also recognizes that it can present this evidence on Normandy's poor past broadcast record at the hearing to rebut any showing by Normandy that they are entitled to a renewal expectancy. However, Brandt believes that, based on the evidence, Normandy's programming record is so lacking in substance that it should not only preclude Normandy from meriting any renewal expectancy, but it should also be considered a "demerit" against Normandy under the comparative criteria in the Policy Statement.

Respectfully submitted,



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March 13, 1992

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 **REPLY TO MASS MEDIA BUREAU COMMENTS** has been sent via U.S. Mail, First-Class postage prepaid this 13th day of March, 1992 to the following:

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