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Before the

FCC 92M-793

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)	MM DOCKET NO. 92-6 ✓
)	
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)	

O R D E R

Issued: July 15, 1992;

Released: July 17, 1992

This is a ruling to clarify bench bench rulings of the Presiding Judge at the Prehearing Conference of July 14, 1992, regarding procedures at the Admission Session to be conducted at **9:30 a.m. on August 4, 1992, in Washington, D.C.**

August 4 Admissions Session

First, it is made clear that it will be necessary for all parties, including Normandy, to appear in Washington, D.C. on August 4 to participate in person or by counsel. There will be no participation permitted by telephone. ¹

Sponsoring Witnesses

Second, counsel for Brandt has anticipated Normandy's attempt to offer letters from members of the community and Brandt has stated it will object to their admission on grounds of hearsay, unless Normandy produces a representative sampling of sponsors numbering around five. Normandy requested on-the-record that if community witnesses are required, Normandy requests that

¹ There has been no direct suggestion that Normandy would seek to participate by telephone. However, Normandy is proceeding pro se and Mr. Lynch has been allowed to participate in prehearing conferences by telephone. The Presiding Judge is taking this measure in order to avoid any possible confusion on the duty to appear.

Normandy represented that it will seek to introduce as many as 200 letters which will show community involvement. Some letters will relate to integration credit on the comparative issue and some may relate to renewal expectancy. Some letters also may relate to Normandy's attempt to show mitigating or exculpating circumstances in connection with the Skidelsky findings. Normandy was instructed by the Presiding Judge to organize the letters into separate groupings and that each grouping of letters should state clearly the issue to which the letters relate.³ The Presiding Judge will determine at the August 4 Admissions Session whether or not to receive some or all of the letters in evidence without live testimony. However, there will be no field hearing held for the testimony of a sampling of sponsoring witnesses.

Brandt was afforded discovery and Brandt did not elect to depose any non-party witnesses. Brandt had earlier sought a poor broadcast record issue against Normandy which was denied. But Brandt was not precluded from taking discovery to contest Normandy's claim for a renewal preference.⁴ The scheduling orders issued pursuant to the first Prehearing Conference specifically provided that "exchanged written testimony shall include testimony of public witnesses who will testify in person on behalf of or against the claimed renewal preference." Order FCC 92M-381, released March 26, 1992. Brandt was granted a request to extend his discovery through July 27, 1992, but only for specific document discovery sought in a motion to compel. See Order FCC 92M-790, issued July 14, 1992.

On February 21, 1992, Normandy filed a Statement of Intent Regarding Renewal Expectancy wherein Normandy stated "it will claim a renewal expectancy" and that Normandy "expects to call fifteen (15) witnesses to testify in support of the expectancy, including persons not affiliated with Normandy." We will await the exchange of written testimony on July 16, 1992, to determine whether or how many such witnesses there are that Normandy will sponsor. If none, there will be no need to consider further the need for a field hearing in the Glens Falls area.⁵

witnesses may be taken in Glens Falls, New York or vicinity if such cannot be introduced by deposition or by use of a speakerphone. Any conflicting comments of the Presiding Judge at the Conference should be disregarded.

3 Some letters may relate to more than one issue in which case Normandy was instructed to specify cross-referencing in a cover sheet for each set of letters to be introduced.

4 See e.g. Order FCC 92M-311, released March 11, 1992 at fn. 2.

5 Brandt filed a Statement Re Estimated Number Of Witnesses To Be Called on March 16, 1992, which concluded that "it is considered unlikely that Normandy will be able to present any evidence supportive of its claim that it is entitled to a renewal expectancy, in which event there will be no need for Brandt to call any witnesses to negate such evidence."

Rulings

Accordingly, IT IS ORDERED that all parties must appear personally, or through counsel familiar with the case, to participate at the Admission Session to be conducted on August 4, 1992.

IT IS FURTHER ORDERED that there will be no field hearing merely to receive non-party testimony for the limited purpose of sponsoring the introduction of letters concerning Normandy's community involvement.

IT IS FURTHER ORDERED that a final ruling on whether a field hearing is appropriate will await receipt of the parties' frozen testimony to be exchanged on July 16, 1992. ⁶

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

⁶ A copy of this Order was mailed on date of issuance to Normandy Broadcasting's president, Christopher P. Lynch in Glens Falls, New York.