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Before the  
**FEDERAL COMMUNICATIONS COMMISSION** FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554 OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 92-6
	)	
<b>NORMANDY BROADCASTING CORP.</b>	)	File No. BRH-910129UR
	)	
For Renewal of License of	)	
Station WYLR(FM)	)	
Glens Falls, New York	)	
	)	
and	)	
	)	
<b>LAWRENCE N. BRANDT</b>	)	File No. BPH-910430MB
	)	
For A Construction Permit	)	
For a New FM Station	)	
Glens Falls, New York	)	

To: Administrative Law Judge  
Richard L. Sippel

**MASS MEDIA BUREAU'S PROPOSED FINDINGS**  
**OF FACT AND CONCLUSIONS OF LAW**

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Summary

1. An issue was specified to determine the effect herein of Normandy's disqualification in Barry Skidelsky, MM Docket 90-181. Pursuant to the principle of collateral estoppel, the issue here was limited to the effect of the findings and conclusions in Barry Skidelsky upon Normandy's qualifications to remain a Commission licensee with respect to the above-captioned station. Normandy was permitted to adduce evidence in mitigation, which included its community activities and the military service of its principal.

2. It is concluded that the findings and conclusions in Barry Skidelsky do not compel Normandy's disqualification here. The misconduct was confined to the earlier proceeding, was isolated and has not recurred. Thus, Normandy is basically qualified to remain a Commission licensee.

3. Normandy has shown that WYLR has presented a substantial amount of non-entertainment programming, most of it locally produced, during the preceding license period. The licensee scheduled programs designed to address ascertained community needs. Letters of support and commendation received by Normandy attest to its favorable reputation in the community. Accordingly, Normandy has established that it is entitled to a renewal expectancy.

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**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**Preliminary Statement**

1. By Hearing Designation Order, 7 FCC Rcd 509 (1992), the Chief, Audio Services Division, designated the above-captioned applications of Normandy Broadcasting Corp. ("Normandy") and Lawrence N. Brandt ("Brandt") for hearing in a consolidated proceeding 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.

2. By Order released February 13, 1992 (FCC 92M-200), issue (a) was deleted. Issue (b) (hereinafter referred to as the Skidelsky issue) was modified by Order released March 26, 1992 (FCC 92M-381), to read as follows:

To determine whether findings and conclusions about the character and qualifications of Normandy Broadcasting Corp. in Barry Skidelsky, 6 FCC Rcd 2221 (Admin. L.J. 1991), should disqualify Normandy in the Glens Falls renewal proceeding.

This modification was in accordance with Barry Skidelsky, 7 FCC Rcd 1392 (Rev. Bd. 1992).

3. By way of background, Normandy was an applicant for a construction permit for a new FM station at Queensbury, New York. The application, together with other mutually exclusive applications, was designated for hearing in MM Docket 90-181, before Administrative Law Judge Edward Kuhlmann. The Initial Decision, 6 FCC Rcd 2221 (ALJ 1991) (hereinafter "Skidelsky ID") disqualified Normandy, inter alia, for having provided untruthful information in its threshold showing of the non-entertainment programming of WYLR(FM), Glens Falls, New York, and for having failed to disclose a contingent ownership interest in Normandy. The threshold showing was offered to seek a comparative preference in the Queensbury proceeding on account of a superior broadcast record at an existing facility operated by the applicant. In disqualifying Normandy, the Skidelsky ID concluded that Normandy's programming claims were "false and unsubstantiated," and that Normandy would "not make a trustworthy licensee." 6 FCC Rcd at 2230-31.

4. On appeal, the Review Board affirmed the disqualification of Normandy for lacking a transmitter site, but declined to reach

the other issues which Normandy had raised in its exceptions, including the issue of the truthfulness of Normandy's threshold showing and the issue regarding non-disclosure of a contingent ownership interest. Barry Skidelsky, 7 FCC Rcd 1 (Rev. Bd. 1992). The Mass Media Bureau sought reconsideration, which was denied. Barry Skidelsky, 7 FCC Rcd 1392 (Rev. Bd. 1992) (hereinafter "Skidelsky Recon"). The Review Board instructed, however, that the Presiding Judge in the instant proceeding should not relitigate the qualifying misrepresentation issue which the Board had declined to reach on appeal. Rather, the Review Board ordered that the issue be framed in accordance with the treatment accorded a similar issue in Ocean Pines FM Broadcasting Partnership, 4 FCC Rcd 3490 (Rev. Bd. 1989), to wit: to determine whether the findings and conclusions of the Administrative Law Judge presiding in the Queensbury proceeding should disqualify Normandy in the instant proceeding. The Review Board further observed, with approval, that the Administrative Law Judge in Ocean Pines had permitted the applicant to adduce any additional evidence that it considered exculpatory. Skidelsky Recon at 1393 (emphasis in original). Although, on March 23, 1992, Normandy filed an Application for Review with the Commission regarding its disqualification in the Queensbury proceeding for lacking a transmitter site, Normandy did not seek review with respect to the misrepresentation issue. Subsequently, on April 3, 1992, Normandy petitioned for dismissal of its Queensbury application.

5. Hearing sessions in the above captioned proceeding were held on August 4, 1992 and September 1, 1992, whereupon the record was closed. Tr. 713. The Mass Media Bureau submits its Proposed Findings of Fact and Conclusions of Law, which are limited to the Skidelsky issue and the renewal expectancy issue.

### **Proposed Findings of Fact**

#### **Skidelsky Issue**

6. The scope of the issue is limited to determining whether the findings and conclusions of the Administrative Law Judge presiding in the Queensbury proceeding (MM Docket No. 90-181, 6 FCC Rcd 2221) should disqualify Normandy in the instant proceeding. In mitigation, Normandy pointed to its service on behalf of a large number of community organizations. Normandy also referred to the participation in community activities by its sole stockholder, Christopher P. Lynch, as well as Lynch's honorable voluntary service in the U.S. Army. Normandy Ex. 3, Pp. 2-3, 5-6, 61. Finally, Normandy described its efforts to ensure and improve compliance with Commission rules and policies. These include attendance at a National Association of Broadcasters conference. Normandy Ex. 8.

#### **Renewal Expectancy**

7. Normandy conducts an ongoing ascertainment of community needs and issues. In this connection, community leaders and members of the general public are interviewed periodically. In

addition, representatives of public service organizations often approach Lynch or Normandy employees with problems and ideas. Another way in which Normandy ascertains community needs is by the active involvement of its owner and employees in community activities and organizations. Normandy Ex. 6, Pp. 2-4.

8. Over the license term, WYLR broadcast about 55 local newscasts and about 70 ABC Newscasts each week, including between 6 and 7 newscasts during each morning and evening drive time. Each local newscast runs about 3 minutes, while the network newscasts are between 1 and 2 minutes in length. In addition, the station broadcasts about 200 weathercasts each week, each of which runs about 30 seconds. Every week, WYLR runs about 100 public service announcements with an average length of 30 seconds. Approximately half of them are for local service organizations. Normandy Ex. 6, Pp. 6-8, 14-15.

9. WYLR's special non-entertainment programming during the license term included a live remote for the Chemical Free Youth Carnival; five 1-hour segments, featuring students as announcers, for Scholar Appreciation Week; and live interviews and remotes to help a local child obtain corrective surgery for curvature of the spine ("Angela Williams Benefit"), and to help raise supplies for victims of Hurricane Hugo ("Hometown USA Adopts a Town"). Via public service announcements and live discussions, WYLR helped raise funds for Cerebral Palsy ("Miller Christmas Wreaths for C.

P."), sponsored its own bloodmobile, participated in Easter Seals' Volleyball and Softball Marathons and sponsored Multiple Sclerosis Century Bikerides. To assist a small local village, WYLR supported a fund drive to purchase Christmas decorations, culminating in a live remote. WYLR promoted and broadcast, live, a Drug/Alcohol Free Graduation Party. In the Spring of 1990, to support the Kingsbury Recycling Committee, WYLR broadcast public service announcements, live discussions, and live remotes. Similarly, the station ran public service announcements, live discussions and live remotes promoting the Olympic run. As needed, WYLR scheduled election coverage and winter weather emergency coverage. The station broadcast public service announcements and live remotes to support the Giant Garage Sale, a charitable fund raising event; LARAC in the Park, on behalf of the Regional Arts Council; Job Discovery, seeking to bring together job seekers and employers; Americade, a local tourism event; the Adirondack Hot Air Balloon Festival; and Earth Day 1990. Normandy Ex. 6, Pp. 15-21. The referenced live remotes were aired at various times of day and days of the week. Tr. 534-535, 537, 547, 550, 561, 615-663. Each addressed an issue which Normandy had found to be of public concern in its community. Tr. 542, 544-547, 551. 615-633.

10. Normandy offered into evidence a substantial number of letters in support of its programming, and, specifically its activities on behalf of the community. These include letters of appreciation from local service organizations, such as the March of

Dimes Birth Defects Foundation, the Council on Alcoholism and Substance Abuse, the Voluntary Action Center, the Multiple Sclerosis Society, and the New York Easter Seal Society. Normandy Ex. 11.

### Conclusions of Law

#### Skidelsky Issue

11. Normandy was an applicant for a construction permit for a new FM station at Queensbury, New York. The application, together with other mutually exclusive applications, was designated for hearing in MM Docket 90-181, before Administrative Law Judge Edward Kuhlmann. The Initial Decision, 6 FCC Rcd 2221 (ALJ 1991) (hereinafter "Skidelsky ID") disqualified Normandy, inter alia, for having provided untruthful information in its threshold showing of the non-entertainment programming of WYLR(FM), Glens Falls, New York, and for having failed to disclose a contingent ownership interest in Normandy. The threshold showing was offered to seek a comparative preference in the Queensbury proceeding based on a superior broadcast record at an existing facility operated by the applicant. In disqualifying Normandy, the Skidelsky ID concluded that Normandy's programming claims were "false and unsubstantiated," and that Normandy would "not make a trustworthy licensee." 6 FCC Rcd at 2230-31.

12. Pursuant to the principle of collateral estoppel, the

issue here is limited to a determination of whether the findings and conclusions of the Administrative Law Judge presiding in the Queensbury proceeding should disqualify Normandy in the instant proceeding. See Skidelsky Recon. Even though collateral estoppel prevents the relitigation of the findings and conclusions in the Skidelsky ID, Normandy was permitted to present additional, new evidence of an exculpatory or mitigating nature. Accord, United Broadcasting Co., 49 RR 2d 597 (1981); Skidelsky Recon. By way of mitigation, Normandy made a showing regarding its community activities and those of its sole stockholder, Christopher P. Lynch. Normandy also demonstrated its own efforts to ensure and upgrade compliance with Commission requirements. Consistent with long-standing Commission policy, however, evidence of meritorious programming was not permitted to mitigate the misrepresentation/lack of candor finding involved here. KOED, Inc., 5 FCC Rcd 1784, 1785 (1990), and authorities cited therein.

13. It is concluded that Normandy's above-captioned renewal application should not be denied on the basis of the findings and conclusions in the Skidelsky ID. Disqualification is not compelled. In an analogous situation, the Commission has observed that "a broadcaster's loss of one license does not invariably compel the conclusion that grant of another license to that same broadcaster would be contrary to the public interest." United Broadcasting Co., supra, at 602; see also, KOED, Inc., supra. And, in a remarkably similar case, WIOO, Inc., 95 FCC 2d 974

(1983), the Commission declined to disqualify the renewal applicant because of misconduct in an earlier proceeding.

14. In WIOO, as here, the misconduct occurred in an isolated context. In both cases, the context was the same: a hearing proceeding where the licensee was an applicant for another, new, facility. There is no denying that the misrepresentation and lack of candor found in the Skidelsky ID concerned, at least in part, a threshold showing of the programming broadcast on the facility at issue here. However, the exaggerated claims which formed the basis for the conclusions in the Skidelsky ID were made in that proceeding exclusively. Even though Normandy seeks a renewal expectancy here on the basis of its programming, there is no hint of misrepresentation, lack of candor, or any other misconduct in the instant proceeding. Moreover, as was the case in WIOO, there is no evidence here that any misconduct whatsoever has ever attended the operation of Normandy's stations, or that Normandy has ever failed to comply with the Commission's rules and policies with respect to its instant facility. Finally, there is no indication that the misconduct found in the Skidelsky ID has ever recurred, in this, or any other proceeding, or that it is likely to be repeated. As the Commission has observed, "[o]ur principal concern is with misconduct disclosing a pervasive unwillingness or inability to meet the basic responsibilities of a licensee . . . we have considered misconduct of a more limited nature a factor in not absolutely disqualifying . . . licensees." WIOO, supra, at 983,

quoting from Faulkner Radio, Inc., 88 FCC 2d 612, 616 (1981).

15. Finally, as was the case in WIOO, the element of deterrence supports the expectation here that the misconduct will not be repeated. Here, as in WIOO, the adjudged wrongdoer lost the opportunity to acquire a new FM station. Whereas in WIOO a comparative demerit was assessed, Commission policy no longer permits the assessment of comparative demerits. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1232 (1986). However, this was immaterial to the ultimate result in WIOO, namely, that the licensee was basically qualified. Similarly, here the conduct is not disqualifying. Thus, it is concluded here that Normandy is basically qualified to remain a Commission licensee.

#### Renewal Expectancy

16. It is well settled that, in a renewal proceeding, an incumbent's past performance affords the Commission the strongest and most reasonable basis for determining whether the public interest will be served by license renewal. Office of Communications of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966); Belo Broadcasting Corp., 47 FCC 2d 540 (1974). Thus, a licensee "runs on its record . . . ." United Church of Christ, supra, at 1007; Simon Geller, 90 FCC 2d 250, 271 (1982) (subsequent history omitted). A sound and favorable record, substantially above the level of mediocre service, gives rise to a

renewal expectancy which, in turn, warrants a preference in comparative renewal proceedings. See Broadcast Communications, Inc., 93 FCC 2d 1162, 1166 (1983), modified 97 FCC 2d 61 (1984), aff'd sub nom. Genesis Broadcasting, Inc. v. FCC. 759 F.2d 959 (D.C. Cir. 1985), citing Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), aff'd sub nom. Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982), and Radio Station WABZ, Inc., 90 FCC 2d 818 (1982), aff'd sub nom. Victor Broadcasting, Inc. v. FCC, 722 F.2d 756 (D.C. Cir. 1983).

17. A substantial performance warranting a renewal expectancy can be demonstrated by any type of showing reasonably related to service over and above what would be considered minimal. Broadcast Communications, Inc., supra. In this regard, the Commission has identified the following criteria:

- (1) the amount of non-entertainment programming presented, the time of day it is presented and whether it is directed to local needs and interests,
- (2) the amount of locally produced programming, and
- (3) the reputation of the station in the community.

Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 4 FCC Rcd 6363, 6368, n. 11 (1989).

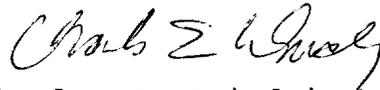
18. Normandy has shown that WYLR has presented a substantial amount of non-entertainment programming during the preceding license period. Moreover, much of this programming is locally produced, and a good deal, particularly WYLR's news and weather

reports, is broadcast during drive times, which are traditionally periods of greatest listenership. Normandy has scheduled programs designed to address community needs, which the licensee has ascertained primarily via interviews. Finally, letters of support and commendation received by Normandy attest to its favorable reputation in the community. Accordingly, Normandy has established that it is entitled to a renewal expectancy.

**Ultimate Conclusion**

19. It is concluded that Normandy is qualified to remain a Commission licensee. It is further concluded that Normandy is entitled to a renewal expectancy.

Respectfully submitted,  
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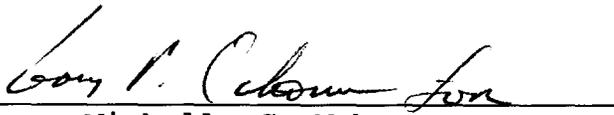
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**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 9th day of October, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law"** to:

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