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

92-310

MM Docket No. 92-310

92-310

In re Applications of

ROBERT M. RICHMOND (hereafter "Richmond") — File No. BPH-910703MD

BARBARA BRINDISI (hereafter "Brindisi") — File No. BPH-910703MI

LAURYN BROADCASTING CORPORATION (hereafter "Lauryn") — File No. BPH-910703MJ

For Construction Permit for a New FM Station on Channel 265A (100.9 MHz) in Beaumont, California

and

KAY SADLIER-GILL (hereafter "Sadlier-Gill") — File No. BPH-910611IF

For Modification of Facilities For Station KATY-FM Idyllwild, California

HEARING DESIGNATION ORDER

Adopted: December 22, 1992; Released: January 21, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications.[1]

2. Sadlier-Gill. Sadlier-Gill proposes to locate her transmitting antenna on a new tower. Our engineering study indicates that Sadlier-Gill failed to address the matter of how she proposes to resolve any RF exposure to workers on her tower. See 47 C.F.R. §1.1307(b). Consequently, we are concerned that she may have failed to comply with the environmental criteria set forth in the Report and Order in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also, Public Notice entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicant must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. §1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. §1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. §1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Sadlier-Gill failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, she will be required to submit the environmental impact information described in 47 C.F.R. §1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency Radiation," at 28. Therefore, Sadlier-Gill will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. §1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See Golden State Broadcasting Corp., 71 FCC 2d 229 (1979), recon. denied sub nom. Old Pueblo Broadcasting Corp., 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessment, that Sadlier-Gill's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposal. See 47 C.F.R. §1.1308(d).

3. Other Matters. Brindisi's proposal reflects the construction of a new tower to be located approximately 30 meters from the directional antenna of FM translator station K201AR, Banning, California (BLFT-861110TB). Additionally, Richmond's and Lauryn's proposals reflect an antenna side-mounted on the existing tower of K201AR. Consequently, the tower proposed by Brindisi and the transmission line proposed by Richmond and Lauryn have the potential to disrupt the translator stations' directional antenna pattern. Accordingly, each of the above-mentioned applicants will be required to file an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order which demonstrates that their proposals will have no adverse impact on the directional antenna pattern of translator station K201AR.

4. Serna Broadcasting, Inc. ("Serna")[2] has filed petitions to deny against the applications of Richmond and Lauryn and an informal objection against the application of Brin-

[1] On June 11, 1991, during the window filing period for the Beaumont allocation, June 3, 1991 to July 3, 1991, Sadlier-Gill filed the above referenced application for modification of the facilities of KATY-FM, Idyllwild, California. This application is not short-spaced to the Beaumont allocation for Channel 265A; however, it is short-spaced to the applications for Channel 265A. Therefore, Sadlier-Gill's application is mutually exclusive and will be designated for hearing.

[2] Serna filed an application for the Beaumont, California facility which was mutually exclusive with the other applicants in this proceeding. However, the Chief, FM Branch returned Serna's application on June 18, 1992 because the applicant had not paid the requisite hearing fee by November 21, 1991, the date set forth in the Public Notice, Mimeo 14834, released September 20, 1991.

disi. The applicants have requested to have their applications processed pursuant to 47 C.F.R. §73.213(c) with respect to the existing facilities of KATY-FM. Serna argues that these applications may not be processed under Section 73.213(c) because of the subsequently-filed modification application by Sadlier-Gill to relocate the transmitter site of KATY-FM. Serna believes that, because Sadlier-Gill's modification application is fully-spaced to the the reference coordinates for the Beaumont allocation, the Beaumont applicants may not avail themselves of Section 73.213 of the Commission's Rules. Rather, Serna contends, the applicants are required to fully protect the application filed by Sadlier Gill pursuant to the provisions of 47 C.F.R. §73.207(b). Furthermore, Serna contends, when the provisions of Section 73.207 of the Commission's Rules are applied, the applications are impermissably short spaced and must be dismissed.

5. Had Sadlier-Gill's application to modify the facilities of KATY-FM not been filed during the window for the Beaumont, California allocation, it would have been processed under the Commission's "first-come-first-served" processing rules and the later-filed applications by Richmond, Lauryn, and Brindisi would have been placed in a queue behind Sadlier-Gill's application and returned upon the grant of a CP to Sadlier-Gill. See Memorandum Opinion and Order in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). However, because Sadlier-Gill's application was filed during the Beaumont window, the applications of Richmond, Lauryn, and Brindisi, as stated in footnote 1, are considered to be mutually exclusive with Sadlier-Gill's application and will be designated for hearing. Accordingly, Serna's petitions and informal objection will be denied.

6. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Sadlier-Gill in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That in accordance with paragraph 2, hereinabove, Sadlier-Gill shall submit the environmental assessment required by 47 C.F.R. §1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That the petitions to deny filed by Serna against the applications of Richmond and Lauryn and the informal objection filed by Serna against the application of Brindisi, in light of the discussion in paragraphs 4 and 5, hereinabove, ARE DENIED.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally Proposals to Reform the Commission's Comparative Hearing Process (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), on reconsideration, FCC 91.154, paras. 7-8 & n.3, Appendix paras. 3 & 5, released May 15, 1991.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau