

FCC MAIL SECTION

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FCC 93M-356  
317/36

In re Applications of	)	MM DOCKET NO. 93-95
ERIC R. HILDING	)	File No. BPH-911115MR
JUDY YEP HUGHES	)	File No. BPH-911115MT
	)	
For Construction Permit for a	)	
New FM Station On Channel 281A	)	
in Windsor, California	)	

ORDER

Issued: June 10, 1993      Released: June 11, 1993

The following bench rulings were made at the Prehearing Conference held on June 9, 1993:<sup>1</sup>

Dates For Filings, Discovery And Hearing

By June 16, 1993, the parties shall submit and file a Settlement Status Report.

By June 17, 1993, the parties shall submit to the Presiding Judge copies of the minutes of Coyote Communications, Inc. for an in camera determination of whether they reflect a conflict in legal representation.

By June 18, 1993, Hilding shall produce and deliver to Hughes' counsel copies of all documents relating to his prior integration pledges which are in his possession or control.

By June 23, 1993, Hilding shall produce and deliver copies to Hughes' counsel of all Petitions for Rulemakings and Comments which he has filed with the Commission from 1988 to 1993.

By June 25, 1993, the parties shall file and submit the affidavits showing their proofs of publication.

On June 28-29, 1993, the depositions of the party applicants shall be taken in San Francisco at an agreed time and place on the standard comparative issue.

<sup>1</sup> The rulings that were made on the record are incorporated. See 47 C.F.R. §1.298(b) (interlocutory rulings may be made orally on the record at the trial judge's discretion).

On September 20, 1993, the hearing shall be held in a Commission courtroom in Washington, D.C., commencing at 10:00 a.m.<sup>2</sup>

Rulings On Motions

Supplementary Document Request and Motion To Compel filed by Hughes on May 14, 1993, were substantially granted as reflected above and on the record.

Motion For Extension Of Time and Motion To Accept Late Filing And Notice Of Deposition filed by Hilding on May 17 and May 24, 1993, were granted.

Stipulation regarding depositions filed by the parties on May 24, 1993, was accepted.

Motion To Strike filed on May 25, 1993, by Hughes with respect to the breadth of "Standardized Integration Statement Of Eric R. Hilding" was substantially granted as reflected on the record.<sup>3</sup>

Motion To Enlarge Issues filed by Hilding on May 10, 1993 is denied. Such issues as unfair prejudice of the Commission's comparative criteria as applied to Hilding, or whether Hilding should receive a preference for his efforts in the Commission allotment of Channel 281(A) at Windsor, or whether Hilding should receive a "technical merit" enhancement for his single-bay antenna proposal and his proposed "compact disc quality music service" are not authorized by the Commission and will not be designated for this case. The pioneer preference does not apply to obtaining new FM allotments. See Establishment of Procedures to Provide a Preference for New Services, 6 FCC Rcd 3488 (Comm'n 1991) (preference only for development of "new communications services and technologies.") See Id. at 3497 (extension of pioneer's preference to commercial broadcast assignments is beyond the scope

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<sup>2</sup> The admissions session set for September 14, 1993, and the hearing date set for September 21, 1993, ARE CANCELLED.

<sup>3</sup> Hilding may offer proof only on the comparative evidence authorized under the current Commission standards. See Policy Statement On Comparative Broadcast Hearings, 1 F.C.C. 2d 393 (Comm'n 1965). Thus, the parties may introduce evidence on owner integration, local residence, local civic activities, broadcast experience, auxiliary power, and the minority preference. Any theories advanced by Hilding for a change in preferences and quality credit are properly addressed in the Commission rulemaking proceeding on the Reexamination of the Policy on Comparative Broadcast Hearings, 7 F.C.C. Rcd 2664 (Comm'n 1992). But such evidence and/or argument shall not be received in this case at the trial level. Mr. Hilding is on notice that this hearing shall not be used as a vehicle to express his criticisms of the Commission's comparative criteria.

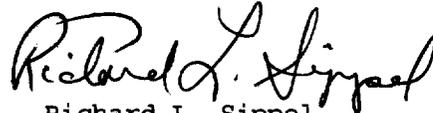
of the rulemaking). The requested issue to challenge the Constitutionality of the minority preference has been resolved in favor of the preference by the United States Supreme Court. See Metro Broadcasting, Inc., 110 S.Ct. 2997 (1990). Therefore, no issue will be added that would seek to reject the minority preference.

#### Proffered Evidence

Any party intending to offer a proffer of evidence will be limited to a pleading having a length of no more than five pages, double spaced, which summarizes the evidence that would be offered if any denied issue (or issues) were to be added. The document must be marked as an exhibit and exchanged on August 30, 1993, the date designated for the exchange of written cases. Hilding may incorporate by reference the issues and arguments in his Motion To Enlarge Issues which has been denied. But Hilding's proffer must be limited to a summary of the evidence that he would offer in evidence.<sup>4</sup> Also, Hilding will refrain in this proceeding from using derogatory language in describing actions (or inactions) or policies of the Commission and the United States Congress or Senate and the members thereof. The Presiding Judge will reject or strike portions of a proffer or any other pleading which he finds to be inflammatory or derogatory.<sup>5</sup>

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>4</sup> Hilding has already explained his perceptions of unfairness and the remedies that he seeks in his Motion To Enlarge Issues. Those points should not be repeated in any Proffer except they may be paraphrased in brief summary form in order to show the relevance of the proffered evidence. In other words, the Proffer must be limited almost exclusively to a summary of factual evidence. It is not to be used as a vehicle to advance the arguments of Hilding that have been rejected by the Presiding Judge in his denial of the Motion To Enlarge Issues.

<sup>5</sup> Hilding is specifically warned about the tenor of his pleading in view of certain language that he has used in his Motion To Enlarge Issues. See e.g., Motion To Enlarge Issues at Para.4. The reference to a "lacking in backbone" is an unfounded attack on character which is merely a personal ad hominem observation of Hilding's which has no legal significance and which is gratuitously derogatory in its intention and effect.