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

MM Docket No. 93-95

In re Applications of

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

Appearances

Eric R. Hilding, *Pro Se;* Peter A. Casciato, Esq., on behalf of Judy Yep Hughes; and Norman Goldstein, Esq., on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: August 6, 1993; Released: August 18, 1993

PRELIMINARY STATEMENT

1. The two applicant parties to this case are Eric R. Hilding ("Hilding") and Judy Yep Hughes (Hughes"). Summary decision was requested under a Joint Motion For Stay Of Discovery & Stipulated Procedures Concerning Respective Summary Decision Motions Regarding The Standard Comparative Issues that was filed on June 28, 1993. The proceeding was stayed to permit rounds of pleadings on Motion For Summary Decision and Cross Motion for Summary Decision. *See Order* FCC 93M-428, released June 30, 1993.[1]

2. Hilding filed a Motion for Summary Decision on June 14, 1993. He filed a Supplement on June 21, 1993. Hughes filed her Opposition on July 8, 1993. Hilding also filed an unauthorized Reply on July 19, 1993, which will be considered.[2] On July 8, 1993, Hughes filed a Cross Motion for Summary Decision and an Opposition to Hilding's Motion For Summary Decision As Supplemented. And on July 19, 1993, Hilding filed his Opposition.[3]

3. The parties seek mutually exclusive summary decisions on the standard comparative issues, i.e.:

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

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

Hearing Designation Order (DA 93-330), 8 F.C.C. Rcd 2495 (MM Bureau 1993) (the "*HDO*"). There are substantial undisputed facts in the record that support summary grant to Judy Yep Hughes.[4] *See Susan D. Brown,* 6 F.C.C. Rcd 7210 (Review Bd. 1991) (summary decision of comparative issues approved).

FINDINGS OF FACT

Eric R. Hilding

4. Hilding is an individual and a United States citizen. He does not qualify for a minority preference. Hilding proposes 100% integration of himself into the station's full-time management and operation. Hilding will cease any conflicting employment activities. It is found that Hilding's integration proposal is feasible. There are no disqualifying factors for his site selection or his financial

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[1] On June 18, 1993, Hilding filed a Motion To Accept Late Filing And Motion For Extension of Time. The relief sought by Hilding was granted under *Order* FCC 93M-428, *supra*. Thus the June 18 motion is moot.

[2] There is no reply pleading authorized in the round of pleadings contemplated by the summary decision procedure. *See* 47 C.F.R. §1.251(b). However, Hilding is proceeding *pro se* and, in the discretion of the Presiding Judge, the reply pleading will be accepted and considered. *See* 47 C.F.R. §1.294(d) (additional pleadings may be required by the Presiding Officer).

[3] There are additional pleadings that were filed by Hilding. Such pleadings are: Supplement To Prehearing Conference Record filed on June 14, 1993; Motion To Accept Late Filing And Motion For Extension of Time filed on June 18, 1993; and Supplement To Motion For Extension Of Time filed on June 21, 1993. These are pleadings which describe in detail the difficulties which Mr. Hilding was experiencing with respect to his compliance with documentary discovery. Because of the subsequent Motion For Stay Of Discovery & Stipulated Procedures that was filed by the parties on June 28, 1993, the miscellaneous pleadings of Hilding identified above are moot and need not be addressed in this ruling. There also was a Supplementary Document Production Request filed by Hilding on June 21, 1993, wherein he seeks documents concerning unspecified civil or criminal lawsuits in which Hilding suggests that Hughes may have been a party. There is no issue pending to which the Request relates and, as framed by Hilding, the request is speculative. Therefore, the Request will not be granted because it is moot, irrelevant, and speculative.

[4] There was a question raised by Hilding at the Prehearing Conference of June 9, 1993, concerning a possible conflict on the part of Peter A. Casciato, counsel for Judy Yep Hughes. *See* Prehearing Conference at Tr. 5-18. Mr. Hilding acknowledged at the conference that he was raising the issue based on recollection and not on documentation. (Tr. 16.) The Presiding Judge concluded preliminarily that there had been no showing made that would justify a disqualification of Mr. Casciato. (Tr. 17-18.) The parties were required to submit documentation *in camera* from which a conclusive ruling could be made. Such documents included minutes of the board of directors' meetings of Coyote Communications, Inc. ("Coyote"). Mr. Casciato maintained that he had only prepared initial incorporation papers for Coyote. The documents submitted for *in camera* review show, to the satisfaction of the Presiding Judge, that Mr. Casciato did not represent Coyote in a substantial way in transactional matters involving broadcast issues. Nor has Mr. Casciato represented Coyote at a time that he could have learned facts about Hilding which could possibly bear on this case. Therefore, it is conclusively determined by the Presiding Judge that Mr. Casciato has no conflict in representing Ms. Hughes in this proceeding.

ability. There have been no qualifying issues added against Hilding. Hilding claims no local residency or residency within his service contour. He does intend to move to Windsor prior to program test authority if he receives the grant.

5. Hilding concedes in his Motion for Summary Decision that he does not qualify for a minority preference; that he does not qualify for any credit for residency within the community or the service area; that he does not qualify for any credit for a civic involvement in the community or the service area; and that the only qualitative merit to which he is entitled is a credit for his broadcast experience. Also, in that pleading Hilding concedes that Hughes qualifies for credit enhancement as a minority, as a local resident, and for participating in qualifying local civic activities.

Judy Yep Hughes

6. Hughes is an individual and a United States citizen. She is a minority of Chinese descent. She proposes to work full time at the station as its general manager. She commits to reducing her present business to three hours per week until her small business is sold. It is found that Hughes' integration proposal is feasible, is made in good faith, and there are no disqualifying factors for her site selection or her financial ability. There have been no qualifying issues added against Hughes.

7. The undisputed Declaration of Ms. Hughes establishes that she has resided within the 1 millivolt contour of her proposed station since 1978. Her residence is located at Healdsburg, CA which is adjacent to or located proximately to Windsor, the city of license. She has been active in local community affairs since 1984, including membership in the Healdsburg Chamber of Commerce; member of the Vineyard Plaza Merchants Association; membership in the Windsor Chamber of Commerce; and a member of the Lakewood Merchant Association. She has been and is also active in other described civic activities in Healdsburg and in Windsor.

Other Comparative Factors

8. Neither Hilding nor Hughes owns an interest in another media of mass communications and therefore neither warrants a diversification demerit. There was no comparative coverage issue set in the *HDO*. Neither Hilding nor Hughes claims any AM daytimer preference. Both Hilding and Hughes propose auxiliary power sources that would be designed to avoid any interruption of a broadcast signal. Hilding has past broadcast experience and Hughes has none.

CONCLUSIONS OF LAW

9. The Commission's rules provide that in considering a motion for summary decision:

> The party filing the motion may not rest upon mere allegations of denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

47 C.F.R. §1.251(a)(1). As there are cross motions now pending for summary relief, Hilding and Hughes have the respective burdens of persuading that summary decision would be appropriate based on the evidence submitted. *See Summary Decision Procedures,* 34 F.C.C. 2d 485, 487-88 (1972). Hughes is found to have sustained her burden on the law and the facts. Hilding concedes the relevant facts, which are admissions against his interest, and he loses on the law.

10. Hilding and Hughes are each entitled to 100% quantitative integration credit because each application sets forth a specific integration proposal and there is reasonable assurance that each proposal would be carried out. *See Bradley, Hand & Triplett,* 89 F.C.C. 2d 657, 662 (Review Bd. 1982). Each applicant has committed to withdraw from current employment to work full time at the station and there are no commitments on the part of Hilding or Hughes that would conflict with a full time management proposal at the Windsor station. *See Poughkeepsie Broadcasting, Ltd.,* 5 F.C.C. Rcd 3374, 3380 (Review Bd. 1990).

11. Because each of the applicants is entitled to full quantitative integration credit, the weight of the qualitative enhancements for local residence and civic activities have decisional significance. *Policy Statement On Comparative Broadcast Hearings,* 1 F.C.C. 2d 393, 396 (1965). Hughes qualifies for a significant credit for her residence outside the Windsor community but within the proposed service area. *Id.* Credit for service area residence closely follows credit for local residence. *Waters Broadcasting Corp.,* 91 F.C.C. 2d 1260, 1262-63 (Comm'n 1982). A promise like Hilding's to move to Windsor, by comparison, is entitled only to a slight additional credit. *Great Lakes Broadcasting,* 7 F.C.C. Rcd 1829, 1831, *recon. denied,* 7 F.C.C. Rcd 6548 (Review Bd. 1992).

12. The Commission considers enhancements for civic activity as an adjunct to local residency. *Ronald Sorenson,* 6 F.C.C. Rcd 1952 (Comm'n 1991). The record reflects that Hughes has a pattern of local civic involvement in the city of license and in the service area. She qualifies for a substantial qualitative credit for her local residency of 14 years coupled with qualifying civic activity performed from 1984 to the present. These enhancements are superior to the minor significance which the Commission affords to broadcast experience. *Policy Statement, supra* at 396; *Ronald Sorenson, supra* at 1954. The record supports a grant to Hughes based on her earned enhancements for residency/civic activity.

13. Hilding has argued in his Supplement that the Presiding Judge had erred in failing to find good cause for adding issues requested by Hilding that would have "leveled the playing field" if the issues had been added and resolved in his favor. *See Order* FCC 93M-356, released June 11, 1993 (request for "technical merit" for a custom-designed bay antenna and a compact disc quality music service denied; pioneer preference found not applicable to comparative case for a new FM allotment; requested issue

to challenge the Constitutionality of the Commission's minority preference denied under U.S. Supreme Court decision upholding preference).[5]

RULINGS

Accordingly, IT IS ORDERED that the Motion for Summary Decision filed on June 14, 1993, by Eric R. Hilding IS DENIED.

IT IS FURTHER ORDERED that the Cross Motion for Summary Decision filed on July 19, 1993, by Judy Yep Hughes IS GRANTED.

IT IS FURTHER ORDERED that the application of Eric R. Hilding (File No. BPH-911115MR) IS DENIED.

IT IS FURTHER ORDERED that the application of Judy Yep Hughes (File No. BPH-911115MT) to construct a new FM Station on Channel 281A at Windsor, California, IS GRANTED.[6]

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

[5] *Metro Broadcasting, Inc.*, 110 S. Ct. 2997 (1990). The Court recognized that "experience has shown that minority ownership does not guarantee that an applicant will prevail" and "[i]n many cases . . ., even when the minority applicant prevailed, the enhancement for minority status was not the dispositive factor in the Commission's decision to award the license." *Id.* at 3026, n.50. *See also Waters Broadcasting Corp., supra,* 92 F.C.C. at 1265-66 (local residency and minority ownership are entitled to equal substantial weight).

[6] This Summary Decision disposes of the case in its entirety. It shall become effective 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).