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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal Express/By Hand

September 29, 1993

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street NW Suite 222  
Washington, D.C. 20554

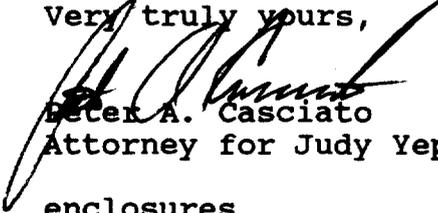
Re: MM Docket No. 93-95 Windsor, CA

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding are an original and eleven copies of Judy Yep Hughes' (BPH-911115MT) Reply Brief.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,

  
Peter A. Casciato  
Attorney for Judy Yep Hughes

enclosures

cc: Judy Yep Hughes w/encl.

PAC:sc

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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SEP 30 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-95
Eric R. Hilding	)	File No. BPH-911115MR
Judy Yep Hughes	)	File No. BPH-911115MT
For a Construction Permit	)	
For a New FM Radio Station	)	
on 281A in	)	
Windsor, California	)	

To: The Review Board

REPLY BRIEF OF  
JUDY YEP HUGHES

Peter A. Casciato  
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September 29, 1993

Attorney for  
Judy Yep Hughes

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## SUMMARY

The Initial Decision should be affirmed, but corrected, to accord the prevailing applicant, Judy Yep Hughes, full credit for her minority status, as an American of Chinese descent.

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OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re Applications of	)	MM Docket No. <u>93-95</u>
	)	
ERIC R. HILDING	)	File No. BPH-911115MR
	)	
JUDY YEP HUGHES	)	File No. BPH-911115MT
	)	
For a Construction Permit	)	
For a New FM Station on	)	
Channel 281A in	)	
Windsor, California	)	

To: The Review Board

REPLY TO BRIEF & EXCEPTIONS OF ERIC HILDING

Judy Yep Hughes, by her attorney and pursuant to Sections 1.276 and 1.4 of the Commission's rules, hereby replies to the Brief & Exceptions of Eric Hilding dated September 16, 1993. As discussed below, the Hilding Exceptions constitute an irrational diatribe concerning the alleged inaction or actions of the Commission which, according to Hilding, have deprived him of his civil rights and discriminated against him by failing to give him comparative preferences as a white male, as well as the initiator of a rulemaking that resulted in the Windsor allocation.

Not to minimize these instances of claimed discrimination, Hilding also asserts that the hearing designation order in this proceeding discriminated against him by allowing Hughes to amend her engineering proposal. Hilding also claims he has not been given due credit for alleged civic activities occurring outside the city of license or service area, and that the local area residence credit accorded applicants by the Commission, generally discriminates against him and other similarly situated

applicants. Finally, Hilding claims that his mere proposal of a single-bay FM antenna and utilization of a compact disc quality music service requires the addition of issues in this proceeding so as to permit him some form of "technical merit" enhancement.

As discussed below, Hilding's claims of discrimination and civil rights violations are meritless. Neither due process nor equal protection have been denied him, and he cites no cases which offer even remote credence to his bizarre theories. Moreover, as further discussed below, some of Hilding's claims have been raised now for the first time in this proceeding and were not the subject of stipulated summary decision process in which Hilding concurred. As a result, those dilatory claims are procedurally defective and must be dismissed. Bible Broadcasting Network, Inc., 70 RR 2nd 743 (1992). Likewise, other Hilding's claims are beyond the authority of the Board. Isis Broadcast Group, 7 FCC Rcd 5125 (Rev. Bd. 1992).

Hilding's claims regarding the acceptance of Ms. Hughes' engineering proposal fare no better and amount to nothing more than a request for reconsideration of the Hearing Designation Order, which the Commission's rules do not allow. See Section 1.106(a)(1) of the Commission's rules; Atlantic Broadcasting Co., 5 FCC 2d 717, 8 RR 2d 991 (1966). Finally, Hilding's enhancement claims regarding his proposed antenna and proposed music service are not recognized by the Commission's Policy Statement on Comparative Broadcast Hearings ("Comparative Policy Statement") 1 FCC 2d 393, 5 RR 2d 1901 (1965), or any other Commission precedent thereunder.

Thus, Hilding's exceptions should be summarily denied, as the discussion below indicates. For clarity and consistency, each of Hilding's 16 claims (A-O) are dealt

with seriatim.

**A. Hilding Is Not Entitled To A Pioneer's Preference**

Hilding's claim that he is entitled to a "Pioneer's Preference" for initiating the Windsor allocation must be rejected. Only two weeks ago, the Commission reiterated that a pioneer's preference is not accorded in any way for such activity. Lynn Broadcasting FCC93-433 released September 15, 1993 at para. 5. Likewise, the presiding ALJ rightly rejected this same claim in a Hilding motion to enlarge. See Order FCC 93M-356 released June 11, 1993 at p.2 -- "The pioneer preference does not apply to obtaining new FM allotments." See Establishment Of Procedures To Provide A Preference For New Services ("New Services Policy") 6 FCC Rcd 3488, 3497 (1991). Thus, this exception has no merit.

**B & C. Hilding's Claim For A "Technical Merit" Enhancement Have No Basis In Commission Policy Or Precedent.**

Neither the Comparative Policy Statement nor Commission precedent make any provision for a "Technical Merit" enhancement credit for the use of specific antenna or form of music service delivery vehicle, as described in Hilding's items "B & C." Rather, the Comparative Policy Statement makes clear that it is interested in equipment proposals only to the extent that they are not adequate to carry out program plans. Ibid. 5 RR 2d at 1912, fn. 10. Thus, Hilding's request for such an enhancement preference must be denied.

**D & E. The Local Area Residence Requirement & Civic Area Activities Related Thereto Do Not Constitute Burdensome Discrimination Or Unjustly Deprive An Applicant Of Comparative Credit.**

**1. Hilding's Claims Are Procedurally Infirm**

**Ab Initio.** Hilding's claim that the local area residence integration enhancement credit is discriminatory against nonresidents must be rejected as procedurally late. Commission precedent holds that any such claims in comparative proceedings should be raised at the earliest possible moment. Coastal Broadcasting Partners, 71 RR 2d 917, 919 (1992) at para. 10; Bible Broadcasting Network, Inc. 70 RR 2d 743, 746 (1992) at para. 9. Neither Hilding's May 8, 1993 motion to enlarge the issues for favored treatment for himself in this proceeding (which was denied), nor his supplemented Summary Decision Motion raised this claim, warranting its rejection here. Moreover, even if this dilatory procedural taint could be removed, both the nonresident discrimination claim and the denial of consideration of Hilding's civic activities outside the city of license and the service area lie beyond the Board's authority in reviewing Initial Decisions. See Isis Broadcast Group, 7 FCC Rcd 5125 at para 44 recon. denied, 8 FCC Rcd 24, aff'd FCC 93-441, released September 24, 1993.

**2. Hilding's Claims Have No Substantive Merit.**

Even if the Board were to attempt to address the merits of Hilding's claims, they are bereft of support under existing case law or general policy considerations. As the Board recently reiterated in Linda U. Kulisky, FCC 93R-43 released August 31, 1993, an applicant such as Hilding's opponent, Ms. Hughes, is entitled to local

residence and civic activities enhancement credit within the city of license and proposed service area as a "single unified comparative [enhancement] factor" because local residents have "a likelihood of continuing knowledge of changing local interest and needs while civic activities therein indicate "a knowledge of and interest in the welfare of the Community." *Id.* at para. 8, quoting the Commission's Comparative Policy Statement. This mere summary of the law evokes the clear policy reasons why local applicants with extensive civic background are accorded significant credit -- such applicants are uniquely attuned to local needs by their local residence and civic involvement. In contrast, an applicant such as Hilding has no such unique knowledge or interaction with the community or ties to the service area and should not and has not been accorded any credit.<sup>1</sup> Thus, this exception should be dismissed.

**F. Hilding's Claim Of Discrimination Based On The Hearing Designation Order's Treatment Of Ms. Hughes' Engineering Proposal Must Be Denied.**

The Hearing Designation Order ("HDO") provided Ms. Hughes the opportunity to amend her application with a minor correction to reflect the elevation of her proposed transmitter site at 499 meters. See HDO DA93-330 released April 8, 1993 at para. 2.<sup>2</sup> Ms. Hughes did so and her amendment was accepted by the presiding

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<sup>1</sup>Paradoxically, in the Morgan Hill, California comparative proceeding (MM Docket No. 88-205) for a new FM station on channel 241A, Hilding attempted to capitalize on his local residence and civic involvement there, not questioning the basis of a policy which avored him.

<sup>2</sup> This is consistent with Report and Order Related To Processing of FM and TV Applications 50 FR 19936, 58 RR 2d 776, recon. denied, 50 FR 43157 (1985) & Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Otherwise Defective 58 RR 2d 166 (1985).

ALJ in Order FCC 93M-320 released June 3, 1993. Hilding did not oppose the Petition For Leave To Amend or Amendment. Hilding's claims of discrimination in this regard amount to nothing more than an attempt to reargue the HDO, contrary to Section 1.106(a)(1) of the Commission's rules and Atlantic Broadcasting Company, 5 FCC 2d 717, 8 RR 2d 991 (1966). It is noteworthy that the presiding judge dismissed this same specious argument when Hilding raised in his motion to enlarge which was denied in Order FCC 93M-56 released June 11, 1993. Hilding presents nothing new on this issue by way his exception, and since he did not oppose the Amendment, his claim is barred and should be dismissed. Bible Broadcasting Network, *supra*.

**G. Hilding's Reargument Of The Minority And "Female" Preference Should Be Rejected**

Hilding's reargument of the nonexistent female preference borders on abuse of process and should be dismissed. As for the minority enhancement credit, it should suffice to say that the United States Supreme Court has ruled on the issue<sup>3</sup> and the Board -- even if it wished -- has no authority to review or change that decision and policy. Isis Broadcasting Group, *supra*.

**H. Hilding's Claim For A Veteran's Preference Should Be Rejected**

The Commission's Comparative Policy Statement makes no provision for a Veteran's preference. Hilding's May 8, 1993 motion to enlarge issues to favor himself did not mention a Veteran's preference. Thus, at the outset, Hilding's claim is

---

<sup>3</sup>(Metro Broadcasting, Inc., 110 S. Ct. 2997 (1990)).

procedurally late and should be dismissed. Bible Broadcasting Network, supra. Moreover, the Board has no authority to award the preference. Isis Broadcast Group, supra. In any event such a preference can not be considered, let alone awarded, in the absence of a rulemaking initiated and concluded under the Commission's rules and the Administrative Procedure Act. Thus, this exception must be denied.

**I., J. & K. Hilding's Claim Of An Accommodation Preference For The Commission's Failure To Act On His Petition For Rulemaking Is Irrational And Meritless**

Like the rest of his exceptions, this duplicative "accommodation preference"<sup>4</sup> reflects a willful failure by Hilding to acquaint himself with the Administrative Procedure Act and the Commission's rules. Whatever the merits of Hilding's alleged May, 1985 Petition For Rulemaking (see p.9 of his Exceptions), which is not in the record and not adequately identified or summarized in his Exceptions, Section 1.407 of the Commission's rules provides the Commission the full discretion to order a rulemaking pursuant to a petition request, rule upon the issue presented without rulemaking, or deny the petition request. Moreover, the Commission's Comparative Policy Statement does not provide for "accommodation preferences" and it is beyond the authority of the Board to consider, let alone grant one. Isis Broadcast Group, supra. Likewise, Hilding's unsubstantiated claims of Commission lack of candor about defective application processing features must meet a similar fate. This is neither a relevant matter to this proceeding nor is it within the scope of the Comparative Policy Statement or even the Proposals to Reform The Commission's Comparative Hearing

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<sup>4</sup>(see) Hilding headings I. J. & K.)

Process ("Comparative Hearing Rulemaking"), 6 FCC Rcd 15 (1990). Thus, Hilding's ersatz claims of discrimination should be rejected.

**K & N      Hilding Is Not Entitled To An Accommodation Preference For Allegations He Made In A 1987 Brief**

Incredibly, Hilding also claims entitlement to his vaguely termed "accommodation preference" as the result of the Commission's alleged failure to not disclose "material facts of knowledge as to the seventy-eighty percent (70-80%) defective nature of its applications processing procedures" to the United States Circuit Court apparently in past cases such Metro Broadcasting, Inc. v. FCC, supra and Jerome Thomas Lamprecht v. FCC., Case No. 88-1395 (D.C. Cir. February 19, 1992). Aside from the fact that the record reflects Hilding's assertions are no more than unproven allegations, this Board has no authority to consider Hilding's allegations concerning alleged non-specific Commission nondisclosures. Thus, this allegation must be roundly rejected.

**L. & M.      Hilding's Claims Of A "Public Service Benefit" And "Positive Oriented Program" Preferences Are Both Procedurally & Substantively Wrong.**

Hilding claims in this item that he is entitled to a "Public Service Benefit" preference for allegedly creating 18 new community FM allotments and for proposing "positive oriented programming." Like many of his other claims, this exception suffers from a failure of proof and a failure to promptly bring this matter to the Commission's attention in this proceeding. Neither claim was raised in the May 8, 1993 Hilding Petition to Enlarge issues and must be procedurally denied. Coastal

Broadcasting Partners, supra; Bible Broadcasting Network, supra. Moreover, the Comparative Policy Statement does not accord such preferences and it is beyond the Board's scope of authority to consider one. Isis Broadcast Group, supra.

With regard to the "Public Service Benefit" Claim, Hilding is merely recasting his claim to a form of pioneer's preference (see Section A, supra) which the Commission has ruled on more than one occasion will not be allowed. Lynn Broadcasting, supra; New Services Policy, supra. With regard to the "positive oriented program," its vague nature and lack of record evidence aside, any form of Commission preferences based on programming which requires value judgments as to the content of that programming are violative of the First Amendment and are not covered by the Comparative Policy Statement, supra.

**O. The National Interest Has Not Been Jeopardized By "The 1965 Policy"**

This section of the Hilding brief sums up all of Hilding's claims and concludes that the "1965 Policy" (one assumes the Comparative Policy Statement) has somehow jeopardized the "National Interest of the United States." Clearly, the foregoing discussion has established that all of Hilding's claims are meritless and border on abuse of process.

Hilding also claims that the presiding ALJ's failure to incorporate his proffer of evidence in the Summary Decision, supra was in error. This is rank nonsense. Attached hereto is the "Joint Motion For Stay Of Discovery & Stipulated Procedures Concerning Respective Summary Decision Motions Regarding The Standard Comparative Issues" executed by Hilding and counsel to Ms. Hughes, which the

presiding ALJ adopted in his Order FCC 93M-428 released June 30, 1993. Mr. Hilding has had his say four times concerning all of his claims via his Motion For Summary Decision, a supplement, thereto, his opposition to Hughes' cross summary decision motion, and an unauthorized reply thereto. See Summary Decision, FCC 93D-17 released August 18, 1993 at para 2 and fn.2. The presiding ALJ was under no duty to indicate any other information with his Summary Decision Order. Thus, Hilding's claim in this regard is as counterfeit as his entire case and must also be denied.

No "National Interest" is implicated by the Hilding pleading other than interest of applicants such as Ms. Hughes and the government, itself, to be free from the false claims of an applicant that willfully fails to follow procedures adopted in accordance with law and then sanctimoniously and erroneously claims injury. Indeed, the true petty, racist nature of Hilding's claims can be seen in fn. 7 of his September 24, 1993 Reply Brief where he accuses Ms. Hughes of being a socialist through perverse Lamarckian eugenics emanating from her Chinese ancestry.<sup>5</sup> Ms. Hughes has endured enough Hilding slander in this proceeding. The Board should not tolerate such "blood libel." It should reject Hilding's exceptions and sanction him for his violation of ethics.

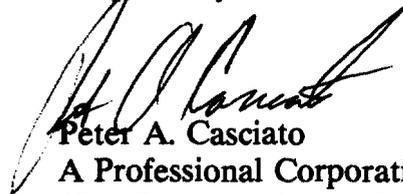
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<sup>5</sup>Hilding is also wrong in his claim that Ms. Hughes has not proven her Chinese ancestry. Hilding Reply Brief at 3. Attached to Ms. Hughes Cross Motion For Summary Decision were her declaration of her Chinese ancestry and copies of the passports of her mother and father, noting their respective births in China. See Attachments A & B to the Hughes July 8, 1993 Cross Motion For Summary Decision.

**Conclusion**

For all of the foregoing reasons, the Summary Decision in favor of Ms. Hughes should be affirmed with the corrections noted in her Limited Exceptions. Hilding's Exceptions should be dismissed and denied.

Respectfully submitted,



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September 29, 1993

Counsel to Judy Yep Hughes

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JUN 28 1993

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re Applications of )  
ERIC R. HILDING )  
JUDY YEP HUGHES )  
For a Construction Permit )  
For a New FM Station on )  
Channel 281A in )  
Windsor, California )

MM Docket NO. 93-95  
File No. BPH-911115NR  
File No. BPH-911115MT

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JUN 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Richard L. Sippel  
Administrative Law Judge

JOINT MOTION FOR STAY OF DISCOVERY  
& STIPULATED PROCEDURES CONCERNING RESPECTIVE  
SUMMARY DECISION NOTICES REGARDING THE  
STANDARD COMPARATIVE ISSUES

Judy Yep Hughes, by her attorney, and Eric R. Hilding, pro  
se, hereby move for a stay of the entire existing discovery  
schedule, as set forth in the presiding ALJ's Order FCC 93M-356  
released June 11, 1993, and the Prehearing Conference Order FCC  
93M-173 released April 21, 1993, pending the outcome and  
disposition of the parties' respective Motions For Summary  
Decision concerning the two issues specified in the Hearing  
Designation Order DA93-330 released April 8, 1993:

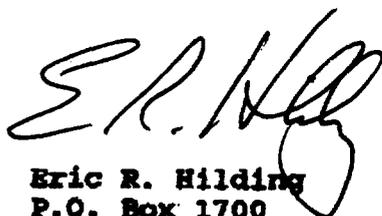
1. To determine which of the proposals would, on a comparative basis, better serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

On or about June 12, 1993, as supplemented on June 19, 1993,  
Mr. Hilding filed a Request For Permission To File And Motion For  
Summary Decision seeking summary disposition of the  
aforementioned two issues without hearing in favor of Ms. Hughes.

By this stipulated agreement between the parties, Ms. Hughes will file a counter-motion for summary judgment and Opposition/Comments on Mr. Hilding's motion on or about July 9, 1993, seeking the same relief as Mr. Hilding's motion, the grant of Ms. Hughes' application and summary decision in her favor, under those issues.

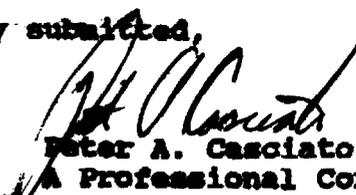
In turn, on or about July 19, 1993, Mr. Hilding shall file an Opposition/Comments on Ms. Hughes' Summary Decision Motion, stipulating to and conceding the underlying facts of her Motion, noting that existing law entitles Ms. Hughes to prevail, but setting forth Mr. Hilding's challenge to the existing comparative criteria and how they disfavor his application. Mr. Hilding's Opposition/Comments shall be five-seven pages in length and in accord with the presiding ALJ's Order FCC 93M-356 and specifically that paragraph entitled "Proffered Evidence" at p. 3 thereof.

WHEREFORE, the parties request that this Motion be granted in its entirety.



Eric R. Hilding  
P.O. Box 1700  
Morgan Hill, CA 95038-1700  
(408) 778-0900

Respectfully submitted,



Peter A. Casciato  
A Professional Corporation  
1500 Sansome Street  
Suite 201  
San Francisco, CA 94111  
(415) 291-8661

Attorney for  
Judy Yep Hughes

June 23, 1993

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

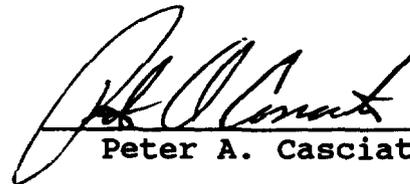
On June 25, 1993, I caused the attached Joint Motion For Stay Of Discovery & Stipulated Procedures Concerning Respective Summary Decision Motions Regarding The Standard Comparative Issues of Judy Yep Hughes and accompanying documents to be served by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be sent by regular U.S. Mail in San Francisco, CA for delivery as follows:

Hon. Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW Room 214  
Washington, DC 20036 (By Federal Express)

Norman Goldstein, Esq.  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street NW Room 7212  
Washington, D.C. 20554

Chief, Data Management  
Federal Communications Commission  
Mass Media Bureau  
1919 M Street NW Room 350  
Washington, D. C. 20554

Eric R. Hilding  
P.O. Box 1700  
Morgan Hill, CA 95038-1700

  
Peter A. Casciato

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

On September 29, 1993, I caused the attached Reply Brief to be served by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be sent by regular U.S. Mail in San Francisco, CA for delivery as follows:

Eric R. Hilding  
P.O. Box 1700  
Morgan Hill, CA 95038-1700

Allan Sacks, Esq.  
Chief for Law  
Review Board  
2000 L Street NW  
Room 205  
Washington, D.C. 20036

  
Peter A. Casciato