ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of	)	MM DOCKET NO. 92-6
NORMANDY BROADCASTING CORP.	)	File No. BRH-[illegible]
For Renewal of License of Station WYLR(FM) (95.9 MHz) Glens Falls, New York	)	
and	)	
LAWRENCE N. BRANDT	)	File No. BPH-910430MB
For a Construction Permit for a New FM Station on 95.9 MHz at Glens Falls, New York	)	

RECEIVED
JAN 16 1996
FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

To: The Review Board

Petition for Extraordinary Relief

Lawrence N. Brandt, by his attorney, hereby petitions for the Review Board to take this case back from the settlement judge to which the case was informally referred following the Commission's action of February 25, 1994 (Public Notice, FCC 94-41) freezing certain comparative proceedings ("Freeze Notice"), and to issue a decision on the basic qualifications issues pertaining to Normandy Broadcasting Company ("Normandy") that were resolved against Normandy by the Initial Decision of Administrative Law Judge Richard L. Sippel (FCC 92D-72), 8 FCC Rcd 1 (ALJ 1992) (the "ID"). As will be shown below, the relief requested herein is warranted because (i) this case should not have been remanded to a settlement judge in the absence of a decision by the Review Board on the Exceptions to the ALJ's conclusions that Normandy is basically unqualified to continue as the licensee of WYLR and (ii) it is

No. of Copies rec'd 0+11
List ABCDE

contrary to the public interest to allow Normandy, after having been found guilty of disqualifying misrepresentations in the ID, to continue to operate Station WYLR indefinitely.

I. **The Case Never Should Have Been Remanded**.

Following the release of the ID, Normandy and Brandt each filed Exceptions to the ID, and oral argument on those exceptions was heard by the Review Board on April 30, 1993. Pursuant to time guidelines that were adopted by the Commission in its *Report and Order* in General Docket 90-264, *6* FCC Rcd 157 (1990), the Review Board should have issued a decision in this routine case involving only two applicants and limited issues before the end of June, 1993. However, when the Freeze Notice was issues almost *14 months* after the release of the ID and 10 months after oral argument, the Review Board still had not issued its decision in this case.

The Freeze Notice suspended all proceedings in comparative cases pertaining to comparative issues. However, the Notice explicitly stated that the Review Board was to continue to issue decisions "in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case." In the ID, the ALJ had concluded that Normandy was unqualified to continue as the licensee of WYLR based on previously found to unqualified to be a Commission licensee on the fact that Normandy had been found unqualified to become a licensee of a new station because of three separate and distinct misrepresentations in an earlier case, *Barry Skidelsky,* 6 FCC Rcd 2221 (ALJ 1991). Accordingly, unless and until the Review Board rendered a decision reversing the ALJ's conclusions that Normandy was basically

disqualified to continue as the licensee of WYLR, this case was exempt from the freeze and the Review Board had an obligation to render a decision on the Exceptions to the ID.[1] Rather than discharge this obligation, following the release of the Freeze Order, the Review Board remanded this case to a settlement judge.

Although the Review Board's action remanding the case to a settlement judge appeared to be at odds with the Freeze Order, Brandt did not file a petition for extraordinary relief at that time since he anticipated that the Commission would adopt new comparative criteria, thereby allowing the case to proceed, within a relatively short period of time. Nearly two years have now passed since the release of the Freeze Order, and it is clear that the Commission is not going to adopt new comparative criteria any time soon. In fact, it is widely assumed that the Commission will eventually abandon its efforts to come up with new comparative criteria and will seek authority to award broadcast channels by auction.

In view of the fact that this case can and should be decided on non comparative issues, Brandt submits that the public interest

---

[1]If the Review Board has concluded that the ALJ erred in holding that Normandy is unqualified to continue as a licensee, it would have been a simple matter for the Board to have issued a brief decision stating and explaining this conclusion. By remanding the case without decision, the Review Board has left the troubling impression that it is unable to write a reasoned decision reversing the ALJ's determination that Normandy is unqualified, but for reasons of compassion it is reluctant to uphold the decision of the ALJ and thereby deprive Lynch of an opportunity to salvage something, and, therefore, it has ducked the issue by sending the case to a settlement judge with a hope and a prayer that something might be worked out.

would be well served by the Review Board taking this case back from the settlement judge and promptly rendering a decision on the issues pertaining to Normandy's basic qualifications to continue as the licensee of WYLR.

II. Continued Operation of WYLR By Normandy Is Contrary to the Public Interest.

In its 1986 Policy Statement Regarding Character Qualifications in Broadcast Licensing ("Character Qualifications"), 102 FCC 2d 1179, 1209-10 (1986), the Commission stated that "the trait of 'truthfulness' is one of the two key elements necessary to operate a broadcast station in the public interest," and, noting that acts of misrepresentation or lack of candor by applicants and licensees are "proximately relevant" to its "core concern" with truthfulness, the Commission held that it would "continue to view misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust." In Skidelsky, Normandy was found to have made three separate and distinct misrepresentations to the Commission which, taken together, led the ALJ to conclude that "it is evident that the Commission can not rely on Normandy's representation...and that there is a *substantial likelihood* that Normandy will not make a trustworthy licensee." 6 FCC Rcd 2221 at ¶62 (emphasis added). The ALJ in this case based his conclusions that Normandy was not qualified to continue as the licensee of WYLR on the findings regarding Lynch's misrepresentations and lack of trustworthiness in *Skidelsky* and the fact that Lynch made further misrepresentations before the ALJ in this case which reflected "a continuing disposition on the part of

Lynch to alter the truth." ID at ¶60.

In view of the importance that the Commission attaches to truthfulness on the part of its licensees, and the fact that Lynch not only was found to have made disqualifying misrepresenations in *Skidelsky*, but made further misrepresentations in this case, it is clearly contrary to the public interest for Normandy to be permitted to continue as the licensee of WYRL for an indefinite period of time while the Commission deliberates new comparative criteria that can have no bearing on the outcome of this case.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the Review Board should be reassume jurisdiction over this case and render a decision on the issues relating to the qualification of Normandy Broadcasting Company to continue as the licensee of Station WYLR.

Respectfully submitted,

David Tillotson
3421 M Street, N.W., #1739
Washington, DC 20007
Tel: 202/625-6241

Attorney for Lawrence N. Brandt

Dated: January 11, 1996

CERTIFICATE OF SERVICE

I, DAVID TILLOTSON hereby certify that a copy of the foregoing **PETITION FOR EXTRAORDINARY RELIEF** has been sent via U.S. Mail, First-Class postage prepaid this 11th day of January, 1996 to the following:

Gary Schonman, Esq.
Federal Communications Commission
Hearing Branch, Enforcement Division
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Christopher P. Lynch, President
Normandy Broadcasting Corp.
217 Dix Avenue
Glens Falls, NY 12801

David Tillotson