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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 92-6
	)	
<b>NORMANDY BROADCASTING</b>	)	File No. BRH-910129UR
<b>CORP.</b>	)	
	)	
For Renewal of License for	)	
Station WCQL(FM) (95.9 MHz) <sup>1</sup>	)	
Glens Falls, New York	)	
	)	
<b>LAWRENCE N. BRANDT</b>	)	File No. BPH-910430MB
	)	
For a Construction Permit for a new	)	
FM Station on 95.9 MHz at	)	
Glens Falls, New York	)	

To: The Commission

**MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS ON**  
**JOINT REQUEST FOR APPROVAL OF AGREEMENT**  
**AND MOTION TO INTERVENE**

1. On January 30, 1998, Normandy Broadcasting Corp. ("Normandy") and Lawrence N. Brandt ("Brandt") filed a joint request for approval of agreement. Also, on January 30, 1998, Entertronics, Inc. filed a motion to intervene. The Mass Media Bureau hereby submits the following consolidated comments.

2. This case is now before the Commission on exceptions to the presiding Administrative Law Judge's *Initial Decision*, 8 FCC Rcd 1 (1992) ("ID"). See *Order*, 11 FCC Rcd 5251 (Rev. Bd. 1996); and *Memorandum Opinion and Order*, 11 FCC Rcd 3559 (Rev. Bd. 1996). The three issues pending for consideration involve: 1) the impact upon Normandy of findings and conclusions concerning Normandy reached in *Barry Skidelsky*, 6

<sup>1</sup> Effective November 21, 1997, the call sign of the station changed from WYLR(FM) to WCQL(FM).

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FCC Rcd 2221 (ALJ 1991); 2) the standard comparative issue; 3) the standard conclusory issue. *ID*, 8 FCC Rcd at 1. The Bureau's position is that Normandy is basically qualified to retain its license, assuming favorable resolution of the comparison between Normandy and Brandt. Moreover, that position remains unaffected by Brandt's pending Motion to Reopen Record and Enlarge Issues ("Motion").

3. Normandy and Brandt now propose to settle this proceeding. In exchange for dismissing his application, Brandt will receive \$137,500 from Normandy. Payment will occur only after the Commission dismisses Brandt's application, grants Normandy's application, and grants the recently-filed applications to assign the licenses of Stations WCQL(FM) and WWSC(AM) from Normandy to Entertronics.<sup>2</sup> The applicants also ask the Commission to defer acting on the Motion pending its decision on the joint request. Brandt and Normandy provide verified statements that: no consideration other than that described in the settlement agreement has been promised or paid; neither filed its application for the purpose of reaching a settlement; and grant of the joint request will serve the public interest by terminating this proceeding and permitting grant of the noted assignments to Entertronics.

4. The joint request and accompanying materials do not include an itemization of Brandt's expenses. In this regard, the applicants essentially contend that *The Balanced Budget Act of 1997*, Pub. L. No. 105-33, 111 Stat. 251 (1997) ("*Budget Act*") temporarily has eliminated the requirement that payments to a dismissing applicant be limited to that applicant's legitimate and prudent expenses.

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<sup>2</sup> The applications to assign the licenses of Stations WCQL(FM) and WWSC(AM) from Normandy to Entertronics were filed February 6, 1998.

5. Finally, the joint request submits that Entertronics is, in essence, a "white knight," since its presence "permits the Commission to settle" this proceeding.<sup>3</sup> In this regard, the joint request asks that, in addition to approving the settlement agreement, the Commission grant the Normandy/Entertronics assignment application. The joint request observes that in *Edward P. and Paula J. Levine*, 97I-41, released December 29, 1998, the Commission, by the Office of General Counsel, approved a "white knight" settlement.

6. Although Brandt is an applicant for a new broadcast facility, Normandy seeks renewal of license for Station WCQL(FM). Section 73.3523 of the Commission's Rules, not Section 73.3525, sets forth rules governing the dismissal of applications in renewal proceedings. Specifically, Section 73.3523(c) provides that if a competing applicant seeks to dismiss its application after the Initial Decision stage of the hearing, it must verify compliance with a variety of provisions. Such provisions included a certification that the amount to be paid did not exceed the challenger's legitimate and prudent expenses and an itemized accounting of the dismissing applicant's expenses for which it sought reimbursement. However, in *EZ Communications, Inc.*, 12 FCC Rcd 3307 (1997) ("*EZ*"), the Commission noted that the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, eliminated the right of challengers to file applications for new facilities against an incumbent licensee's renewal application filed after May 1, 1995. Thus, the Commission concluded that

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<sup>3</sup> Entertronics seeks to "intervene" for the limited purpose of "participating in the pleadings" concerning the joint request. The joint request indicates that Entertronics' involvement with Normandy includes a Time Brokerage and Asset Purchase Agreement which allows Entertronics to program WCQL(FM) and WWSC(AM) and provides for their sale. As made clear herein, it is not necessary to decide either the "white knight" issue or the motion to intervene.

the limitation on the amount to be paid to such a competing applicant in order to deter non-bona fide filings no longer served any public interest purpose. *EZ*, 12 FCC Rcd at 3308.

7. The Bureau submits that the rationale of *EZ* pertains to the instant proceeding. As was the case with the *EZ* challenger, there is no reason to believe that Brandt filed his application with expectation of monetary gain since that filing occurred after the reimbursement limitations had been imposed. Further, as noted in *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 12 FCC Rcd 22363 (1997) at ¶¶ 101-03, the Commission is seeking comment on how to resolve the few remaining comparative/renewal proceedings. Since it may be quite some time before decisions are final, the public interest is probably better served by waiving rules that would prohibit otherwise acceptable settlements. Accordingly, the Bureau submits that the absence of a certification that Brandt is receiving no more than his legitimate and prudent expenses and of documentation regarding Brandt's expenses should not bar grant of the joint request.

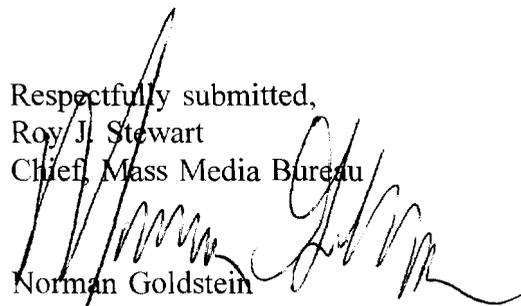
8. Otherwise, review of the settlement agreement, including the declarations of the applicants' respective principals, shows that the applicants have complied with the remaining provisions of Section 73.3523 of the Commission's Rules. The applicants have affirmed that their agreement is the only agreement related to the settlement, and Brandt has affirmed that his application was not filed for an improper purpose. Finally, the applicants have demonstrated that, except for the caveat noted herein, approval of the joint request will serve the public interest by terminating this proceeding.

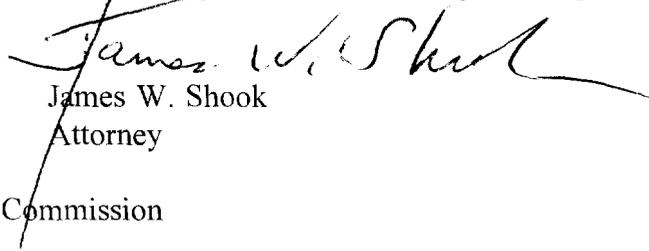
9. Although the settlement agreement itself is not so conditioned, the joint request

argues that the grant of the assignment of Normandy's stations, WCQL(FM) and WWSC(AM), to Entertronics is an integral part of the settlement. As noted, those applications were only recently filed with the Commission, and the Bureau cannot yet state whether they are grantable. Accordingly, upon completion of the processing of those applications, the Bureau will report to the Commission whether the assignee is fully qualified and whether grant of the assignment applications will serve the public interest.

10. Accordingly, assuming that the assignment applications can be granted, the Bureau supports the joint request, dismissal of Brandt's application, grant of Normandy's application, and termination of this proceeding.

Respectfully submitted,  
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February 12, 1998

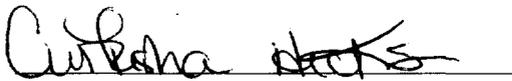
**CERTIFICATE OF SERVICE**

CurTrisha Hicks, a secretary in the Complaints/Political Programming Branch, Mass Media Bureau, certifies that she has on this 12th day of February, 1998, sent by first class United States mail, copies of the foregoing "Mass Media Bureau's Consolidated Comments on Joint Request for Approval of Agreement and Motion to Intervene" to:

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