

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

MM Docket No. 88-568

In re Applications of

MARY KAREN DODD File No. BPH-871119MG
(hereafter: Dodd)

EDUCATIONAL File No. BPED-871216MB
BROADCASTING CORP.
(hereafter: EBC)

PAMELA KAY WARREN File No. BPH-871216MH
(hereafter: Warren)

FRED M. WEINBERG File No. BPH-871216MJ
(hereafter: Weinberg)

For Construction Permit
for a New FM Station on
Channel 264A in Claremore,
Oklahoma

HEARING DESIGNATION ORDER

Adopted: November 30, 1988; Released: January 17, 1989

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matter.* In the *Report and Order* in MM Docket No. 85-156, released September 30, 1987, 2 FCC Rcd 5921 (1987), the Commission, *inter alia*, amended the FM Table of Allotments to allot Channel 233A to Claremore, Oklahoma and Channel 264A to Locust Grove, Oklahoma. William R. Williams, Trustee in Bankruptcy, licensee of FM Station KNFB, Channel 232A, Nowata, Oklahoma, and Moran Broadcasting Company, proposed assignee of Station KNFB (Williams and Moran), filed a Petition for Reconsideration directed against the allotment of Channel 233A to Claremore. On February 16, 1988, Williams and Moran filed a Request to Stay Processing of the Claremore and Locust Grove, Oklahoma, MX groups pending a final determination in MM Docket No. 85-156. On February 23, 1988, Fred Weinberg, an applicant in the above-captioned Claremore proceeding, filed an Opposition to Request to Stay Proceedings. On June 29, 1988, the Commission released its *Memorandum Opinion and Order* in MM Docket No. 85-156, 3 FCC Rcd 4037 (1988), in which it reversed its previous action and amended the Table of Allotments to allot Channel 233A to Locust Grove and Channel 264A to Claremore. At the time this latter amendment of the Table of Allotments was taken, the four applications for Claremore were pending for the Channel 233A allotment.

As a result of the Commission's action, all four applicants, each of which had proposed the same transmitter site, ERP and HAAT, became short-spaced to existing Station KXOJ(FM), Sapulpa, Oklahoma, by 14.9 km and to existing Station KBBQ(FM), Fort Smith, Arkansas, by 8 km. Accordingly, each applicant will be permitted, within 30 days of the release of this Order, to submit an amendment to the presiding Administrative Law Judge, to specify the new channel and a new transmitter site.¹ Also as a result of the Commission's action upon reconsideration, the Request to Stay Processing and the Opposition to Request to Stay Proceeding became moot. Accordingly, they will be dismissed herein.

3. *Divestiture.* Pamela Kay Warren is station manager and her husband Mike Warren is general manager of KOAW(AM), Ruidoso, New Mexico. They have indicated their intent to terminate their relationships with KOAW(AM) in the event of grant of the referenced application. Accordingly, in the event of grant of Warren's application, Pamela Kay and Mike Warren will be required to sever all connections with KOAW(AM) prior to the commencement of program test authority.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best 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.

6. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Dodd, EBC, Warren and Weinberg shall submit an amendment specifying the information requested in Paragraph 2 herein.

7. IT IS FURTHER ORDERED, That the February 16, 1988, Request to Stay Processing and the February 23, 1988, Opposition to Request to Stay Proceeding ARE DISMISSED as moot.

8. IT IS FURTHER ORDERED, That, in the event of grant of Warren's application, Pamela Kay and Mike Warren will be ordered to divest themselves of all interests in and sever all connections with station KOAW(AM) prior to the commencement of program test authority.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by

attorney, within 20 days of the mailing of this Order, not later than, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

¹ See *Memorandum Opinion and Order* in MM Docket No. 85-156, 3 FCC Rcd 4037, 4039 n.2 (1988).