

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

MM Docket No. 88-569

In re Applications of

WILLIAM L. KNOWLES      File No. BPH-851114MS  
(hereafter Knowles)

MOUNTAIN RIVER      File No. BPH-851115NT  
BROADCASTING, INC.  
(hereafter Mountain)

Construction Permit for  
a New FM Station on Channel 243A  
in Yellowstone, Montana

#### HEARING DESIGNATION ORDER

Adopted: December 9, 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. Mountain proposes to mount its antenna on the existing tower of station KWYS(AM). Our study indicates that the operation of the new proposal and the existing KWYS(AM) facilities may significantly exceed the radio frequency (RF) radiation guidelines under 47 C.F.R. § 1.1307(b). Accordingly, Mountain is required to amend its application within 30 days of the release of this Order to demonstrate compliance with the RF radiation guidelines. The applicant must submit a detailed study based upon OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Radiation." This study must include the cumulative effect of the proposed operation and the KWYS(AM) operation. If a fence is to be built, the applicant must give the distance from the base of the tower to the fence. Since the proposal of Mountain may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, Mountain is required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Mountain will be required to file within 30 days of the release of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting*, 71 FCC 2d 229 (1979), *recon.* denied sub nom. *Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the propos-

als. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

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. If a final environmental impact statement is issued with respect to Mountain in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

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

3. 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 in accordance with paragraph 2 hereinabove, Mountain shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

7. 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.

8. 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, 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.

9. 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