

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

MM Docket No. 88-578

In re Applications of

KNIGHT RADIO, INC. File No. BPH-871019MC
(hereafter Knight)

PENOBSCOT INDIAN File No. BPH-871026MO
NATION
(hereafter Nation)

For Construction Permit
for a New FM Station on
Channel 297B in Old Town, Maine

HEARING DESIGNATION ORDER

Adopted: December 9, 1988; Released: January 19, 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. *Station Classification.* Old Towne, ME and the reference coordinates for the Channel 297B allocation (as adopted by the *Report and Order* in Docket 86-314, DA 87-999, released August 6, 1987) are both located in Zone I (see 47 C.F.R. § 73.205). Each applicant, however, has chosen to locate its proposed transmitter site in Zone II, in which Class B stations do not exist. Knight has requested a waiver of the zone/class requirements so as to permit its application to be filed as a Class B with a Zone II transmitter site. Nation has simply requested Class C2 facilities for its Zone II transmitter site. Each applicant indicates that the appropriate spacings will be met under 47 C.F.R. § 73.207(a) no matter which classification, B or C2, is used.

3. Previous Commission policy has been to classify a station by the zone in which the transmitter site is located, not by the zone in which the community of license lies, provided that the applicable spacings are met. In keeping with this policy, and since both applications meet the spacings required of a Zone II Class C2 station, we will classify both Knight's and Nation's proposals as Class C2 stations. Upon grant of a construction permit to either of these parties, the allocation will be reclassified to Class C2 at that time. This action will not affect the maximum facilities permitted since both Class B and Class C2 stations are allowed to operate with 50 kw effective radiated power at an antenna height above average terrain of 150 meters.

4. Knight petitioned for leave to amend its application on July 21, September 12, October 19, 1988, and November 21, 1988. The accompanying amendments were filed after January 6, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Com-

mission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

5. 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.

6. 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.

7. IT IS FURTHER ORDERED, That, in the event of a grant of either application, the construction permit shall be conditioned in accordance with the policy indicated in paragraphs 2 and 3 herein.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Knight ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

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, 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