

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

MM Docket No. 89-8

In re Applications of

WILLIAM A. BROWNEE
d/b/a RUDOLPH
RADIO COMPANY
(hereafter Radio)

File No. BPH-880107NC

M & M
BROADCASTING
(hereafter M & M)

File No. BPH-880107NE

For Construction Permit for a New
FM Station on Channel 260A in
Rudolph, Wisconsin

HEARING DESIGNATION ORDER

Adopted: January 24, 1989; Released: February 8, 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. *M & M*. In response to Section III of FCC Form 301 (October 1986), *M & M* indicates that it is not financially qualified to construct and operate the requested facilities for three months without revenue. Furthermore, *M & M* states that it will amend its application when its financing plans are complete. To date, no such amendment has been filed. Accordingly, an issue will be specified.

3. *Radio*. In response to Section VI, FCC Form 301, *Radio* has indicated that it will employ five or more fulltime employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396A, the five-point Model EEO Program. The EEO program submitted by *Radio* is deficient in that it fails to identify at least one female-oriented recruitment source. Accordingly, *Radio* will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by *Radio* would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

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, with respect to *M & M*, whether the applicant is financially qualified.
2. To determine whether there is a reasonable possibility that the tower height and location proposed by *Radio* would constitute a hazard to air navigation.
3. To determine which of the proposals would, on a comparative basis, best serve the public interest.
4. 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 *Radio* shall file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

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