

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

MM Docket No. 90-379

In re Applications of

NORTHERN
INDIANA
BROADCASTERS,
INC.
(hereafter "NIB")

File No. BPH-880707MG

(Dennis J. Kelly
and Carol A. Kelly
d/b/a) LAGRANGE
COUNTY
BROADCASTING
COMPANY

File No. BPH-880707MI

CROSS
COMMUNICATIONS, INC.

File No. BPH-880707MK

For Construction Permit For a
New FM Station on Channel 288A
in Lagrange, Indiana

HEARING DESIGNATION ORDER

Adopted: August 10, 1990; Released: September 10, 1990

By the Chief, Audio Services Division:

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

2. A preliminary examination of these applications revealed that the entire allocation for Channel 288A at Lagrange, Indiana is short-spaced to the Commission's pending MM Docket No. 88-284 proceeding. Nonetheless, the applicants for the Lagrange allotment will be allowed to proceed to comparative hearing. However, it shall be ordered that any construction permit awarded as a result of this proceeding shall be made contingent on the outcome of MM Docket 88-284.

3. NIB petitioned for leave to amend its application on February 3, 1989. The accompanying amendment was filed after September 29, 1988, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is 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 amendment will be disallowed.

4. Data submitted by the applicants indicate there would be significant difference in the size of the populations which would receive service from the proposals. Consequently, the 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.

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 any construction permit awarded as a result of this proceeding shall be made contingent on the outcome of MM Docket 88-284.

8. IT IS FURTHER ORDERED, That the petition for leave to amend filed by NIB IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, 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