

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

MM Docket No. 90-329

In re Applications of

ARTHUR ANDREW MOBLEY
(hereafter "Mobley")

File No. BPH-880728MZ

DESERT WEST AIR RANCHERS
CORPORATION
(hereafter "Ranchers")

File No. BPH-880728NE

For Construction Permit for a
New FM Station in Buckeye, Arizona
Channel 295A (106.9 MHz)

HEARING DESIGNATION ORDER

Adopted: June 28, 1990;

Released: July 17, 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. *Mobley*. 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 Mobley would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. *Ranchers*. Ranchers petitioned for leave to amend its application on February 16, 1989 and March 29, 1990. The accompanying amendments were filed after December 19, 1988, the last day for filing amendments as of right. The subject amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage 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 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 either 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 whether there is a reasonable possibility that the tower height and location proposed by the Mobley would constitute a hazard to air navigation.
2. To determine which of the proposals would, on a comparative basis, better 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.

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

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 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