

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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| In re Applications of |) | MM Docket No. 93-95 |
| |) | |
| ERIC R. HILDING |) | File No. BPH-911115MR |
| |) | |
| JUDY YEP HUGHES |) | File No. BPH-911115MT |
| |) | |
| For Construction Permit For a |) | |
| New FM Station on Channel 281A in |) | |
| Windsor, California |) | |

ORDER

Adopted: October 8, 1996

Released: October 9, 1996

By the Assistant General Counsel, Administrative Law Division:

1. This order grants the Joint Petition for Approval of Agreement and Dismissal of Applicant filed September 5, 1996 by Judy Yep Hughes and Eric R. Hilding, and supplemented October 3, 1996 by Hughes. Comments in support of the Joint Request were filed by the Mass Media Bureau on September 16, 1996.

2. By Summary Decision, 8 FCC Rcd 5560 (ALJ 1993), Administrative Law Judge Richard L. Sippel granted Hughes' application and denied Hilding's competing application. Thereafter, Hughes and Hilding filed Exceptions with the Review Board, but this case was held in abeyance pursuant to the Commission's Public Notice, FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), following the decision of the Court of Appeals in Bechtel v. FCC, 10 F. 3rd 875 (D.C. Cir. 1993), holding that the integration of ownership into management criterion used by the Commission to decide among competing applicants was unlawful. Upon elimination of the Review Board, this proceeding was certified to the Commission for its consideration 11 FCC Rcd 5296 (Rev. Bd. 1996).

3. The parties have now entered into a settlement agreement which they have attached to their Joint Petition. Pursuant to that agreement, Hughes proposes to amend her application, as reflected in her Petition for Leave to Amend and Erratum filed September 20, and October 3, 1996, to substitute JYH Broadcasting, Inc., which would have 100 shares of Class A stock, with full voting rights, and 100 shares of Class B stock, with voting rights limited to matters involving sale or other disposition of JYH Broadcasting's assets, issuance of any additional equity interest, and any proposal to borrow more than \$275,000.00. Upon approval of the agreement, grant of Hughes' amended application, and dismissal of Hilding's application, JYH Broadcasting will issue all of its Class A shares to Hughes and all of its Class B shares to Hilding. The agreement also provides for various options, beginning with the first anniversary of operation by the station pursuant to program test authority or fifteen months after an order approving the settlement becomes final, by which each of the applicants may acquire the other's interest in JYH

Broadcasting. In addition, the applicants have agreed to a consultancy agreement, by which Hilding will be paid \$5,000.00 per month for devoting, on average, at least 10 hours per week to providing assistance with respect to acquisition and installation of equipment for the station, designing offices and studios, acquiring programming and developing the station's programming format, and supervising technical and programming operations.

4. The Joint Petition complies in all respects with the provisions of 47 U.S.C. § 311(c) and 47 C.F.R. § 73.3525(a) governing settlement agreements. The applicants have provided sworn statements that there is no other consideration for the dismissal of this application, that these applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the agreement will serve the public interest by facilitating the institution of new FM service for Windsor, California, and by terminating this litigation. The applicants' agreement constitutes a bona fide merger of business entities reflecting a consensual allocation of economic risks and rewards between the parties. See Amendment of Section 73.3525, 6 FCC Rcd 2901, 2902 ¶¶ 9-10 (1991). Furthermore, the payments to be made to Hilding pursuant to the applicants' consultancy agreement reflect fair compensation for services actually to be rendered rather than consideration for his agreement to dismiss his application. See Venton Corporation, 90 FCC 2d 307, 312-14 ¶¶ 8-12 (1982). Finally, good cause has been shown and therefore the public interest will be served by grant of Hughes' Petition for Leave to Amend and acceptance of the attached amendment substituting JYH Broadcasting as the applicant in this proceeding.

5. **ACCORDINGLY, IT IS ORDERED**, That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c), the Petition for Leave to Amend filed March 22, 1996 by Judy Yep Hughes reflecting the filing of an application for a construction permit for a new FM station in Healdsburg, California IS GRANTED and the attached amendment IS ACCEPTED; that the Petition for Leave to Amend and Erratum filed September 20, and October 3, 1996 by Judy Yep Hughes, reflecting the substitution of JYH Broadcasting, Inc. as the applicant in this proceeding IS GRANTED and the attached amendment IS ACCEPTED; that the Joint Petition for Approval of Agreement and Dismissal of Applicant filed September 5, 1996 by Judy Yep Hughes and Eric R. Hilding and supplemented October 3, 1996 by Judy Yep Hughes IS GRANTED and the attached settlement agreement IS APPROVED; that the Consolidated Brief and Limited Exceptions filed September 16, 1993 by Judy Yep Hughes and the Exceptions and Brief filed September 17, 1993 by Eric R. Hilding ARE DISMISSED; that the application of Eric R. Hilding (File BPH-911115MR) IS DISMISSED; that the application of JYH Broadcasting, Inc. (File No BPH- 911115MT) IS GRANTED; and that this proceeding IS TERMINATED

FEDERAL COMMUNICATIONS COMMISSION

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