

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Burlington Broadcasters, Inc. d/b/a WIZN; Land Use Permit
Charlotte Volunteer Fire & Rescue; Application #4C1004R-EB
& John Lane

MEMORANDUM OF DECISION

This Memorandum of Decision addresses the request of BBI¹ to extend certain filing deadlines in this proceeding concerning a radio tower located in Charlotte, Vermont. As set forth below, the Board extends the filing deadlines by two weeks.

I. DISCUSSION

BBI moves to extend the filing deadlines for briefs on Group 2 Preliminary Issues. The April 18, 2003 PCRO provides that the initial briefs on Group 2 Preliminary Issues are due on September 2, 2003. BBI claims that it intends to file a Motion to Reconsider the August 8, 2003 Memorandum of Decision on Group 1 Preliminary Issues (Group 1 MOD), and that it would be more expeditious for the Board to decide the as-yet unfiled Motion to Reconsider before proceeding to the Group 2 issues. BBI asks the Board to extend the Group 2 briefing deadline to 30 days after a decision is issued on this Motion to Reconsider the Group 1 MOD.

BBI also argues that it received the Group 1 MOD on August 11, 2003, which leaves only 14 working days until the Group 2 briefs are due, and that previously scheduled vacations of clients and counsel leave even less time for briefing the Group 2 issues.

Appellants object to BBI's request, arguing that the Group 2 issues can be briefed regardless of the Board's decision on Group 1 issues. Appellants correctly point out that the parties have known about the September 2 deadline since April 2003, and argue that further delay would work to their disadvantage.

The Group 1 issues concern RFR, RFI, and federal preemption. The Group 2 issues are: (A) Whether the evidentiary test for scientific evidence under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), applies to Board proceedings; and (B) Which Town or Regional Plans and community standards will be applied as part of the Board's review of the Project's compliance with Criteria 10 and 8 respectfully, or, stated otherwise, what date will be used to assess compliance with these criteria. These two groups of preliminary issues are not so inextricably intertwined that the parties cannot brief one without a final decision on the other.

1

Terms defined in the Board's August 8, 2003 Memorandum of Decision are used herein without definition. A procedural summary of this case can be found in that Memorandum of Decision.

While the Board often accommodates reasonable scheduling requests by the parties, see, e.g., *Re: Habitat for Humanity*, Declaratory Ruling #406, Continuance Order (Aug. 27, 2002)(granting continuance requested by all parties), it will not do so over another party's objection absent good cause. In this case, the parties have known about these deadlines since the PCRO was issued on April 18, 2003. The briefing of Group 2 issues was never contingent upon a final decision on the Group 1 issues, and no party objected to this. There is no reason that the parties' briefing of the Group 2 Preliminary Issues should be delayed by a Motion to Reconsider the Group 1 MOD.

To accommodate any scheduling difficulties that BBI may have, however, the Board extends the briefing deadlines for Group 2 Preliminary Issues by two weeks, as set forth below.


III. ORDER

The Motion to Enlarge is DENIED in part, and GRANTED in part, as follows:

1. Any party wishing to file a legal memorandum on the Group 2 Preliminary Issues shall do so on or before **Tuesday, September 16, 2003**.
2. Any party wishing to file a reply to a legal memorandum on the Group 2 Preliminary Issues shall do so on or before **Friday, September 26, 2003**.

DATED at Montpelier, Vermont this 27th day of August, 2003.

ENVIRONMENTAL BOARD*


Patricia Moulton Powden, Chair
George Holland
Samuel Lloyd
Alice Olenick
Richard C. Pembroke, Sr.
Jean Richardson

* Board Member Christopher Roy did not participate in this decision because the Motion to Recuse remains pending.