

ORIGINAL

Transcript of Proceedings

BEFORE THE

Federal Communications Commission

In the Matter of:

Docket No. 91-10

BALDWIN, FLORIDA

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of: : VOLUME IV
BALDWIN, FLORIDA : Docket No. 91-10

- - - - - X

The above-entitled matter came on for
conference pursuant to Notice before Edward Luton,
Administrative Law Judge, at 2000 L Street N.W.,
Washington, D.C., in Courtroom Number 4, on Thursday,
August 22, 1991, at 9:30 a.m.

APPEARANCES:

On Behalf of Charley Cecil & Dianna Mae White
d/b/a White Broadcasting Partnership:

CHARLEY WHITE
DIANNA WHITE
707 Newport Street
Macclenny, Florida 32063

On Behalf of Peaches Broadcasting, Ltd.:

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1800 Northwest 187th Street
Miami, Florida 33056

1 APPEARANCES (Continued)

2 On Behalf of Douglas Johnson:

3 ARTHUR BELENDIUK, Esquire

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5 2033 M Street, Northwest

6 Suite 207

7 Washington, D.C. 20036

8 On Behalf of Northeast Florida Broadcasting
9 Corporation:

10 JAMES L. WINSTON, Esquire

11 Rubin, Winston, Diercks & Harris

12 1730 M Street, Northwest

13 Suite 412

14 Washington, D.C. 20036

15 On Behalf of JEM Productions, Limited Partnership
16 c/o Joyce Morgan:

17 AVELINO G. HALAGAO, Esquire

18 7799 Leesburg Pike

19 Falls Church, Virginia 22043-2413

20 On Behalf of the Chief, Mass Media Bureau:

21 Y. PAULETTE LADON, Esquire

22 Federal Communications Commission

23 2025 M Street, Northwest

24 Washington, D.C.

25

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1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Joyce Morgan	415	424	466	471
4	Peter Knobel	475	476		
5		- - -			

6	E X H I B I T S			
7	NUMBER	IDENTIFIED	RECEIVED	REJECTED
8	JEM 1	415	421	
9	JEM 2	416	424	
10	Peaches 16	430	431	
11	Peaches 17	431	435	
12	Peaches 18	431		436
13	Peaches 19	437	439	
14	Peaches 20	437	439	
15	Peaches 21	440	443	
16	Peaches 22	444		
17	Peaches 23	449	452	
18	Northeast Florida 8	459		

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1 seated.

2 Whereupon,

3 JOYCE MORGAN

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 MR. HALAGAO: I'd like to submit an original
7 and one copy of our exhibit, Your Honor. I would like
8 to offer into evidence our exhibit number 1, which is
9 the structure of the applicant and declaration of Joyce
10 Morgan.

11 (The document referred to
12 above was marked JEM Exhibit
13 No. 1 for identification.)

14 DIRECT EXAMINATION

15 BY MR. HALAGAO:

16 Q Ms. Morgan, if you would like at the second
17 page of that exhibit, you have a declaration and do you
18 recognize that as your signature?

19 A Yes, I do.

20 Q And do you, in exhibit number 2, which is the
21 statement of Joyce Morgan, consisting of two pages and
22 you have a declaration on the second page.

23 Do you recognize that as your signature?

24 A Yes, I do.

25

1 (The document referred to
2 above was marked JEM Exhibit
3 No. 2 for identification.)

4 Q And do you say that all of the statements
5 that are in that are accurate?

6 A Everything is accurate, but number 6 in the
7 statement.

8 Q Yes?

9 A There was an oversight. It says I have
10 resided within the proposed service area for more than
11 three years. I actually was in the county, in Duvall
12 County, which contains Baldwin.

13 Q Are you saying that when you made this
14 statement, you believed that Duvall County, in which
15 you formerly resided, is the proposed service area?

16 A Yes, I did.

17 Q And now we realize that it is not within the
18 service area?

19 A That is correct.

20 Q And you want to amend that statement, then?

21 A Yes, I do.

22 Q You want to just take that out?

23 A I did live within the county.

24 Q So you want to say I have resided in --

25 A -- in Duvall County for more than three

1 years.

2 MR. HALAGAO: Your Honor, we would like to
3 offer Exhibit 1 and Exhibit 2, with that amendment on
4 number six as evidence of JEM, if there are no
5 objections, Your Honor.

6 JUDGE LUTON: Any objections to one or two?

7 MR. WINSTON: I have an objection to exhibit
8 number 1, Your Honor.

9 JUDGE LUTON: All right.

10 MR. WINSTON: Exhibit number 1 states that
11 the ownership structure of the applicant is Joyce
12 Morgan, sole general partner of 50 percent of
13 attributable interest and 50 percent of equity
14 interest.

15 I believe the statement for equity interest
16 in an upgrade beyond the date of the amendment. I
17 would move to strike that as it's not an accurate
18 statement of the facts for purpose of her comparative
19 case.

20 JUDGE LUTON: Well, you just characterized it
21 as an upgrade. Can you explain why?

22 MR. WINSTON: At the time the application was
23 filed, the applicant had a limited partnership
24 agreement, which stated that Ms. Morgan owned 20
25 percent of the equity of the applicant. The applicant

1 got into a new limited partnership agreement on
2 February 26, 1991 and another amendment to the limited
3 partnership agreement on May 2nd, 1991.

4 So at the earliest the 50 percent equity
5 interest could have occurred would have been February
6 26, 1991, which would have been after the amendment has
7 a write date.

8 JUDGE LUTON: Do you wish to respond?

9 MR. HALAGAO: Yes, Your Honor. I think the
10 structure here now as we are trying to present it, is
11 the present structure, Your Honor, and it's -- the
12 write participation of the purpose at the present time,
13 so that's why we are offering our exhibit, Your Honor.

14 MR. WINSTON: Your Honor, can I just -- for
15 clarification, I have in front of me the February 26,
16 1991 agreement of limited partnership and as of that
17 date, Ms. Morgan still had a 20 percent equity
18 interest.

19 So it wasn't until the May 2nd, 1991, that
20 her interest went to 50 percent equity.

21 JUDGE LUTON: Mr. Halagao, you say that
22 your -- this statement intends to show only the present
23 equity holding of Ms. Morgan?

24 MR. HALAGAO: Yes, Your Honor.

25 JUDGE LUTON: You say that by realizing --

1 you say that agreeing with Mr. Winston that if credit
2 were sought on the basis of the 50 percent equity
3 interest, it would, in fact, constitute an
4 impermissible upgrade?

5 Are you conceding that point?

6 MR. HALAGAO: Your Honor, I think it is an
7 upgrade, Your Honor.

8 JUDGE LUTON: It is or is not, I'm sorry?

9 MR. HALAGAO: It's not.

10 JUDGE LUTON: Would you explain why it is
11 not, if indeed, the cut-off date passed showing the
12 general partner with a 20 percent equity interest and
13 today, she's claiming a 50 percent equity interest.

14 Why is that not an upgrade?

15 MR. HALAGAO: Well, Your Honor, it is an
16 ownership equity interest and I think we've not talking
17 here about the attributable interest, so I do not it is
18 an upgrade as to the enhancement in a comparative
19 issue.

20 JUDGE LUTON: Attributable and enhancement, I
21 don't follow that too well. It's true, is it not, that
22 it wasn't until May the 2nd, 1991, that Ms. Morgan came
23 to hold 50 percent?

24 MR. HALAGAO: Yes, Your Honor.

25 JUDGE LUTON: One more time. Tell me, now,

1 why you think this doesn't constitute an upgrade?

2 MR. HALAGAO: I believe, Your Honor, that in
3 a comparative issue hearing, ownership of an equity
4 interest is not taken into consideration, but I would
5 say that the attributable of the applicants will be.

6 JUDGE LUTON: So, if I understand you
7 correctly, you're saying that no matter what the --
8 assuming that the equity interest is above a certain
9 percentage in a limited partnership, if there's a
10 single general partner, that general partner is going
11 to be entitled to claim what you're calling here
12 attributable interest of 100 percent whether the equity
13 ownership interest is 20 or 50 percent.

14 MR. HALAGAO: Yes, Your Honor.

15 JUDGE LUTON: Consequently, there is no
16 upgrade?

17 MR. WINSTON: Your Honor, in analyzing
18 applications, two-tiered applications, the Commission
19 has given weight both to the voting interest of general
20 partners as well as equity interest of general
21 partners, because both go to the bona fides of the
22 structure. The Review Board has stated that 20
23 percent, in most instances, would be the minimum amount
24 that they would expect to see a general partner to have
25 in a voting structure.

1 So the applicant, in this case, has gone from
2 a marginal equity interest of terms of bona fides to a
3 structure that would give it more validity. And that
4 clearly would be an upgrade.

5 JUDGE LUTON: I don't see that 50 percent is
6 any more valid than the 20 percent. Twenty percent
7 isn't marginal, it's the minimum that's required. And
8 I don't think that the increase in the equity ownership
9 means a thing in a situation such as this. That 20
10 percent interest can be extrapolated to 100 percent in
11 the circumstances, so can 50 percent be extrapolated.

12 Extrapolation's the thing that is important
13 here. Once one is at or above the 20 percent minimum,
14 which is where Ms. Morgan has been all the time.

15 I'm going to overrule that objection, because
16 I don't think it's sound.

17 Next objection?

18 MR. WINSTON: Are we just on number 1, Your
19 Honor. No other objections to number 1, Your Honor.

20 JUDGE LUTON: Okay. One is received.

21 (The document heretofore
22 marked JEM Exhibit No. 1 for
23 identification was received
24 into evidence.)

25 JUDGE LUTON: No we go to two. Any

1 objections to two?

2 MS. ROBINSON: Yes, Your Honor. Regarding
3 the personnel resume, Exhibit A of Ms. Morgan, the
4 information relating to her civic activities. For the
5 same reason that Peaches offered yesterday regarding
6 vagueness, lack of information regarding time frame.

7 JUDGE LUTON: I'm sorry, where is this
8 information, general reference regarding civic
9 activities leaves me searching for it?

10 MS. ROBINSON: Well, it's under experience,
11 under the personnel resume, exhibit A, exhibit 2A, I
12 should add.

13 JUDGE LUTON: And the objection is?

14 MS. ROBINSON: The objection is basically
15 what Peaches offered yesterday, that it's vague and
16 doesn't offer enough information to warrant any
17 enhancement for civic activities.

18 JUDGE LUTON: I'm going to rule the same way
19 that I ruled yesterday. That doesn't state an
20 evidentiary objection, it could cause some problems
21 when it's time to weigh and award credit for whatever
22 might be claimed.

23 I think yesterday we were dealing with
24 Northeast Florida's exhibit, which listed a year and
25 then an activity. How much of that activity was

1 carried on during the year, I have no way of knowing.

2 But I didn't strike the offering. I just
3 expressed my view that it would cause me some
4 difficulty, probably not in favor of the applicant when
5 it came time to try to weight those civic activities.
6 I'll make the same ruling here. A motion to strike
7 does not lie. Overruled.

8 Any other objections?

9 MR. WINSTON: Your Honor, I assume that
10 really went to the first paragraph of exhibit A,
11 concerning experience in Jacksonville, Florida?

12 JUDGE LUTON: That's the only one that was
13 referenced here. It -- I don't -- that's all I was
14 talking about.

15 MR. WINSTON: Then I would like to move to
16 strike the references to community activities in Macon,
17 Georgia and Atlanta, Georgia in the subsequent two
18 paragraphs. And that would be beginning at the fifth
19 line of the second paragraph, drop the remainder of
20 that paragraph and at the sixth line of the third
21 paragraph, drop the remainder of that paragraph.

22 JUDGE LUTON: You'd like to strike those
23 because they're not within the service area and not in
24 the community of license? That's so obvious and so I'm
25 going to leave it in as simply biographical

1 information. After all, what we have here is a resume
2 which has been attached. So I would not be surprised
3 to find these kind of things, but it's really quite
4 clear that no credit for civic activities can be
5 granted for those activities in those locations.
6 That's plain.

7 So I'll let the information stand with a
8 promise to view it strictly as biographical material
9 and deny the motion to strike.

10 MR. WINSTON: No other objections, Your
11 Honor.

12 JUDGE LUTON: All right. One and two are
13 received.

14 (The document heretofore
15 marked JEM Exhibit No. 2 for
16 identification was received
17 into evidence.)

18 JUDGE LUTON: Is the witness ready for cross
19 examination or available, I should say?

20 MR. HALAGAO: No, Your Honor, I think we are
21 ready for our cross examination.

22 JUDGE LUTON: We'll proceed.

23 CROSS EXAMINATION

24 BY MS. ROBINSON:

25 Q Good morning. My name is Rhonda Robinson and

1 I'm here on behalf of Peaches Broadcasting.

2 I'd like to direct your attention to Page Two
3 of your Exhibit 2.

4 A Okay.

5 Q Is that your signature?

6 A Yes, it is.

7 Q Okay. Earlier, when your direct testimony
8 was offered and you acknowledged the change in the
9 information regarding your proposed service area.

10 At what point were you made aware that that
11 was a mistake?

12 A I became aware when we went into the
13 deposition.

14 Q And the deposition's date was?

15 A 24th, I think, of June.

16 Q Did you examine your exhibits before you
17 filed them?

18 A These exhibits? Yes, I looked over them, but
19 like I say, it was an oversight, because when I looked
20 over it, I guess I just read through it very quickly
21 and I didn't catch it.

22 Q Okay. Where are you currently employed?

23 A At KXAS-TV, Channel 5, in Fort Worth, Texas.

24 Q And where were you before that?

25 A At WJKS, Channel 17 in Jacksonville.

1 Q When did you move?

2 A I moved in April.

3 Q And what are your job responsibilities now?

4 A I'm a news anchor. In Fort Worth, I anchor
5 the morning and noon news.

6 Q Are you under contract there?

7 A Yes, I am.

8 Q Until?

9 A Two years from April, which is April '93.

10 Q Okay. And if the permit were granted today,
11 how do you plan to fulfill your contract and build a
12 station, say, if you were permitted the construction
13 permit?

14 A Well, I would go ahead and start the
15 proceedings to get the construction underway. But I
16 intend to leave my job and locate back to Jacksonville
17 or the Baldwin area to do that.

18 In the meantime, I have -- my fiancée would
19 be my legs and do all of the leg work for me, with me
20 going back and forth. I go back and forth every two
21 weeks.

22 Q Okay. So you would have someone else
23 possibly initiate that, the building of the station?

24 A I don't say I would have him initiate the
25 building. I would initiate. He would just do what I

1 asked to be done.

2 Q But he would actually be the one executing
3 the responsibility?

4 A In some respects, yes.

5 Q And what's this person's name?

6 A Richard Danford.

7 Q Does Mr. Danford have any broadcasting
8 experience?

9 A No, he does not.

10 Q Okay. What is Mr. Danford's present
11 employment?

12 A He works for the City of Jacksonville. He's
13 an equal opportunity officer for the city.

14 Q So, would he plan to leave that post to build
15 a station, to assist you in building it?

16 A That has not been discussed.

17 Q Your salary is \$78,000 a year. Is that
18 correct?

19 A Correct.

20 Q And you expect to be earning about one third
21 that amount if you --

22 A Quite possibly.

23 Q No problems with the cut in pay?

24 A No.

25 Q Does your employer know you're an applicant

1 here?

2 A Yes, he does. He had to let me off to come
3 here.

4 Q Have you ever expressed to your employer your
5 desire to enter into management, any management
6 functions?

7 A No, I have not. I've only been there four
8 months.

9 Q Okay. Ever worked at a radio station?

10 A No.

11 Q How did you learn of the opportunity to
12 apply?

13 A Through Georgia Newton. He was in the
14 Jacksonville area and he had heard about me and he
15 approached me with the idea and when he did, I became
16 very excited because I know quite a few people who also
17 own -- African Americans who also own and I had
18 actually worked for one in Macon. So I was very
19 excited about the thought that I could also.

20 Q And could you share with us exactly what his
21 initial conversation with you was on that subject?

22 A On the subject? As much as I can remember.
23 He called me on the telephone and told me about the
24 Baldwin allocation. He asked if that was something
25 that may be of interest to me. I said yes. He wanted

1 to meet with me.

2 He met with me that night at the station
3 after I got off and we talked about it. We talked
4 about what it would mean, how much it could possibly
5 cost me, everything.

6 Q Did he mention having an investor in mind
7 already?

8 A He mentioned that I would definitely need
9 money. He asked who I thought I might be able to get
10 that money from and he said if I didn't know of anyone
11 or any source specifically that I may be able to go to
12 get the money, he might possibly have someone for me to
13 call to see if he would be interested in working with
14 me.

15 Q And did he name that person?

16 A Yes, he did.

17 Q And what was the name?

18 A Peter Knoble.

19 Q Was there any mention that they were looking
20 for minority?

21 A That was what George is all about. George is
22 looking to increase minority ownership in radio
23 stations.

24 Q Is George a minority?

25 A Yes, he is.

1 Q I'd like to bring to your attention a
2 document which is an agreement between Salvador Serrano
3 and yourself. I'd like to have it marked as Peaches
4 16.

5 Are you familiar with this document?

6 A Yes, I am.

7 (The document referred to
8 above was marked Peaches
9 Exhibit No. 16 for
10 identification.)

11 Q Okay. Part of your agreement with Mr.
12 Serrano was to prosecute the application, isn't that
13 correct?

14 A That is correct.

15 Q Okay. Who paid Mr. Serrano to do that?

16 A I did.

17 Q Who paid Mr. Newton to be involved in this?

18 A He has not been paid.

19 Q But he is involved in the process?

20 A Yes, he is. He is my consultant.

21 MS. ROBINSON: Your Honor, I'd like to have
22 Peaches 16 moved into evidence.

23 JUDGE LUTON: Any objections?

24 MR. HALAGAO: No objection, Your Honor.

25 JUDGE LUTON: Sixteen is received.

1 (The document heretofore
2 marked Peaches Exhibit No. 16
3 for identification was
4 received into evidence.)

5 MS. ROBINSON: I'd also like to bring to Ms.
6 Morgan's attention the document which is entitled legal
7 qualifications, Peaches 17 and also a document entitled
8 ownership information interests of Robin Rothschild,
9 Peaches 18.

10 (The documents referred to
11 above were marked Peaches
12 Exhibit No. 17 and 18 for
13 identification.)

14 JUDGE LUTON: Which is to be marked 17?

15 MS. ROBINSON: The legal qualifications.

16 JUDGE LUTON: Thank you.

17 BY MS. ROBINSON:

18 Q Ms. Morgan, who was Robin Rothschild?

19 A She used to be one of my limited partners?

20 Q And at your deposition, you indicated that
21 she just Mr. Knoble's friend, is that correct?

22 A Yes.

23 Q So you've since found out that she perhaps
24 has another role besides Mr. Knoble's friend? Is there
25 any other input?

1 A What do you mean?

2 Q Would she happened to be George Newton's
3 sister?

4 A Sister, oh no. That's George's daughter.

5 Q But she is related to him?

6 A Yeah.

7 Q So her role was more than just a friend of
8 Peter's, Mr. Knoble's? You originally identified her
9 as just a friend of Peter Knobles, is that correct?

10 A I think I identified her also as George's
11 daughter.

12 Q Okay. Was she a surety for George to get
13 paid in this?

14 A Yes, she was.

15 Q And initially, she owned 40 percent?

16 A That is correct.

17 Q Did she ever put any money of her own into
18 that?

19 A No, she didn't.

20 Q Why did she drop out?

21 A She dropped out because she was basically
22 busy with her own life and later I found out there were
23 other personal reasons, but she wanted to drop out,
24 which I didn't have a problem with.

25 Q I couldn't have been because Newton had

1 gotten paid for his involvement?

2 A No, he has not been paid.

3 Q Okay. Did you get any resumes or
4 biographical information on Ms. Rothschild?

5 A No, I did not. I talked with Robin a few
6 times on the telephone while she was at a radio
7 station. I talked to her about what she was doing and
8 I saw this exhibit of her ownership interests and that
9 was sufficient for me, since she was a limited partner.

10 Q Okay. What about Mr. Knoble?

11 A I saw his financial statement and I was very
12 pleased.

13 Q Did you contact any references on either one
14 of them?

15 A No.

16 Q And when you filed the application, you
17 didn't ask Mr. Knobel about any other broadcast
18 applications he might have had pending?

19 A At that time, I don't remember asking him
20 about anything.

21 Q You didn't.

22 A No, I really don't remember asking him about
23 anything like that. I think I asked Mr. Knobel about
24 money.

25 Q Okay. So you weren't interested in knowing

1 about his other activities?

2 A Because he was money. It was very different
3 from Robin. Robin was directly involved with owning
4 and running her station. Mr. Knobel was very involved
5 in real estate deals and making money. I talked to him
6 about money, which is what I wanted from him.

7 Q Did he offer any information about that,
8 about his interests in broadcasting?

9 A No. Just that his wife had once tried to get
10 a station. And I even talked with her about it.

11 Q You talked to Mr. Knobel's wife?

12 A Yes.

13 Q Did you know that he was a limited partner in
14 an application out of Fernardino Beach at all?

15 A No, I did not. I think that happened
16 afterward. I don't think it happened when I was
17 involved with getting my money from him initially.

18 Q You are aware of the proximity of --

19 A Oh, of course, yes.

20 Q It was not a problem having what might be
21 potentially a competing application in the --

22 A No, it was not.

23 Q Did you know that Robin had an interest in
24 this Fernardino Beach?

25 A No, I did not.