

FCC MAIL SECTION

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

FCC 92M-612
02920

May 27 11 56 AM '92

In re Applications of)	MM Docket No. 92-114
ROBERT B. TAYLOR)	File No. BRH-880926UJ
)	
For Renewal of License for Station)	
WTRU(FM), Jupiter, Florida)	
)	
JUPITER BROADCASTING CORPORATION)	File No. BPH-890103MD
)	
For Construction Permit for New FM)	
Station in Jupiter, Florida)	

PREHEARING ORDER

Issued: May 26, 1992;

Released: May 27, 1992

1. We will hold the prehearing conference on August 25, 1992, and the Washington, D.C. comparative hearing beginning on October 5, 1992. ¹ Both will begin at 8:30 a.m. in the Commission's offices in Washington, D.C. If it becomes necessary to cross-examine local witnesses, that aspect of the hearing will begin in Jupiter, Florida or vicinity on October 19, 1992. ² See FCC 92M-599 released May 26, 1992.

2. Appearances and Publication. On or before June 9, 1992, both applicants must show that they have complied with 47 CFR 1.221(c). On or before June 19, 1992, both applicants must also show that they have complied with 47 CFR 73.3594(g)'s publication requirements. See DA 92-584 supra at paras. 15-16.

3. Clarification of Issues. The Chief, Audio Services Division has set down a comparative issue for hearing. See DA 92-584 supra, para. 9, Issue 1. So on or before June 9, 1992 both applicants will serve on each other and on the Trial Judge a standardized integration/diversification statement.

4. Robert Taylor has a right to claim a renewal expectancy. So, or or before June 9, 1992 he shall signify in writing whether he intends to prosecute such a claim. In any event, in his direct case exhibits discussed infra, Taylor must provide a full and complete explanation on why Station

1 The Trial Judge has reserved courtroom space for October 5 through 8, 1992 for the Washington, D.C. hearing.

2 The Trial Judge has blocked off October 19-23, 1992 for the Jupiter or vicinity hearings.

WTRU(FM) remained silent for two years the first time and one month the second time. See DA 92-584 supra para. 4.

5. The Chief wants comparative coverage adduced. See DA 92-584 para. 6. The two applicants should consider a joint areas and populations exhibit if only for reasons of economy. For if you can't agree on a joint coverage exhibit, each applicant must not only portray their own areas and population but your opponents as well. That will be a substantial expense. It could also give rise to evidentiary conflicts. But both of you are alerted now. If you take the joint exhibit route you will be bound by that agreed-upon showing.

6. All preliminary engineering will be exchanged on or before August 4, 1992, and the final engineering will be exchanged at the August 25, 1992 prehearing. All population data should be based on the latest U.S. Bureau of the Census figures. In that way we'll have comparable data.

7. All counsel will be prepared to discuss any questions about clarification of the existing designated issues.

8. Amendments. Jupiter Broadcasting is reminded that they cannot obtain any comparative advantage from the late-filed amendments they submitted on July 28, 1989, September 1, 1989, May 2, 1990, May 1, 1991, and June 13, 1991. See DA 92-584, supra para. 7. In addition they will be charged with any comparative deterioration resulting from such amendments. See WTAR Radio-TV Corporation et al., 48 FCC 2d 1147.

9. Discovery. The use of discovery is discretionary. Discovery must be initiated on June 23, 1992 and completed by August 24, 1992. No 47 CFR 1.315 and 1.323 written interrogatories will be employed. Principals of the applicant's will be deposed in Jupiter, Florida, unless otherwise agreed-upon. Discovery is not to be used as a vehicle for obtaining allegations on which to base motions to enlarge issues. If issues are added later on, provision for any needed discovery on those enlarged issues will be made in the enlargement order.

10. The parties will hold a discovery conference on June 16, 1992, at 10:00 a.m. They will meet in the Mass Media Bureau counsel's office unless otherwise agreed upon. There they will set up an agreed-upon deposition schedule; they should also agree on a joint motion for production of documents and how that joint motion will be implemented. ³

3 It's no defense to an otherwise legitimate discovery motion for the objecting party to claim that it intends to either file a Petition for Leave to Amend, or a Motion for Summary decision that will moot the discovery requests. Nor should an objecting party seek to defer a response to discovery on that ground.

11. Any Motion for an In Camera Inspection must be filed on or before June 23, 1992, and must meet the five-step procedure outlined in Patterson Communications Associates, 41 RR 2d 640 (1977) and 41 RR 2d 1027 (1977).

12. Settlement. This case could prove long and costly. Because of attorney and engineering fees both applicants will lose. At best one of you will have squandered substantial amounts of time and money prosecuting this case. Invariably there is a direct relationship between the length of trial and the amount of costs involved. The general rule is the longer the trial, the greater the cost. So from your client's viewpoint, this prospective litigation is a mistake, another form of warfare. Avoid it. Engage in settlement dialogue now. Don't wait to argue before the Commission three and one-half years from today.

13. To this end, a negotiating principal from each applicant along with their attorney (if they're not pro se) are directed to attend a disposition conference on July 15, 1992 at 2:00 p.m.⁴ This conference too will be held in the Mass Media Bureau Counsel's office, unless otherwise agreed upon. There the parties should determine whether this case can be settled.

14. On or before July 22, the applicants should submit a joint settlement memorandum to the Trial Judge outlining the results of the July 15th conference. The memorandum should include, but not necessarily be limited to, answers to the following questions:

- (a) Has this case been settled? If so, do the settlement terms pose any public interest questions?
- (b) If the case hasn't been settled, were any offers made at the conference? If so, are they still open? For how long?
- (c) If the case has been settled, how soon can the settlement package, i.e., the joint request and the accompanying papers be submitted for approval?

15. Marshalling and Exchanging Exhibits. It will contribute significantly to the disposition of this proceeding for the parties to submit and exchange their direct affirmative cases in writing. See Equal Employment Opportunity Commission, 25 RR 2d 813 (1972) at para. 7.⁵ This includes the

⁴ The parties needn't wait until July 15, 1992 to initiate settlement efforts. Nor should the mandatory June 15th conference be the only effort at settlement. In brief, don't be afraid to initiate settlement efforts.

⁵ The Trial Judge is aware of the provisions of 47 CFR 1.248(d)(3). So if any party believes that the written case procedure does not best fit this case, they are free to submit an alternative to be "... approved by the presiding officer."

testimony of the local Jupiter, Florida witnesses. So at the August 25, 1992 prehearing, the parties will exchange all of their direct affirmative cases; i.e., the sworn written testimony and the exhibits to be offered in support of their direct cases.⁶ If either party intends to cross-examine any local Jupiter witnesses, they will so signify at the close of the September 11, 1992 evidentiary admission session.

16. If any party intends to ask that official notice be taken of any materials in the Commission's files, they should assemble that material in written form, properly identified by source, given a tentative exhibit number and exchanged on the date set.

17. Each party will assemble their exhibit in a binder. Each exhibit will bear a number, preferably by means of a tab on each document. Please number the exhibits serially starting with the number one. Each exhibit will also contain the sponsoring witnesses' affidavit - if such an affidavit is required (see Finding 16 supra).

18. Evidentiary Admission Session. We will hold an evidentiary admission session on September 11, 1992, at 10:00 a.m. There each applicant (in docket order) will formally identify and offer the direct case exhibits they exchanged on August 25, 1992. The Trial Judge will rule on any objections to those proffers. Immediately at the conclusion of the evidentiary admission session, each party will notify his opponents of those witnesses they need to cross-examine and the exhibits or areas to be covered by that cross-examination.

19. Extensions of Time. The case has been placed on the Trial Judge's docket, and courtroom space has been reserved. So we cannot afford the luxury of procedural slippage. Otherwise, other case assignments could suffer. Thus, any requests for extensions of time must be made in writing and must be consent extensions. In addition, any extension request for more than four working days must be signed by the client.⁷

6 Before he exchanges his written exhibits, counsel would be wise to go over them and delete all unnecessary adjectives and comparative puffing. Let's save everybody time and money.

7 "Captive extension requests" will not be entertained.

20. The October 5-8, 1992 hearing dates are firm dates. A thorough but speedy trial is contemplated. The hearing dates will not be extended merely because counsel have agreed to recommend a settlement. ⁸

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

⁸ Daily hearing sessions will begin at 8:30 a.m. and end at 5:30 p.m. with an hour for lunch.