

1 (The document referred to was
2 marked for identification as
3 JBC Exhibit No. 6.)

4 MR. BELISLE: At this time I would like to
5 offer into evidence JBC Exhibit 6.

6 JUDGE MILLER: Any objections, Mr. Carr?

7 MR. CARR: No, Your Honor.

8 JUDGE MILLER: Mr. Goldstein?

9 MR. GOLDSTEIN: Just out of curiosity, is
10 there still a WXDJ-FM after Andrew?

11 MR. BELISLE: Oh, that is so hard to say.

12 MR. GOLDSTEIN: Just curiosity.

13 MR. BELISLE: I did see a 300 foot self-
14 supporting tower down in my neighborhood, however, and
15 that was impressive. It was brand new. It had gone up
16 last year.

17 JUDGE MILLER: It probably is a plastic
18 tower. You know, plastic is the thing now. They have
19 got a big contractor coming into Homestead that says
20 what you are going to have to have now is my plastic
21 homes because they are hurricane-proof.

22 MR. BELISLE: No, this was a solid steel,
23 galvanized tower. I had even talked to some of the
24 people who were putting it up. It was huge, it was a
25 monster.

1 JUDGE MILLER: All right. JBC Exhibit No. 6
2 is received.

3 (The document referred to,
4 having been previously marked
5 for identification as JBC
6 Exhibit No. 6, was received in
7 evidence.)

8 MR. BELISLE: And now, if I may hand a copy
9 of what I would ask be marked as JBC Exhibit 7 to Your
10 Honor, a copy to Mr. Goldstein. I have already
11 provided a copy to Mr. Carr, and an original and one to
12 the court reporter. And ask that this document
13 entitled "Standardized Integration Statement," which
14 consists of a declaration of Paul J. Levine and a four
15 page standardized integration statement of Jupiter
16 Broadcasting Corp. be identified as JBC Exhibit No. 7.

17 JUDGE MILLER: The document you just
18 described will be marked for identification as JBC
19 Exhibit No. 7.

20 (The document referred to was
21 marked for identification as
22 JBC Exhibit No. 7.)

23 MR. BELISLE: And at this time I would offer
24 JBC Exhibit No. 7 into evidence.

25 JUDGE MILLER: Objections, Mr. Carr?

1 MR. CARR: No, Your Honor.

2 JUDGE MILLER: Mr. Goldstein?

3 MR. GOLDSTEIN: I would have a question.

4 Will this moot the necessity for any examination of
5 your principals?

6 MR. BELISLE: I don't know.

7 JUDGE MILLER: Well, let me, I am not
8 prepared to --

9 MR. GOLDSTEIN: Okay. I have no objection.

10 JUDGE MILLER: We are going to take a look at
11 that.

12 MR. GOLDSTEIN: Okay.

13 JUDGE MILLER: First of all, Exhibit No. 7 is
14 received.

15 (The document referred to,
16 having been previously marked
17 for identification as JBC
18 Exhibit No. 7, was received in
19 evidence.)

20 JUDGE MILLER: And let me explain that this
21 is at my request, Mr. Goldstein, and I am directing
22 your attention to, on page 3, little Roman v, vi, vii
23 and viii, in which he says they don't claim any
24 minority or female credit, they don't claim any
25 integration, they don't claim any credit for broadcast

1 experience, and they don't claim any day time or
2 preference.

3 It was my belief that once that is in, that
4 may well, if not eliminate, cut down on the questioning
5 on these previous exhibits where it would be up to Mr.
6 Carr to establish that he wasn't, that there was no
7 claim for this and no claim for that. And all this
8 does is save us, I think will save us an awful lot of
9 time. Now, that's -- and I explained that to Mr.
10 Belisle and Mr. Carr when I said that I had asked him
11 to do that.

12 MR. GOLDSTEIN: Does Mr. Carr agree?

13 JUDGE MILLER: Well, Mr. Carr said he didn't
14 have any problems with --

15 MR. CARR: I have no problem with that going
16 in, Your Honor.

17 JUDGE MILLER: Well, we'll get to what is
18 bothering Mr. Goldstein in a couple of minutes, I have
19 it on my agenda here.

20 MR. GOLDSTEIN: Yes.

21 JUDGE MILLER: Exhibit 7 is received.

22 And does that complete your Phase One
23 proffer, Mr. Belisle?

24 MR. BELISLE: Yes, it certainly completes the
25 direct case of Jupiter Broadcasting Corp.

1 JUDGE MILLER: Now, we come to the subject of
2 witness notification, which the pre-hearing order said
3 I would, promised I would write as soon as we finished
4 what we have just done.

5 First of all, I'll ask you, Mr. Belisle, to
6 indicate on this record who you need for cross-
7 examination.

8 MR. BELISLE: Given the exhibits that were
9 received today, Your Honor, I need Robert B. Taylor. I
10 would ask for Ramon Hernandez and Jaime Garza. Those
11 three individuals.

12 JUDGE MILLER: Now, on what basis do you ask
13 for Hernandez and -- they haven't sponsored no
14 witnesses, they have sponsored no exhibits.

15 MR. BELISLE: That is quite right, Your
16 Honor. I ask for them under Exhibit No. 10, where Mr.
17 Taylor has testified as to how his manager agreements
18 have operated. I believe that Mr. Ramon Hernandez, who
19 wound up suing Mr. Taylor over one of these agreements,
20 would have a different point of view on how the
21 management contracts, what they were and how they were
22 to operate. Mr. Garza, who does presently run the
23 station under the management agreement, would also have
24 a different view.

25 JUDGE MILLER: Why aren't you prepared to say

1 that he will be a rebuttal witness? That is my
2 question. In other words, you have got a sponsor here
3 and he says this is the way it is. Now, when you
4 finish cross-examining him, if you have on information
5 and belief, mainly that you have already talked to
6 Hernandez and you know that that is not what Hernandez
7 believes, and he has some written documentation that
8 indicates otherwise, why don't you just say, hey, I
9 want to present a rebuttal witness, Judge, on this.

10 MR. BELISLE: If at the end of cross-
11 examining Mr. Taylor, --

12 JUDGE MILLER: Be ready.

13 MR. BELISLE: -- I would have the opportunity
14 to request --

15 JUDGE MILLER: Be ready. Be ready. Do you
16 request rebuttal and be ready.

17 In other words, Hernandez had better know
18 that he can get up here in a hurry, because we don't an
19 awful, we are not going to waste a lot of time. All
20 right? Does that make sense to you?

21 MR. BELISLE: Yes, it certainly does make
22 sense.

23 JUDGE MILLER: Because I don't believe that
24 it is Taylor's responsibility to provide as a witness
25 of his somebody that is going to submarine him.

1 MR. BELISLE: And of course Mr. Garza is his
2 station manager I guess.

3 JUDGE MILLER: I understand that.

4 MR. BELISLE: I would say an employee but --

5 JUDGE MILLER: Well, let me say this, Mr.
6 Garza, I am not prepared to say that Mr. Garza is
7 anything other than an independent contractor right
8 now. That is about all I am willing to say. But we
9 have issues, we have areas that will permit us to get
10 into what Mr. Hernandez did and what Mr. Garza does.
11 But I just don't believe that it is proper to say that
12 you want to cross-examine them on the basis of Exhibit
13 10.

14 MR. BELISLE: That's fine. And if at the end
15 of Mr. Taylor's testimony, it appears that rebuttal is
16 necessary, then we will ask for it.

17 JUDGE MILLER: Yes. Then you certainly can
18 ask for it. And let me say that, you know, if you can
19 tie it in, the testimony that he has given, you are
20 probably going to get rebuttal. But quickly.

21 MR. BELISLE: Yes, Your Honor.

22 JUDGE MILLER: All right. So Taylor is your,
23 is the witness you want to cross-examine, right?

24 MR. BELISLE: That is correct.

25 JUDGE MILLER: Mr. Goldstein, do you want to

1 cross-examine Taylor?

2 MR. GOLDSTEIN: Yes, sir.

3 JUDGE MILLER: Anybody else?

4 MR. GOLDSTEIN: I would make the same
5 questions with respect to Mr. Garza, Mr. Hernandez,
6 perhaps Ms. Davisson, on the same, I assume the same
7 enjoinder that you had with respect to Garza and
8 Hernandez would apply to Davisson and Levine.

9 JUDGE MILLER: All right. So what we have is
10 one witness for sure and three contingents. Is that a
11 fair description of where we stand, as far as --

12 MR. GOLDSTEIN: Well, Mr. Levine, I don't
13 know that he --

14 JUDGE MILLER: We haven't got to --

15 MR. GOLDSTEIN: Okay. All right.

16 JUDGE MILLER: We haven't got to Jupiter
17 Broadcasting Corporation yet. Right now we are dealing
18 with Taylor.

19 MR. GOLDSTEIN: Yes.

20 JUDGE MILLER: Witness notification for
21 Taylor.

22 MR. GOLDSTEIN: Yes.

23 JUDGE MILLER: And what we have is one
24 certain and three contingents.

25 Now, does everybody understand where we stand

1 on the witness notification for Taylor? Do you
2 understand, Mr. --

3 MR. CARR: Yes, I do, Your Honor.

4 JUDGE MILLER: You are obligated to bring
5 Taylor.

6 MR. CARR: Yes, Your Honor.

7 JUDGE MILLER: And --

8 MR. CARR: And the logs.

9 JUDGE MILLER: Oh, yeah.

10 MR. CARR: Yes, I had said that.

11 JUDGE MILLER: And it may well be that we may
12 get into an argument as to whether you should be
13 sponsoring somebody else. In the case of Ms. Davisson,
14 that isn't exactly, she is in a little different
15 position than Garza and Hernandez because she is a, I
16 don't know what you call it, a major prong in the
17 ascertainment and he is responsible for her name being
18 in that exhibit. She is not an independent, she may be
19 an independent public relations person, but she is
20 being relied upon by Mr. Taylor.

21 So we'll cross that bridge when we come to
22 it, Mr. Carr.

23 MR. CARR: Yes, Your Honor.

24 JUDGE MILLER: But I would just like to point
25 out that she does occupy a little different position

1 than Garza and Hernandez does.

2 MR. BELISLE: May I ask a question, Your
3 Honor. Regarding Ms. Davisson, I didn't ask for her.
4 If she does appear, would I be permitted to examine?

5 JUDGE MILLER: You want to amend and ask?

6 MR. BELISLE: Only in the sense, I don't want
7 to require her to come, but if she does come, I would
8 like to be free to ask questions.

9 JUDGE MILLER: Well, then I think you ought
10 to state that you too may well want Ms. Davisson. I
11 think that that is the smart way to do business.

12 MR. BELISLE: Yes, Your Honor.

13 MR. CARR: Isn't the issue the question of
14 who pays for her, Mr. Belisle? Is that the question
15 that is hanging over?

16 MR. BELISLE: Well, of course, if we were to
17 present her as a rebuttal witness, we would pay her. I
18 mean that is true enough. What I am wondering is if
19 she did appear, without us presenting her as a rebuttal
20 witness, I would like to be able to examine.

21 JUDGE MILLER: Well, let me say this, you
22 know, we are four trial attorneys here. I earned my
23 living before I was lucky enough to get up here so I
24 didn't need to work that hard any more, as a trial
25 attorney. And let me say things that I would do just

1 in the normal course of having received these documents
2 for both sides.

3 I make calls to people on the telephone and
4 interview. Say do you recall doing this, you know.
5 And try to find out whether I was going to need them
6 for rebuttal. And find out whether, if the stories
7 held together. If the story holds together, I would
8 say, fine, I have done my due diligence, you see. And,
9 you know, I might even telephone Elaine Price and
10 Sherry Making. I am just telling you how, as a trial
11 attorney, I would do business.

12 And then I would arrive at conclusions. But
13 in the case of Ms. Davisson, I think you would be,
14 since Mr. Goldstein has indicated that she is a
15 contingent witness and he may ask for her, you have the
16 same right.

17 MR. BELISLE: Thank you, Your Honor.

18 JUDGE MILLER: All right. Now, Jupiter
19 Broadcasting. Mr. Carr, tell me who you need to cross-
20 examine.

21 MR. CARR: Yes, Your Honor. I would like Mr.
22 Levine with regard to Exhibit No. 4, obviously.

23 JUDGE MILLER: All right.

24 MR. CARR: And I would like Mr. Potamkin with
25 regard to Exhibit No. 6. We have an option agreement

1 and then we have a revision to that option agreement.

2 JUDGE MILLER: You have got a second
3 revision.

4 MR. CARR: And a second revision, Your Honor.

5 JUDGE MILLER: Well, if they are not -- let
6 me back up. If they are not claiming anything in the
7 line of integration and diversification, are you saying
8 to me you nevertheless have a problem with their
9 ownership structure?

10 MR. CARR: Your Honor --

11 JUDGE MILLER: That you don't think it is
12 what they claim it is, is that what you are saying?

13 MR. CARR: I would like the opportunity to
14 probe the ownership structure, Your Honor.

15 JUDGE MILLER: Well, that's why you were
16 giving depositions, Mr. Carr. And you should also know
17 now whether you had a successful probe or not.

18 MR. CARR: Yes, Your Honor. Well, that, of
19 course, we have, there is a pending motion to enlarge
20 and it is true that that ties into that.

21 JUDGE MILLER: Well, but if that motion to
22 enlarge is granted, Mr. Carr, you are going to have
23 witnesses here.

24 MR. CARR: Yes, Your Honor.

25 JUDGE MILLER: But what I am saying to you

1 is, right now, your only concern as far as Washington,
2 Levine, Reid and Potamkin is concerned is Phase One.
3 Now, if you need them for Phase One, having gotten, the
4 Bench having discussed with Mr. Belisle the need for
5 the integration statement and what it contained, and
6 Mr. Belisle understanding fully why I wanted it,
7 because, namely, that I thought maybe it would
8 eliminate cross-examination of these people, as far as
9 the Phase One direct is concerned.

10 Now, but if you tell me you still need these
11 people, notwithstanding the fact that they are not
12 making any claim, what Belisle is saying to you in
13 essence, I think, is that the best he can get out of
14 the comparative aspects of this case is a draw, and the
15 case will be won or lost on these issues that are going
16 to come in later on.

17 MR. CARR: Yes, Your Honor.

18 JUDGE MILLER: Hear later on. I think that's
19 the way I have interpreted what is going on.

20 Now, with that, do you need any cross-
21 examination?

22 MR. CARR: In light of that, of the
23 discussion we have just had, Your Honor, I would limit
24 my request to Mr. Levine.

25 JUDGE MILLER: All right. Now, Mr.

1 Goldstein.

2 MR. GOLDSTEIN: Mr. Levine, Your Honor.

3 JUDGE MILLER: Mr. Levine. All right. Now,
4 we have two certainties, one on each side, three
5 contingents that may well be in the subject of rebuttal
6 or for an argument to be made that they really ought to
7 be cross-examined in light of that Taylor can't give
8 the necessary firsthand knowledge that is required,
9 I'll entertain motions.

10 And it may well be that even if I rule, for
11 example, were I to rule that Ms. Davisson was in fact a
12 cross-examination witness, she would be subject to the
13 same time constraints that I have placed on Mr. Belisle
14 regarding Garza and Hernandez. In other words, we want
15 them ready to go so that we don't delay this thing.
16 And I am not anxious to have them put off to Phase Two,
17 which is, I have learned how to anticipate by what
18 happens in these cases.

19 MR. CARR: In that regard, Your Honor, if we
20 got to the point where Ms. Davisson was going to be
21 required, it probably would be necessary to request a
22 subpoena for her.

23 JUDGE MILLER: And I will give you one.

24 MR. CARR: Thank you, Your Honor.

25 JUDGE MILLER: I can tell you right now I

1 will give you one.

2 MR. CARR: Right. Because I don't --

3 JUDGE MILLER: In fact I will give you, if
4 one is needed for Garza and Hernandez, I'll give you
5 one.

6 MR. CARR: Thank you, Your Honor.

7 JUDGE MILLER: All right. Are we all squared
8 away, everybody, on witness notification, what is
9 needed and what we are going ahead with? Taylor will
10 be going first on the 21st, right?

11 MR. CARR: Yes, Your Honor.

12 JUDGE MILLER: And we'll follow immediately
13 with Levine. And then if there is anybody that we need
14 to tack on the back end, we'll tack them on, and that
15 way, we'll have continuity, and then if we have to
16 break for a half a day to get somebody up here or
17 something, why, we'll take care of it.

18 MR. CARR: All right.

19 JUDGE MILLER: Does that make sense? Mr.
20 Goldstein?

21 MR. GOLDSTEIN: Yes, Your Honor. Yes, Your
22 Honor.

23 MR. CARR: Yes, Your Honor.

24 MR. BELISLE: Yes, Your Honor.

25 JUDGE MILLER: Now, with witness notification

1 out of the way, are there any Phase One matters you
2 wish to bring up, Mr. Carr?

3 MR. CARR: No, Your Honor.

4 JUDGE MILLER: Mr. Belisle?

5 MR. BELISLE: No, Your Honor.

6 JUDGE MILLER: Mr. Goldstein?

7 MR. GOLDSTEIN: No, other than I hoped that I
8 made arrangements to get the depositions of, deposition
9 of Mr. Taylor. There was some confusion, no fault
10 attributable to any of the people here in terms of its
11 delivery to the Commission.

12 JUDGE MILLER: Well, let's leave me, I'm glad
13 we are on the record on it. The rules provide that two
14 copies have to be sent in here to you, that's what the
15 rules provide. Now, and there should be, down in the
16 docket section, not kept with the docket -- I don't
17 know what they are doing any more.

18 MR. GOLDSTEIN: That's the problem, Your
19 Honor, I called yesterday and Capital Hill Reporting
20 said it would be delivered this morning. So I didn't
21 have the chance to go before I came here, but they
22 assured me that it would be available.

23 JUDGE MILLER: Okay. Well, --

24 MR. BELISLE: And when I made arrangements
25 with Capitol Hill, it was for the delivery, for the

1 filing of the deposition with the Commission. We paid
2 the price for that and --

3 JUDGE MILLER: Oh, yeah. No, I was just
4 repeating the rule. In other words, what happens is,
5 and the reason for this is, that those two depositions,
6 in essence, become the official copies, in case --
7 although we don't abide by this anymore. If, for
8 example, Mr. Belisle wanted to introduce all or
9 portions of Mr. Taylor's deposition, technically, he
10 would have in the room here those two official copies.
11 He would then have those marked for identification, you
12 see. And that's how the whole thing started when they
13 first set it up.

14 It's, the rule is probably honored more in
15 its breach than in its observance over the years, and
16 that's because we have enough faith in opposing counsel
17 to know that he is -- in only one instance do I know of
18 where what was identified and offered wasn't complete,
19 you see, and counsel could be, it's been a long time
20 since Mr. Yerachuk.

21 MR. BELISLE: I think often you find yourself
22 in debates over whether other portions of a deposition
23 transcript modify the questions.

24 JUDGE MILLER: Yeah. You also get problems
25 of signatures. See, those depositions shouldn't be

1 sent in here until the deponent has had a chance to
2 read it, make corrections and sign it. That's one of
3 the reasons that, when I start out, if I have a
4 deponent, and they start with a deposition, the first
5 think I make everybody do is say is this, do you recall
6 being deposed on January 23, 1992? I do. Is this a
7 copy of the deposition, of your deposition on that day?
8 It is. Have you had a chance to read that deposition?
9 Yes. Have you made any corrections to it? Yes. Have
10 you signed it? Yes. Is that your signature? Yes.
11 Now, proceed. That's the litany.

12 MR. BELISLE: I am not certain whether Mr.
13 Taylor has ordered a copy of his deposition or not.
14 You know, so I don't think, my recollection is that he
15 didn't and that it wouldn't be available for him to
16 just read, he would have to come down here to
17 Washington to read it. Is that -- well.

18 JUDGE MILLER: We can waive signature. All I
19 am saying --

20 MR. CARR: I don't recall whether he waived
21 signature or not.

22 MR. BELISLE: I guess my question is, at some
23 point, at some point, if you are given the opportunity
24 to read it and you don't bother to come by and read it
25 and so forth, have you, would that be considered a

1 waiver?

2 JUDGE MILLER: I don't know. I am not going
3 to speculate.

4 Well, all I can say is that whether he signs
5 the deposition or not is not dependent on whether he
6 ordered it. One of those two copies, at least one of
7 them, should have been placed in the deponent's
8 possession for him to look over, before it is ever sent
9 to Washington.

10 And that's the reason that quite often I have
11 told counsel, I said, you know, if you start to push
12 your deposition dates to the back end of that 60 days I
13 allow for discovery, don't expect to have your copies
14 available in time for the hearing, mainly because this
15 portion of the ceremony takes time too.

16 MR. CARR: If you don't, my understanding is,
17 Your Honor, if you don't order a copy of the
18 transcript, then the court reporter requires the
19 witness to come to their offices, they don't want to
20 turn a copy of it over because then you duplicate it.

21 JUDGE MILLER: That makes sense.

22 MR. CARR: And so the witness would have to
23 go there, and sometimes the witness doesn't do that, it
24 just doesn't get done for that reason, because they --

25 JUDGE MILLER: Well, that's a delinquent

1 witness, you see. You are supposed to do that, that is
2 a part of the ritual.

3 All right. Anything more we need to bring
4 up? Mr. Goldstein?

5 MR. GOLDSTEIN: Not that I can think of, Your
6 Honor.

7 JUDGE MILLER: We stand adjourned until
8 September 21, 1992 at 8:30 a.m.

9 (Whereupon, at 11:15 p.m., the hearing was
10 adjourned, to reconvene Monday, September 21, 1992 at
11 8:30 a.m.)

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C E R T I F I C A T E

This is to certify that the attached proceedings
before the FEDERAL COMMUNICATIONS COMMISSION
in the matter of: JUPITER, FLORIDA
Docket Number: 92-114
Place: WASHINGTON, DC
Date: SEPTEMBER 11, 1992

were held as herein appears, and that this is a true
and accurate record of the proceedings.

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