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

In re Applications of)	MM DOCKET NO. 92-253 ✓
)	
BAKCOR BROADCASTING, INC., Debtor)	File No. BRH-900330VV
c/o DENNIS ELAM, TRUSTEE)	
)	
For Renewal of License of)	
Station KKIK(FM))	
Lubbock, Texas)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	File No. BPED-900629MK
FOUNDATION OF TEXAS, INC.)	
)	
For Construction Permit for a New)	
FM Station on Channel 229C1)	
Lubbock, Texas)	

PREHEARING ORDER

Issued: October 29, 1992 ; Released: November 2, 1992

1. We will hold the prehearing conference on January 25, 1993 and the Washington, D.C. comparative hearing beginning on February 22, 1993. 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 renewal expectancy witnesses, that aspect ;of the proceeding will be held in Lubbock, Texas or vicinity beginning on March 8, 1993.²

2. Appearances and Publication. On or before November 16, 1992, each applicant must show that they have complied with 47 CFR 1.221(c). On or before November 25, 1992 each must show that they have complied with 47 CFR 73.3594(g)'s publication requirements. See DA 92-1427 released October 26, 1992 at paras. 15-16.

3. Clarification of Issues. The Chief, Audio Services Division has specified a comparative issue for hearing. See DA 92-1427 supra. para 7, Issue 2. So on November 16, 1992, each applicant will serve on each other, Mass Media Bureau Counsel, and the Trial Judge a standardized integration/diversification statement.

¹ The Trial Judge has reserved courtroom space for February 22, 1993 through February 26, 1993 for the Washington, D.C. hearing.

² The Trial Judge has blocked off March 8 through March 13, 1993 for the Lubbock or vicinity hearings.

4. If the Bakcor Trustee in Bankruptcy, Dennis Elam decides to claim a renewal expectancy, on or before November 16, 1992, he shall signify in writing whether he intends to prosecute such a claim, and outline the factual skeleton of that claim.

5. The Chief has also set down a contingent basic qualifying environmental impact issue against SEMFOT. See DA 92-1427 supra. at paras. 5 and 10, and para. 7, Issue 1. SEMFOT must file its Environmental Assessment as an amendment on or before November 25, 1992. And if they haven't satisfied the Mass Media Bureau on or before the January 25, 1993 prehearing conference, they'll submit their environmental direct case evidence on that day.

6. All counsel should be prepared to discuss any questions about clarification of existing issues.

7. Perfecting Amendments. In addition to their environmental assessment amendment, the Chief has directed SEMFOT to file two other critical amendments on or before November 16, 1992. See DA 92-1447 supra. at paras. 3, 4, 5, and 9, 10, 11. All those amendments must be accompanied by an appropriate Petition for Leave to Amend. See the New Continental Broadcasting Company, FCC 80M-102 released January 3, 1980 at Footnote 1. SEMFOT is further reminded that they must serve copies of their amendments pursuant to para. 14 of the Hearing Designation Order.

8. Discovery. The use of discovery is discretionary. All discovery must be initiated on November 27, 1992, not before and not after. Discovery will be completed by January 25, 1993. No. 47 CFR 1.315 or 1.323 written interrogatories will be employed. Principals of both applicants will be deposed in Lubbock, Texas, 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.

9. The parties will hold a discovery conference on November 20, 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 to implement that motion.³

10. Any In Camera inspection request must be filed on or before November 20, 1992 and must meet the five-step procedure outlined in Patterson Communications Associates, 41 RR 2d 640 (1977) and 41 RR 2d 1027 (1977).

³ It's no defense to an otherwise legitimate discovery request for the objecting party to assert that it intends to file a Petition for Leave to Amend, or a Motion for Summary Decision that will meet the request. Nor should an objecting party seek to defer a response to discovery on that ground.

11. Settlement. This case, if it goes to fruition, will prove long and costly. At best one of you will have squandered substantial amounts of money prosecuting this case. So from your client's view 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 a half years from today.

12. 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 December 28, 1992 at 2:00 p.m.⁴ This conference 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.

13. On or before January 4, 1993, the applicants should submit a joint settlement memorandum outlining the results of that conference. The memoranda should include, but not necessarily be limited to, the 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?

14. 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 testimony of any local Lubbock renewal expectancy witnesses (on both sides). So, at the January 25, 1993 Prehearing Conference, 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

⁴ The parties needn't wait until December 28, 1992 to initiate settlement efforts. Nor should the mandatory December 28th conference be the only effort at settlement. Don't be afraid to initiate settlement efforts.

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

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.

15. 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 identify its source, give it a tentative exhibit number, and exchange it on the date set.

16. Please assemble your exhibits in a binder. Each exhibit will be a number, preferably by means of a tab on each document. Number your exhibits serially starting with the number one. Attach the sponsoring witnesses' affidavit to the exhibit - if such an affidavit is required (See para. 15 supra.).

17. Evidentiary Admission Session. We will hold an evidentiary admission session on February 8, 1993 at 8:30 a.m. There each applicant (in docket order) will formally identify and offer the direct case exhibits they exchanged on January 25, 1993. 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 opponent of those witnesses they need to cross-examine and the exhibits or topics to be covered by that cross-examination.

18. Extensions of Time. The case has been placed on the Trial Judge's docket, and courtroom space for the Washington, D.C. comparative hearing has been reserved. So we cannot afford the luxury of procedural slippage. Otherwise other case assignments could suffer. Any requests for extension 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

19. The February 22-26, 1993 Washington, D.C. hearing dates are firm. 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

⁷ "Captive extension requests" will not be entertained.s

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