

1 is, if it -- if it's totally consistent, then it's, it's
2 cumulative and, and serves no purpose.

3 JUDGE FRYSIAK: Okay --

4 MR. WARD: -- offer our own SIS as an exhibit.

5 JUDGE FRYSIAK: What do you say about the redundancy?
6 Is, is it redundant?

7 MR. NEELY: Your Honor, no, I don't believe it that
8 this exhibit is -- I would -- it may be redundant in certain
9 limited extents -- to certain limited extent. However, there
10 is vast amounts of information in this exhibit which was not
11 duplicated in any other Sample exhibit and given the order,
12 the procedural order in this proceeding that indicated that
13 the documentary exhibit should acclaim -- include the Standard
14 Integration Statement, we specifically attempted not to
15 reproduce information in other, in other statements to the
16 extent that was possible. This document includes the
17 specification of duties for Ms. Sample as general manager.
18 That's important information under the comparative issues,
19 describes her broadcast experience, her claim for minority
20 enhancement, her local residence credit, her civic activities,
21 her broadcast experience --

22 JUDGE FRYSIAK: All that I read in the testimony here.

23 MR. NEELY: Her, her description of duties was not
24 included in her testimony. Her, her definition and
25 description of her broadcast experience was not included with

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1 the detail that it's included here. Her local residence
2 credits, specifically with, with locations and dates, was not
3 in her other testimony.

4 JUDGE FRYSIAK: All right. I'll receive it over
5 objection. It was a document generated in the course of the
6 proceeding pursuant to Commission's orders and is relevant to
7 this proceeding. I'll receive it.

8 (Whereupon, the document referred to as
9 Sample Exhibit No. 4 was marked for
10 identification and received into
11 evidence.)

12 JUDGE FRYSIAK: Mr. Ward, I'll give you an opportunity
13 to have yours marked for identification if you like.

14 MR. WARD: Well, I, I guess -- I, I didn't follow the
15 same practice that Mr. Neely did. I, I tried to leave no
16 stone unturned when it came to preparing our actual exhibits,
17 so --

18 JUDGE FRYSIAK: So it's okay, fine. All right.
19 Exhibit 5.

20 MR. NEELY: I'd like to have marked for identification
21 as Sample Broadcasting Exhibit No. 5 an 11-page document sworn
22 to and certified by Mark McVey under penalty of perjury. It's
23 entitled Statement of Mark McVey.

24 MR. WARD: This is the -- this was the exhibit that was
25 exchanged on May 11 and the substitute for the original McVey

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1 exhibit --

2 MR. NEELY: It is.

3 MR. WARD: -- that was exchanged on May 4?

4 MR. NEELY: It is.

5 JUDGE FRYSIAK: Any objections, then, to Exhibit 5?

6 MR. WARD: No, no objection.

7 JUDGE FRYSIAK: Okay. Now, just to have the record
8 clear, this is an exhibit that was signed when?

9 MR. NEELY: This says an 11-page statement signed May
10 10, 1993.

11 JUDGE FRYSIAK: All right. I'll receive it.

12 (Whereupon, the document referred to as
13 Sample Exhibit No. 5 was marked for
14 identification and received into
15 evidence.)

16 JUDGE FRYSIAK: And you have a 6?

17 MR. NEELY: Yes, Your Honor. I'd like to have marked
18 for identification as Sample Exhibit 6 a four-page document
19 entitled Request for Admissions.

20 JUDGE FRYSIAK: All right. It's marked.

21 (Whereupon, the document referred to as
22 Sample Exhibit No. 6 was marked for
23 identification.)

24 JUDGE FRYSIAK: Do you have any objections to the --

25 MR. WARD: Yes. Yes, Your Honor. I would object to it

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1 as being immaterial and irrelevant. And as the authority for
2 that, I would point out that the -- that in the Hearing
3 Designation Order itself the Mass Media Bureau had before it
4 arguments predicated on the very facts which, which Sample
5 seeks to have admitted at this point. And, and the footnote,
6 too, to that Hearing Designation Order, the Commission stated
7 in the alternative, Sample requested that a reporting issue be
8 specified against Rivertown.

9 This request is misdirected. Moreover, based on our
10 review of the Rivertown application, its amendments, and the
11 various pleadings, we do not find any substantial and material
12 question of fact warrant -- warranting specification of such
13 an issue. I, I just -- that's why I didn't, I didn't bother
14 to respond to this Request for Admission because I think this
15 is a -- this is another sample of Sample's proclivity for wild
16 goose chases.

17 The facts are what they are, but -- their essential,
18 their essential thrust, as I understand it, is that because,
19 because Mr. Brown did not report -- or Rivertown did not
20 report Mr. Brown's new employment by a Galesburg station,
21 precisely within 30 days of the time that that employment
22 commenced, his contemporaneous proposal to cease such
23 employment upon grant of the Eldon application, even though
24 that commitment was embodied in the, the very contract of
25 employment at that station, could not be considered and thus

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1 with that employment immutably detracts from his integration
2 proposal. The --

3 JUDGE FRYSIAK: I take it the --

4 MR. WARD: The Bureau evaluated that and found it, and
5 found it rather wanting.

6 JUDGE FRYSIAK: All right.

7 MR. WARD: And I, I think that --

8 JUDGE FRYSIAK: Well, I --

9 MR. WARD: I suggest the judge should do. should do so

1 | then explaining its relevance under the standard comparative
2 | issue?

3 | JUDGE FRYSIAK: Yeah. But I think maybe it'd be better
4 | had -- I really don't know when it would fit in. Whether
5 | before the hearing or after the hearing. I know what you're
6 | driving at. You're going to draw up proposed findings you
7 | want to know whether it's going to be a piece of evidence or
8 | not. Better make it a motion. All right. With an argument
9 | attached with it. So I can understand it. I, I missed what
10 | he read -- what Mr. Ward read there from the previous
11 | Commission proceeding.

12 | MR. WARD: From the Hearing Designation Order.

13 | JUDGE FRYSIAK: If you would put all that in maybe I
14 | can make some sense out of it for myself.

15 | MR. MILLER: Your Honor, what Mr. Ward read had to do
16 | with the specification of a qualifying issue. This is being
17 | offered under the standard comparative issue for
18 | diversification purposes. This is a management-level position
19 | which the Commission has held and Thomas and S.E. Collins, 93
20 | FCC 2nd 467, that a management-level position in another
21 | station is cognizable as a diversification demerit.

22 | JUDGE FRYSIAK: Well, at any event, you can develop all
23 | of that from the witness when he's on the stand anyway.
24 | Right? I mean, surely you wouldn't be precluded from raising
25 | that argument that this is the diversity factor involved,

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1 | which would weigh against the application.

2 | MR. MILLER: Your Honor, this was put in also out of an
3 | abundance of, of caution, not knowing whether Mr. Brown would,
4 | under the Commission's new procedures of limiting cross-
5 | examination, whether Mr. Brown would, in fact, testify. We
6 | didn't know at the time we exchanged whether --

7 | JUDGE FRYSIAK: I understand, but he will testify, so
8 | you will have this opportunity.

9 | MR. MILLER: Right. Okay. That's fine.

10 | JUDGE FRYSIAK: Any other -- any other objections, Mr.
11 | Ward?

12 | MR. WARD: No.

13 | JUDGE FRYSIAK: You, you've, you've objected. I've,
14 | you know, I've postponed ruling on it. I marked it for
15 | identification, subject to a motion being filed. I really
16 | think it may be, you know, a waste of effort to file a motion.
17 | If you can develop this information by way of cross-
18 | examination, but that's up to you. I don't want to preclude
19 | you from doing it. All right. Anything else?

20 | MR. NEELY: I have no further exhibits for Sample
21 | Broadcasting, Your Honor.

22 | JUDGE FRYSIAK: All right. Thank you. We have a
23 | hearing scheduled for when?

24 | MR. NEELY: June 22nd.

25 | JUDGE FRYSIAK: June -- are we going to consider both

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1 the -- all the issues on the 22nd?

2 MR. WARD: I -- that's, that's my contemplation. I --
3 as I indicated in my, in my motion for modification of
4 procedural dates, which you granted a few weeks ago, I --

5 JUDGE FRYSIAK: All right. So we don't need to meet
6 before the hearing to rule on any admissions? We won't have
7 an admission session?

8 MR. WARD: Yes, that's correct. Yes, that's correct.

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