1 she didn't sign the application and it's not even clear that
2 she reviewed it.
3 JUDGE CHACHKIN: I'll strike the sentence. Any
4 further objections?
5 MR. TOPEL: Your Honor, I would just, if I might,
6 have my position on the record that if there are errors in an
7 application that are -- and the parties intent and those
8 errors are going to be put into issue by Glendale or other
9 parties, certainly the witness is entitled to testify that she
10 did not intend those errors. I don't know on what basis she's
11 not competent to testify to her own intent.
12 JUDGE CHACHKIN: Any further objections?
13 MR. COHEN: Yes, sir.
14 MR. TOPEL: What -- Your Honor, what --
15 JUDGE CHACHKIN: I'm striking that sentence.
16 MR. TOPEL: What sentence came out?
17 JUDGE CHACHKIN: I'm striking the sentence, "I do
18 know that I did not intentionally make the errors and I do not
19 believe that anyone did." Whether she intentionally made it
20 or not will be developed on the basis of the facts, not from
21 her stating that she didn't intentionally make them. Any
22 other objections?
23 MR. COHEN: Yes. My next objection is on paragraph
24 52, Your Honor. I don't know if the Bureau has anything --
25 JUDGE CHACHKIN: The Bureau has any objections on

1 that?

2 MR. SCHONMAN: No, sir.

3 JUDGE CHACHKIN: All right. Let's continue.

4 MR. COHEN: We have the same problem in paragraph

5 52, Your Honor, concerning the witness' belief. She carefully

6 doesn't state that she reviewed it. Same issue in paragraph

7 52, "Mr. May also prepared and I believe I reviewed." And I

8 don't want to burden you or the parties, but it's the same --

9 if you'll read the paragraph it's exactly the same rationale,

10 Your Honor, and I can go through this line by line if you

11 wish.

12 JUDGE CHACHKIN: My concern is who prepared this

13 document, the lawyers or Ms. Duff? I mean, how could she

14 testify about things that she believes? If she's not sure

15 about it, then how did she know about all these things about

16 it? She's not even -- she only believes she reviewed the

17 document. How could she then go on and deal with all that

18 took place in the document? I -- if this was crafted simply

19 by the lawyers and Mrs. Duff cannot vouch for it, and

20 apparently this is the case when she said she only believes

21 it, and yet there's an indication that she did all these

22 things, there's a serious question in my mind whether this is

23 Ms. Duff's document or not, declaration or not, and whether

24 she could vouch what's contained in this document. I know

25 this is a supporting document which she swears that the

1 foregoing testimony is true and accurate. Then how could the
2 testify -- how could she make that declaration if, in fact,
3 she doesn't have any knowledge, only a belief, that she may
4 have done these things?
5 MR. TOPEL: I think she's more testifying to what
6 she didn't do. She certainly knows that she -- whether or not
7 she intended to misstate information to the Commission. I
8 believe when her examination occurs her, her statement of her
9 belief as to her reviewing the document relates to the process
10 through the filing of the document. I'm quite sure she will
11 indicate that she is very knowledgeable of the application and
12 what was in it. The normal practice was and process was that
13 Mr. May's office would prepare the application and that's what
14 she has testified to, Mr. May's office prepared it, and that
15 it would be sent to her for review and she believes that's
16 what happened in this instance. But, in any, event, whether
17 she reviewed it before it was filed or not, she, Jane Duff,
18 did not intend for any information not to be provided to the
19 Commission that was required.
20 JUDGE CHACHKIN: If she didn't prepare the
21 application, if she didn't review it prior to the time she was
22 filed -- it was filed, then how could she make a statement of
23 what her intentions were? Her intentions could only be if she
24 had something to do with the application.
25 MR. COHEN: That's my objection, Your Honor.

1 JUDGE CHACHKIN: If she said she believes, then what
2 -- then I don't understand how she can make a statement about
3 what her intentions were. She had nothing to do with it. The
4 only one who can make a statement is the one who actually
5 prepared the application. Now, why do we have something from
6 Ms. Duff who had nothing to do with the preparation of the
7 application and she believes she reviewed it? Who was
8 primarily responsible for preparing the application?
9 MR. TOPEL: Mr. May, Your Honor.
10 JUDGE CHACHKIN: Mr. May? Well, then Mr. May can
11 testify about it, not Ms. Duff. I'm not going to allow this
12 secondhand material in and I think I'm going to go back and
13 any place where she said she believes -- I don't see she's
14 positioned to testify about errors that were made in the
15 document since she had nothing to do with it. Apparently even
16 if she reviewed it there's no indication that she made any
17 changes or did anything with it and she's not even sure if she
18 reviewed it. Let's get the persons who are responsible for
19 the document, whether it's Mr. Crouch or Mr. May or whoever it
20 was and not try to put this material in through a witness who
21 obviously doesn't have any knowledge of it. But apparently is
22 minority and apparently that's the attempt to put it in
23 through her that she had knowledge of these things, which she
24 herself states in the statement she didn't have knowledge of,
25 merely a belief.

1 MR. TOPEL: And it was so submitted that way,
2 Your Honor, and it is because there is a, a strong reason and
3 likelihood that she did review it and we weren't trying to
4 overstate the testimony anymore than what it states on its
5 face. I mean, there was certainly no intention in this to
6 inflate Mrs. Duff's role concerning the application. It was
7 simply to provide the Commission with the best information we
8 had about what happened in the preparation, and she believes
9 that -- from Mr. May it was her responsibility to review it.
10 She believed she did do that. There are mistakes in the
11 application and she wishes to tell the Commission that she
12 didn't intend such mistakes.
13 JUDGE CHACHKIN: But the question is if she was
14 asked on the stand did you review this document, she said
15 well, I believe I did, did you review the document, all I can
16 say is I believe I did since I reviewed other documents, and
17 then you proceeded to ask these questions and there were
18 objections, they would be sustained on the grounds she doesn't
19 have any knowledge whether she reviewed it or not. A mere
20 belief doesn't provide knowledge.
21 MR. TOPEL: Well, I understand your ruling,
22 Your Honor.
23 JUDGE CHACHKIN: That's what you're attempting to do
24 here in the written case. If she merely believes it, then
25 she's not in a position to provide information about what took

1 place.

2 MR. TOPEL: I understand your ruling, Your Honor,

3 and I just want to indicate that we're trying to provide the

4 best information we can and there was certainly no tangential

5 intention about indicating that Mrs. Duff because she's a

6 minority did more or less. We were trying to give the best

7 complete information we had about how the application came to

8 be and I understand your ruling.

9 JUDGE CHACHKIN: But I don't understand how someone

10 who merely has the belief that they reviewed a document can

11 later on state that the material contained in the document

12 wasn't intentionally -- this -- she did not proceed

13 intentionally with these mistakes and this was mere mistakes

14 when her only recollection of it is a mere belief. How could

15 she then go on and discuss the contents of the document?

16 MR. TOPEL: Well, I understand your ruling,

17 Your Honor, and I suppose the way I understand it is that

18 normal practice isn't sufficient to establish a specific

19 occurrence, and I understand that's your ruling and I assume

20 that's the ruling that will apply, you know, throughout the

21 case and we'll honor your -- the ruling that you made.

22 JUDGE CHACHKIN: All right. What were those

23 paragraphs I'm going to strike?

24 MR. COHEN: Your Honor, I believe they were -- we

25 have to go back to 47, Your Honor. I think it begins in 47

1 and ends in 48 and 49.

2 JUDGE CHACHKIN: Well, I'm going to strike 47, 48,

3 49 for the simple reason that the witness has indicated she

4 merely has a belief and does not have a recollection of having

5 done so. Under the circumstances she's not in a position --

6 she's not qualified to testify concerning what took place with

7 respect to the document.

8 MR. COHEN: I assume your ruling would apply to 52,

9 Your Honor?

10 JUDGE CHACHKIN: Same thing with 52 only to the --

11 well, let's see, 52. Where there's anything referring --

12 where she has a specific recollection of having done so, I'll

13 permit that.

14 MR. COHEN: Yes.

15 JUDGE CHACHKIN: Where she's merely relying on

16 belief, I will not permit it.

17 MR. TOPEL: Your Honor, I would like to make an

18 effort, if you'll permit me, to say a portion of paragraph 49

19 which refers to the documents attached at Tab R regarding

20 information that we've disclosed to the information that's

21 information of which you can take official notice because it's

22 filings from the FCC, and that information is permissible for

23 NMTV to establish that since these cross Assistant Secretary

24 positions were reported to the Commission in other documents

25 that there would not have been an intent to conceal it. So I

1 would request that you take official notice of -- beginning --
2 in paragraph 49 beginning with the sentence, "The documents
3 that are attached at Tab R through --
4 JUDGE CHACHKIN: Well, I assume all this material is
5 going to come in through another witness.
6 MR. TOPEL: I don't think we've offered it through
7 another witness, Your Honor, so --
8 JUDGE CHACHKIN: The person who prepared the
9 documents, who was responsible for preparing the documents, of
10 signing off on the documents? Apparently she didn't sign the
11 application.
12 MR. TOPEL: The, the --
13 JUDGE CHACHKIN: Require the instruction --
14 MR. TOPEL: That's correct. She did not sign it.
15 JUDGE CHACHKIN: Well, who signed it?
16 MR. TOPEL: Dr. Crouch.
17 JUDGE CHACHKIN: Well, why -- isn't he the witness
18 that should be testifying about it since he signed it?
19 MR. TOPEL: Yes, Your Honor. Let me just tell you
20 what I did. I made a judgment which I am regretting now that
21 -- particularly with documents that came from the Commission's
22 files, if they were already attached to Mrs. Duff's testimony
23 or another witness' testimony that were so voluminous that I
24 in many cases, not entirely, but in many cases made the
25 judgment not to attach them to a subsequent witness' testimony

1 simply because of the volume of documentation that was being
2 submitted. I thought it would be unwise to duplicate things
3 that were in the Commission's files. Now I regret that I do
4 -- did that, frankly, if the ruling is going to be that this
5 should have been attached to Dr. Crouch's testimony.
6 JUDGE CHACHKIN: I'm not precluding you from -- the
7 fact if it was attached doesn't concern me. What concerns me
8 is that the person should testify on personal knowledge of
9 these matters. And it sounds to me that Mr. Couch or
10 Dr. Crouch he signed the document. He would have personal
11 knowledge of the document.
12 MR. TOPEL: I understand your ruling with respect to
13 the preparation of the application. I'm requesting official
14 notice of the filings at the FCC for the purpose of showing
15 that this information was on file with the FCC elsewhere.
16 JUDGE CHACHKIN: Aren't the -- I thought you said
17 all these tabs contained the documents on file with the FCC.
18 MR. SCHONMAN: Tab R is not the application.
19 MR. TOPEL: That's correct.
20 MR. SCHONMAN: It's an ownership report.
21 MR. TOPEL: It's, it's other, other documents that
22 were filed with the Commission which contain the information
23 that was omitted from the application but indicates that, in
24 our view, that there was no intent to hide this information
25 from the Commission. It was filed often.

1 JUDGE CHACHKIN: Well -- any objection -- what are
2 you -- what documents do you want to take official notice of?
3 MR. TOPEL: Tab R.
4 JUDGE CHACHKIN: Well, didn't you -- haven't you
5 attached it for purposes of taking official notice?
6 MR. TOPEL: Well, we tried, we tried to tie all of
7 the attachments to testimony and I just -- if your striking of
8 the testimony does not necessarily encompass the striking of
9 the tab --
10 JUDGE CHACHKIN: That's correct. Someone else can
11 testify about these matters or we could take official notice
12 of it, but I'll deal with that at a different time.
13 MR. TOPEL: Okay.
14 JUDGE CHACHKIN: I'm only dealing with, I'm only
15 dealing with the testimony and the question is if the persons
16 are competent to testify about these matters. I'm not
17 precluding from offering these tabs as official notice --
18 MR. TOPEL: Oh, okay.
19 JUDGE CHACHKIN: -- or anything else, and the fact
20 that -- well, we'll take up the tab separately if there's any
21 objection to it.
22 MR. TOPEL: Oh, fine, Your Honor.
23 JUDGE CHACHKIN: Maybe they stand on their own
24 without any need for Ms. Duff's testimony.
25 MR. TOPEL: I understand. In all honesty,

1 Your Honor, we were just trying to be helpful in giving as
2 much explanation as we can, but I -- that's fine. If we're
3 going to take the tabs up individually, then I withdraw my --
4 JUDGE CHACHKIN: All right.
5 MR. TOPEL: -- my argument on paragraph 49.
6 JUDGE CHACHKIN: Let's go on with any further
7 objections.
8 MR. TOPEL: We were -- Mr. Cohen raised a point on
9 -- which paragraph was it?
10 JUDGE CHACHKIN: 49?
11 MR. TOPEL: Was it 52 or --
12 JUDGE CHACHKIN: 52?
13 MR. COHEN: 52, Your Honor.
14 MR. TOPEL: Which language are we talking about
15 because I missed that?
16 MR. COHEN: I was raising an argument -- my argument
17 commenced, Your Honor, "I received a copy of that
18 application," is where my objection commences.
19 JUDGE CHACHKIN: And the question is here whether or
20 not that she's competent to testify about these matters and we
21 have a situation here in which she also states mere belief
22 that she reviewed these -- the document. Is that correct,
23 Mr. Cohen?
24 MR. COHEN: Yes. You've stated it better than I,
25 Your Honor.

1 JUDGE CHACHKIN: And I'm indicating that since it's
2 based only on her mere belief and not a positive knowledge
3 that I'm not going to receive her testimony, and that I assume
4 is all of paragraph 52. Is that correct?
5 MR. COHEN: Well, actually, Your Honor, the first
6 -- the introduction is not subject to that same objection --
7 JUDGE CHACHKIN: All right.
8 MR. COHEN: -- and I'm not going -- because I
9 certainly wouldn't object to something that's --
10 JUDGE CHACHKIN: All right. Well, tell me what
11 you're objecting to?
12 MR. COHEN: In giving a copy, Your Honor, line 1, 2,
13 3, 4, 5.
14 JUDGE CHACHKIN: All right.
15 MR. TOPEL: Your Honor, may I just speak?
16 MR. COHEN: To the bottom of the page.
17 JUDGE CHACHKIN: Yes.
18 MR. TOPEL: I'm not going to reargue matters that
19 you've ruled on, but the testimony -- the first sentence which
20 says that this attachment is a copy of the application and
21 also says that, "Which Mr. May also prepared," I believe is,
22 is proper to stay in. Certainly the testimony that Mr. May
23 prepared it is consistent with your prior ruling and I don't
24 think there should be any dispute or problem about having the
25 application in the record since it is -- in fact, I think

1 Mrs. Duff can testify from personal knowledge that that tab is
2 a copy of the application even if she didn't prepare it.
3 JUDGE CHACHKIN: All right. "A copy of that
4 application which Mr. May also prepared" is attached at Tab T.
5 I'll permit that. Any other objections?
6 MR. COHEN: Yes, sir.
7 MR. TOPEL: So every -- after that Tab T, the
8 remainder of that paragraph has been, has been stricken,
9 Your Honor.
10 JUDGE CHACHKIN: Yes.
11 MR. COHEN: Your Honor, turning to page 38 --
12 JUDGE CHACHKIN: And the remainder of that paragraph
13 is stricken?
14 MR. COHEN: Yes, sir. That's by my request.
15 JUDGE CHACHKIN: All right.
16 MR. SCHONMAN: Your Honor?
17 JUDGE CHACHKIN: Yes.
18 MR. SCHONMAN: I hate to go back on something, but
19 in the interest of keeping the context of this --
20 JUDGE CHACHKIN: Yes.
21 MR. SCHONMAN: -- of this testimony, on paragraph
22 47, the very first sentence says, "NMTV filed its application
23 for the Odessa station on February 3, 1987." In the interest
24 of, of just keeping the context, could we keep that sentence
25 in?

1 JUDGE CHACHKIN: What sentence in?

2 MR. SCHONMAN: That first sentence in paragraph 47.

3 JUDGE CHACHKIN: "And a copy of the application is

4 attached at Tab 2?" Is that what you're saying?

5 MR. SCHONMAN: Yes.

6 MR. TOPEL: I'm happy to have as much kept in as I

7 can.

8 JUDGE CHACHKIN: All right. Those two sentences in

9 paragraph 47 will be permitted.

10 MR. SCHONMAN: Thank you, Your Honor.

11 JUDGE CHACHKIN: The remainder of the paragraph is

12 stricken. Any other objections?

13 MR. COHEN: Yes, Your Honor. I draw your attention

14 to paragraph 55 on page 38. The last sentence of the

15 paragraph I don't object to, but I want to make sure at the

16 beginning rather -- I want to make sure, Your Honor, that's

17 coming in for the witness' state of mind and no other purpose.

18 MR. TOPEL: I'm sorry, Mr. Cohen --

19 MR. COHEN: Sure.

20 MR. TOPEL: -- will you direct me again?

21 MR. COHEN: Of course. Page 38, the last line --

22 excuse me, the last sentence, "Rather, which on the advise I

23 received from Mr. May."

24 MR. TOPEL: Page --

25 MR. COHEN: On the bottom of the page, paragraph 55.

1 MR. TOPEL: Which -- okay. Let me have one second
2 here to look at that.
3 MR. COHEN: Because I don't want this coming in for
4 the truth of the proposition assertion Your Honor.
5 MR. TOPEL: Well, that's -- yeah. We covered a
6 similar objection, yes, Judge, yes, Your Honor.
7 MR. COHEN: Yes. What I want is to protect the
8 record.
9 MR. TOPEL: This is not intended to establish the
10 correctness of the legal advice. It's intended to establish
11 the state of mind that the advice was given.
12 JUDGE CHACHKIN: All right. Further objections?
13 MR. COHEN: Your Honor, turning to paragraph 64, you
14 visited this yesterday, this, this concept and I regret having
15 to raise it again but I, it seems to me, have to. If you read
16 this paragraph you'll see that this is a -- beginning with
17 "Developing successful television operations." This is a sort
18 of a commentary on, on this witness' perception of what
19 developing successful television from a start-up position,
20 what's involved in that, and I submit to you that's not
21 relevant. It doesn't deal with the control issue. It's
22 tangential and it's collateral. What -- as you pointed out
23 yesterday --
24 JUDGE CHACHKIN: It's not even tangential or
25 collateral, frankly. I don't know what it is.

1 MR. COHEN: I was being charitable.

2 JUDGE CHACHKIN: It sounds like some pumping, but it

3 has nothing to do with the control issue.

4 MR. COHEN: And I would say all of 64 falls in that

5 category, all of paragraph 64. And you're going to see a lot

6 more of this as her testimony develops, Your Honor.

7 JUDGE CHACHKIN: I'm going to strike all of

8 paragraph 64. It has nothing to do with the control issue.

9 MR. TOPEL: Your Honor, I'm not going to argue. I

10 was -- if this is similar to a matter that you ruled on

11 yesterday --

12 JUDGE CHACHKIN: Yes.

13 MR. TOPEL: -- I'd like the record to reflect our

14 position --

15 JUDGE CHACHKIN: I understand.

16 MR. TOPEL: -- is the same as, as argued yesterday.

17 JUDGE CHACHKIN: All right.

18 MR. SCHONMAN: Your Honor, I'm sorry I didn't speak

19 up earlier, but I didn't hear what paragraph Mr. Cohen is

20 quoting about.

21 JUDGE CHACHKIN: 64.

22 MR. SCHONMAN: I had a problem with paragraph 57, so

23 I apologize for having to go back.

24 JUDGE CHACHKIN: All right.

25 MR. SCHONMAN: Paragraph 57, the second sentence

1 begins, "First I know that NMTV's Board of Directors has the
2 ultimate control NMTV's affairs," and I have a problem with
3 that in that it's conclusory in nature.
4 MR. TOPEL: Your Honor, I would offer to change the
5 word "know" to "believe." I think the introductory paragraph
6 talks about belief. The witness is clearly defining her state
7 of mind which is relevant to this issue. I think if, if she
8 were to testify about her knowledge it would be proper for
9 people to cross-examine her and if the facts prove that her
10 knowledge was wrong, which she says she knows wouldn't count
11 for very much, but I'm -- none of those were written with the
12 idea of establishing the disposition of the issues in this
13 case, Your Honor. It was all intended to show the witnesses
14 state of mind, what they were thinking. So I would offer to
15 change the word "know" to "believe" if Mr. Schonman -- "First
16 I believe that NMTV's Board," if Mr. Schonman would accept
17 that as a modification.
18 JUDGE CHACHKIN: That will be acceptable.
19 Mr. Cohen, do you have any objection?
20 MR. COHEN: No objection.
21 JUDGE CHACHKIN: All right. "Know" is changed to
22 "believe." Any other objections?
23 MR. COHEN: Yes, paragraph 65.
24 JUDGE CHACHKIN: 65, yes.
25 MR. COHEN: I object "as I have previously

1 discussed," in the middle of the paragraph.

2 MR. TOPEL: You struck that yesterday, Your Honor.

3 JUDGE CHACHKIN: Yes.

4 MR. TOPEL: You struck that -- those words.

5 MR. COHEN: Yes. Well, can you -- you'll have to

6 refresh my recollection. I didn't know you dealt with

7 paragraph 65 yesterday.

8 JUDGE CHACHKIN: Only to the extent here is I struck

9 the words, "As I have previously discussed."

10 MR. COHEN: I see. I would, I would object to the,

11 I would object to the remainder of that paragraph in that it

12 deals with matters that are tangential and remote from the

13 control.

14 MR. TOPEL: Well, Your Honor, this is -- that's an

15 extraordinary objection. We discussed this yesterday and the

16 issue is control of programming and, as we discussed, one of

17 the items in the Designation Order is the fact that NMTV

18 broadcasts Trinity programming. Here Mrs. Duff is explaining

19 that it is her judgment that this is valuable programming.

20 Mrs. Duff is explaining her reasons why NMTV broadcasts

21 Trinity programming.

22 MR. COHEN: I'll withdraw my objection, Your Honor.

23 JUDGE CHACHKIN: All right. Any other objections/

24 MR. COHEN: Yes, paragraph 67, Your Honor. I

25 submit, Your Honor, this is irrelevant to the designated

1 control issues and the abuse of process issue.
2 JUDGE CHACHKIN: Paragraph 67 will be rejected as
3 irrelevant.
4 MR. TOPEL: Your Honor, do I need to repeat on these
5 paragraphs? My argument is the same as yesterday, that it's
6 under the abuse of process issue, the fact that the goals that
7 the Commission wished the process to accomplish is probative
8 of the intent to, to use the Commission process and not to
9 abuse it. You've ruled and --
10 JUDGE CHACHKIN: What you're saying, in effect, is
11 the end justifies the means.
12 MR. TOPEL: Well, what I'm --
13 JUDGE CHACHKIN: -- is what you're arguing.
14 MR. TOPEL: No. What I'm saying is that the, that
15 the end establishes the intent to fulfill the end.
16 JUDGE CHACHKIN: Well, I think it's more the end
17 justifies the means is what you're arguing. The fact that
18 these things occurred which the Commission wanted justifies
19 the fact that it may have been done -- obtained in an illegal
20 fashion.
21 MR. TOPEL: No, I'm not arguing that, Your Honor,
22 JUDGE CHACHKIN: Well, that's what, that's what it
23 seems to be you're arguing here by bringing the fact that all
24 these things were accomplished which the Commission had in
25 mind when they established the -- that the right of, of

1 minorities to obtain additional stations. That's what you
2 seem to be arguing here. Otherwise, I don't see any purpose
3 of, of this material.
4 MR. TOPEL: I'm arguing that this was a legitimate
5 minority company under the Commission's rules that --
6 JUDGE CHACHKIN: Well, if it was --
7 MR. TOPEL: -- that proceeded --
8 JUDGE CHACHKIN: If it was then it doesn't matter
9 that -- what the staff -- full-time staff were minorities and
10 it doesn't matter that employment opportunities occurred. If
11 it was a legitimate minority corporation, as you say, then all
12 these other things don't matter.
13 MR. TOPEL: I understand that's your ruling --
14 JUDGE CHACHKIN: Well, then there's no need for you
15 putting in all this material.
16 MR. TOPEL: I understand your ruling, Your Honor,
17 and I agree --
18 JUDGE CHACHKIN: All right.
19 MR. TOPEL: -- with you as far as you've gone. I
20 -- you know, our position --
21 JUDGE CHACHKIN: All right.
22 MR. TOPEL: -- is to go further, but you've ruled.
23 JUDGE CHACHKIN: All right.
24 MR. TOPEL: Your Honor, the same objection to
25 paragraph 68.

1 JUDGE CHACHKIN: Again, this has nothing to do with
2 whether it was control or not. Paragraph 68 will also -- is
3 rejected. This will be stricken.
4 MR. TOPEL: Your Honor, I suppose -- I think I
5 probably do need to just indicate my position is the same on
6 paragraph 68.
7 JUDGE CHACHKIN: All right.
8 MR. COHEN: Now, paragraph 71, Your Honor. I hate
9 to make a speech, Your Honor, but I -- without getting into
10 the question of the Portland station, and I think the
11 programming of the Portland station, local programming, is
12 absolutely irrelevant to the, to the designated issues. If
13 the argument is that the Portland programming is different
14 from the TBN programming, then it's relevant to the extent
15 that it deals with the control issue. And I don't believe
16 that in this testimony or in Mr. McClellan's testimony that
17 foundation is laid. That is, there isn't going to be a claim
18 here that this is different kind of programming. You've got
19 to have something to compare it with, and to just talk about
20 local programming per se has no significance under the
21 designate issues. This is not a renewal expectancy case
22 insofar as the NMTV station is concerned. The programming of
23 the Portland station in itself has no probative significance
24 whatsoever. And this exhibit -- this paragraph is subject to
25 that vice because it doesn't tie up the relationship to the

1 control issue.

2 MR. TOPEL: Which paragraph, Mr. Cohen?

3 MR. COHEN: 71.

4 MR. TOPEL: 71. I'm sorry. I was looking at 70.

5 May I have one second to look at 71, Your Honor?

6 JUDGE CHACHKIN: Yes.

7 MR. TOPEL: Two things, Your Honor. First of all,

8 the paragraph goes directly to what Mrs. Duff did, her control

9 over NMTV's activities. "I told Mr. McClellan he was hired.

10 I trained him. I instructed him on," -- all the matters

11 discussed in that paragraph. For that reason alone it is, it

12 is directly relevant to the issue as it's been defined who's

13 in control, who's doing things in charge for NMTV. It's

14 Mrs. Duff and that paragraph says that repeatedly, so I don't

15 understand that objection. On the issue of local programming,

16 Your Honor, I don't know this is a relevant paragraph to

17 discuss it. It will come up, come up in other paragraphs.

18 But, again, the Designation Order made a point that all of the

19 programming was Trinity programming and there was no local

20 programming until recently. And one of the purposes of the

21 explanations of the plans for local programming is to indicate

22 that, that there were intentions to do local programming

23 explaining what the Designation Order seemed to be concerned

24 about. And one of the issues that I imagine will be presented

25 to you is the fact that this local programming did not start

1 until after Mr. Cohen and his client got the idea to file a
2 renewal challenge, and so perhaps it was responsive to that.
3 But the consistent testimony of Mrs. Duff and Mr. McClellan is
4 we planned local programming from the beginning. Yes, the
5 Designation Order is correct that it got started late, but
6 there were reasons for it. But it was planned from the
7 beginning. This paragraph is -- and it's only a minor part of
8 this paragraph because most of this paragraph deals with
9 Mrs. Duff's role in the hiring and training of Mr. McClellan.
10 But this paragraph, along with other testimony, indicates
11 that, although the Designation Order is correct about when --
12 about the amount of local programming and when it started,
13 there was reason for that. It was planned from the beginning,
14 but there were problems and they -- and those problems are
15 described in terms of the difficulties in building the local
16 studio. So I think to the extent that the testimony addresses
17 a specific concern of the Designation Order it's certainly
18 relevant and should be allowed. So for both of those reasons
19 I think paragraph 71 should be allowed.
20 JUDGE CHACHKIN: I'll overrule the objection. Any
21 other objections?
22 MR. COHEN: Yes. I want to object to paragraph 72
23 on the grounds of irrelevance, Your Honor.
24 JUDGE CHACHKIN: I'm satisfied by Mr. Topel's
25 statements that the exhibit was -- is relevant and certainly

1 you can challenge the assertions made in those paragraphs --
2 MR. COHEN: For the record, Your Honor --
3 JUDGE CHACHKIN: -- the reasons for the delay.
4 MR. COHEN: For the record, Your Honor, to protect
5 my client's position I want to object to paragraph 73.
6 JUDGE CHACHKIN: And I have a similar ruling.
7 MR. COHEN: 74.
8 JUDGE CHACHKIN: Also overruled.
9 MR. SCHONMAN: 74 is, is different, though.
10 JUDGE CHACHKIN: All right. Well, let's --
11 MR. COHEN: Well, yes. Your point is well taken and
12 I did have a -- my note reflects that. This is a different --
13 you want to state that objection?
14 MR. SCHONMAN: Go ahead, Mr. Cohen.
15 MR. COHEN: This now deals with something more than
16 what the preceding paragraphs that you -- deal with. This,
17 this goes into the question of employing and training
18 minorities and outreach activities to the minority community,
19 as plans for minority advisory boards and student intern
20 programs and school minority enrollment. Not only have some
21 of these plans not occurred yet, but they're speculative. But
22 it's clearly not relevant to the control issue. This is, this
23 is the kind of evidence one might see in a renewal expectancy
24 showing, Your Honor.
25 MR. TOPEL: May I be heard, Your Honor?

1 JUDGE CHACHKIN: Your objection is not to the first
2 sentence. It's to the remaining sentences.
3 MR. COHEN: Yes, that's correct, Your Honor.
4 JUDGE CHACHKIN: Does the Bureau have a similar
5 objection?
6 MR. SCHONMAN: Correct.
7 JUDGE CHACHKIN: Go ahead.
8 MR. SCHONMAN: Well, you've anticipated me with
9 respect to the first sentence and I appreciate that,
10 Your Honor. The remaining sentence in one respect does fall
11 under the earlier rulings that you've made. In another
12 respect it's complimentary to other evidence that I believe
13 will be in the record, particularly minutes of the National
14 Minority Television Board meeting where the various Board
15 members, Pastor Hill and Mrs. Duff and Pastor Aguilar, met
16 with the station manager and discussed the formulation of
17 these plans and doing them. So to that regard it corroborates
18 evidence and supports evidence in terms of the minorities
19 being in control of the corporation. It does not -- on it's
20 face it does not without being tied to that other testimony,
21 but I wanted Your Honor to be aware of that.
22 JUDGE CHACHKIN: All right.
23 MR. COHEN: It's objectionable on that basis then.
24 It's not tied in, Your Honor.
25 JUDGE CHACHKIN: The sentences following the first