

ORIGINAL
Transcript of Proceedings

RECEIVED
SEP 30 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission

ORIGINAL
FILE

-----X
In the Matter of: :
ORDER TO SHOW CAUSE DIRECTED : Docket No.
AGAINST MARIO J. GABELLI : 92-201
-and- :
GABELLI FUNDS, INC.
-----X

DATE: September 21, 1992
PLACE: Washington, D.C
PAGES: 1 - 18

Capital Hill Reporting

Official Reporters
1825 K Street, N.W.
Washington, D.C. 20006
(202) 466-9500

0 + 3

RECEIVED

1
SEP 30 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

- - - - - x

In the matter of: : Docket Number 92-201
ORDER TO SHOW CAUSE :
DIRECTED AGAINST :
MARIO J. GABELLI :
-and :
GABELLI FUNDS, INC. :

- - - - - x

The above-entitled matter came on for
meeting, pursuant to Notice, before Larry A. Miller,
Attorney, at 1919 M Street, N.W., Courtroom No. 315,
Washington, D.C., on Monday, September 21, 1992, at
1:00 p.m.

APPEARANCES:

On behalf of the Federal Communications Commission:

- LARRY A. MILLER, Esquire
- GARY P. SCHONMAN, Esquire
- ANNE LUCEY
- STEPHEN SEWELL
- Mass Media Bureau
- 2025 M Street, N.W.
- Washington, D.C. 20554

1 On behalf of Mario Gabelli:

2 HERBERT D. MILLER, JR.

3 M. ANNE SWANSON

4 ALAN NAFTALIN

5 Koteen & Naftalin

6 1150 Connecticut Avenue, N.W.

7 Washington, D.C. 20036

8 On behalf of Gabelli Funds, Inc.:

9 J. HAMILTON CRAWFORD, JR.

10 Senior Vice President and General Counsel

11 Gabelli Funds, Inc.

12 One Corporate Center

13 Rye, New York 10580

14 - - -

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

[Time Noted: 1:00 p.m.]

1
2
3 MR. MILLER: Let's go ahead and begin. The
4 first thing I'd like to do is just have everybody go
5 around and introduce themselves, so it will be on the
6 tape and, that way, if they talk during the meeting,
7 the transcriber will know who's talking.

8 Why don't we start with Dan Miller.

9 MR. MILLER: Herbert D. Miller, Jr., from the
10 law firm of Koteen & Naftalin.

11 MS. SWANSON: M. Anne Swanson, also of the
12 same law firm.

13 MR. CRAWFORD: J. Hamilton Crawford, Senior
14 Vice President & General Counsel, Gabelli Funds, Inc.

15 MR. NAFTALIN: Alan Naftalin of Koteen &
16 Naftalin.

17 MR. MILLER: Larry A. Miller, and I'm
18 representing the Mass Media Bureau.

19 MR. SCHONMAN: Gary P. Schonman, co-counsel
20 for the Mass Media Bureau.

21 MS. LUCEY: Anne Lucey, TV Branch, Mass Media
22 Bureau.

23 MR. SEWELL: Stephen Sewell, Assistant Chief,
24 Video Services Division, Mass Media Bureau.

25 MR. MILLER: Okay. Today, we're conducting

1 the personal interview as provided for in Section
2 503(b)(5) of the Communications Act of 1934 as amended.

3 The Order to Show Cause which designated this
4 proceeding or hearing was issued back or was released
5 August 21st, 1992. In that document, the Order to Show
6 Cause, the Commission said that it would constitute a
7 notice of citation or citation as provided for in
8 Section 503(b)(5) of the Communications Act.

9 The meeting today was scheduled at the
10 request of Mr. Gabelli's attorneys, and let me just
11 make it clear. The meeting is being held here in
12 Washington in lieu of a field office nearest
13 Mr. Gabelli's place of residence. That was at your
14 request, was it not?

15 MR. NAFTALIN: Yes. The meeting is here.
16 Both Mario Gabelli and Gabelli Funds, Inc. have waived
17 their right to have this occur at the nearest field
18 office, and Mr. Gabelli has waived the right to be here
19 personally.

20 MR. MILLER: And Mr. Crawford is appearing
21 for him.

22 MR. NAFTALIN: As his representative.

23 MR. MILLER: And for Gabelli Funds, Inc.
24 Okay. Paragraph 2 of the Order to Show Cause set forth
25 a list of media holdings which the Commission believed

1 that Mario Gabelli and/or Gabelli Funds, Inc. held an
2 attributable interest in, and paragraph 3 of the Order
3 to Show Cause set forth the alleged rule and statute
4 violations. Those included Sections 73.3555 and
5 76.501(a) of the Commission's rules and Section 613 of
6 the Communications Act.

7 Now, what I'm going to tell you today is
8 based on the information that has been provided from
9 Gabelli -- and I'll use Gabelli to include both Mario
10 Gabelli and Gabelli Funds, Inc. -- based on that
11 information, the list of attributable media holdings
12 that were provided, there are certain specific rule
13 violations that we believe exist, and I think we've
14 discussed this already, but I'll go through those
15 specific rule violations. If you have any questions,
16 you can ask me.

17 The first one is Section 73.3555(d)(1)ii of
18 the Commission's rules, which limits the number of
19 television stations that one may have an attributable
20 interest in to 12 and, according to the information
21 that you've provided, Gabelli has an interest in 19
22 television stations.

23 MR. NAFTALIN: Do you want to go through it
24 and then I'll comment, or do you -- we'll do whatever
25 order you want.

1 MR. MILLER: Why don't I go through them, and
2 we'll come back.

3 MR. NAFTALIN: Okay.

4 MR. MILLER: Those are just the interests
5 that you listed there.

6 MR. CRAWFORD: How many did you say?

7 MR. MILLER: Nineteen. That's including
8 WWOR-TV, and that's not counting the interests of
9 Paramount and Media General. All right.

10 The second rule violation is Section
11 73.3555(e)(1) and (2) of the Commission's rules, which
12 prohibits serving contour overlaps between television
13 and radio stations and, in this respect, there would be
14 an overlap between WWOR-TV, which is a Chris-Craft
15 subsidiary, and WRKL-AM, licensed to New City, New
16 York. The licensee is Rockland Communications, Inc.,
17 and there's also a prohibited overlap between WWOR-TV
18 and WXPS-FM, which is Briar Cliff Manor, New York,
19 licensed to Westland Communicators, Inc.

20 The third specific rule violation is Section
21 73.3555(a)(3) of the Commission's rules, and that
22 prohibits a Grade B Contour overlap between TV
23 stations. This exists between WTOL-TV in Toledo, Ohio,
24 which is licensed to Cosmos Broadcasting, which is a
25 subsidiary of Liberty Corporation, and there's an

1 overlap of the Grade B Contour of WCMH-TV, Columbus,
2 Ohio, which is licensed to Outlet Communications.

3 Finally, there's a Section 76.501(a)(2) of
4 the Commission's rules and Section 613(a) of the
5 Communications Act, apparent violation of that rule and
6 section of the Act because of the Grade B Contour of
7 Station KMSP-TV, Minneapolis, Minnesota, which is
8 licensed to Chris-Craft, covers part of the service
9 area of Cable Television Systems in Pine Island and
10 Oronco, Minnesota, and a system under construction in
11 Hudson Township, Wisconsin, and these systems are owned
12 by Pine Island Telephone Company, which is a subsidiary
13 of Hector Communications.

14 Now, those are the four specific rule
15 violations that we have determined from the information
16 that you have provided. Did you want to discuss those?

17 MR. NAFTALIN: One of them is WWOR-TV overlap
18 with those two radio stations.

19 MR. MILLER: That's correct.

20 MR. NAFTALIN: I have a question about that.
21 The Commission has already granted Chris-Craft a waiver
22 with regard to that based on the fact that they found
23 93 voices in New York.

24 Are you taking the position that there needs
25 to be a separate waiver request with regard to that?

1 MR. MILLER: Yes. That was a temporary
2 waiver, and it was granted to the applicants that were
3 involved in a transfer in order to allow the transfer
4 to go forward, and the Commission said the Gabelli
5 interests were something they were going to separately
6 designate.

7 MR. NAFTALIN: So, it's your position that
8 every shareholder who is in that kind of a situation
9 needs to ask for a waiver separately? I just want to
10 understand what your policy is on that, the Bureau's
11 policy on that.

12 MR. MILLER: Yes. If their interests differ
13 from the applicants; for instance, in this case, Chris-
14 Craft or BHC did not have the interest in the stations
15 WRKL and WXPS. So, those interests weren't taken into
16 consideration by the Commission when they granted the
17 waiver.

18 MR. NAFTALIN: That leads to a further
19 question. Would you explain how the rule -- what makes
20 you think that 73.3555 -- what is it?

21 MR. MILLER: 73.3555.

22 MR. NAFTALIN: -- applies to the
23 shareholders?

24 MR. MILLER: If you look at --

25 MR. NAFTALIN: It doesn't say that.

1 MR. MILLER: -- Footnote 4 of the ownership
2 attribution report and order, it indicates there that
3 the Commission was making applicable what used to be
4 considered cross-interest, its cross-interest policy to
5 the ownership attribution rules.

6 If you want the specific language, noted in
7 Footnote 4 that the owns, operates or controls language
8 of the duopoly market rules has been construed by the
9 Commission to render these provisions applicable only
10 where a stockholder holds a majority voting interest in
11 the licensee or otherwise exercises actual control over
12 the licensee, and that's what you're saying?

13 MR. NAFTALIN: No, I'm not saying.

14 MR. MILLER: But as to stock ownership,
15 therefore, the percentage of attribution benchmarks
16 advanced in connection with the ownership rules are not
17 literally germane to these rules.

18 It goes on to say that they bar adopting them
19 -- here.

20 MR. NAFTALIN: Where is this?

21 MR. MILLER: This is the ownership
22 attribution.

23 MR. NAFTALIN: Yes. I'm familiar with that.

24 MR. MILLER: But anyway, you were asking what
25 our basis was.

1 MR. NAFTALIN: I have a broader question. If
2 you look at that rule, it says no license shall be
3 issued to somebody under some circumstances. It
4 doesn't say no shareholders shall own.

5 MR. MILLER: And I'm just saying the
6 Commission's report and order in this -- when it
7 adopted the attribution rules or changed the
8 attribution rules, also the Commission's report and
9 order relating to cross-ownership policy indicate that
10 the rules would apply to individual shareholders.

11 MR. NAFTALIN: Are you familiar with the
12 Commission's notice of rule making in 1964 in which
13 they said the rules did not apply to shareholders, and
14 they were proposing to change the rules but didn't?

15 MR. MILLER: No, but I'm familiar with the
16 more recent Commission report and orders where they say
17 that they do apply to shareholders.

18 MR. NAFTALIN: I believe that those cite back
19 to this history for their authority.

20 MR. MILLER: If you want to debate --

21 MR. NAFTALIN: I want to say that in 1964,
22 the Commission issued a notice of proposed rule
23 making -- Steve, you may remember this. I don't mean
24 because you were there. I was in the practice then.

25 In 1964, the Commission issued a notice of

1 proposed rule making. The Federal Register cite -- it
2 was September 23rd, 1964. It starts on page 13 to 11
3 in which the -- they specifically say that the rules
4 did not then apply to shareholders, and there was a
5 proposal to change the rules to make them applicable
6 and to establish a procedure to follow.

7 And in 1968, the Commission adopted the rules
8 and did not -- I think declined to make them applicable
9 to shareholders, and we have found no change in the
10 rules since then that changes the way -- in our view,
11 would change that. There have been changes in the
12 limits and so on.

13 I know there's a reference in 1984. We don't
14 think that changed the rule. We just think it
15 interpreted the rule.

16 MR. MILLER: You're entitled to your opinion,
17 but the Commission has enforced the rules against
18 individual investors. They've done that on several
19 occasions back in the 70's. '72, they did that several
20 times.

21 MR. NAFTALIN: It's my understanding that
22 they directed them to sell shares and that shares were
23 sold. I don't know if it's been enforced.

24 MR. MILLER: Well, when they direct somebody
25 to sell shares and they do, that seems to be enforcing

1 it to me.

2 MR. NAFTALIN: And you could direct me to do
3 lots of things, but your authority hasn't been tested
4 if I just go ahead and do it.

5 MR. MILLER: And in the report and order, the
6 Commission says that it has the authority to order
7 divestiture of stock to effect compliance of the
8 Commission's multiple ownership rules.

9 MR. NAFTALIN: Let me make it clear. I don't
10 question --

11 MR. MILLER: The Commission's position is
12 that it has this authority.

13 MR. NAFTALIN: Pardon me. I didn't question
14 that. I think the statute gives it the authority.
15 We're not questioning that.

16 What we say is the Commission hasn't
17 exercised it by making the rules apply to shareholders.
18 We don't question that it could. It has the authority
19 to do that.

20 MR. MILLER: And I think that the statements
21 by the Commission and the report and order in
22 attribution and in cross-ownership interests make it
23 clear that they believe they have taken that. There
24 may be other things that Steve is aware of that I'm not
25 that indicates that the Commission has exercised this

1 authority.

2 MR. NAFTALIN: Good. Thank you.

3 MR. MILLER: Are you aware of anything else
4 that would indicate that the Commission has this
5 authority?

6 MR. SEWELL: Well, I think you're talking
7 about legal authority, and the Commission assumed it
8 had it in the Order to Show Cause. So, I think we
9 ought to go through our notice in factual matters and
10 let counsel make his remarks.

11 MR. NAFTALIN: That's fine. I just wanted to
12 make it clear on the record that, while we don't
13 question the Commission's statutory authority, we do
14 question that the rules -- we take the position that
15 the rules don't apply. Therefore, there is no rule to
16 violate. I mean, there's no violation available here.
17 Therefore, there is no compliance required. I mean,
18 that is our legal position.

19 MR. MILLER: Okay. And, obviously, the
20 Commission believes otherwise, or it wouldn't have
21 designated this for a Show Cause Order intending that
22 Gabelli cease and desist from rule violations.

23 MR. NAFTALIN: I accept that. I'm not asking
24 you to agree with me.

25 MR. MILLER: All right.

1 MR. NAFTALIN: We didn't get up to 19
2 stations, incidentally, based on your count. We got to
3 18. Did you say 19? Did I misunderstand that?

4 MR. MILLER: I had 18, but I wasn't sure
5 whether I was counting WWOR in that 18. It may be only
6 18.

7 MR. NAFTALIN: We counted Chris-Craft as
8 having eight stations.

9 MS. SWANSON: It has seven plus WWOR.

10 MR. NAFTALIN: We think it had seven before
11 that.

12 MR. MILLER: I had 18, and then when you told
13 me WWOR had been added, I mean, had consummated, then I
14 --

15 MR. NAFTALIN: No.

16 MR. MILLER: I think you may be correct. It
17 may only be 18.

18 MR. NAFTALIN: I think we've been counting it
19 all along. So, that was one -- I want to be sure. One
20 is the numerical limit. One is the WWOR radio cross-
21 interest and one is the two Grade B Contours in Ohio
22 and the last one is the overlap of cable systems in
23 Minnesota.

24 MR. MILLER: Yes.

25 MR. NAFTALIN: I think we agree that that's

1 what -- we agree that what you said, putting aside the
2 legal argument, that what you said is consistent with
3 our submission.

4 MR. MILLER: Okay. Now, for purposes of the
5 record, I want to also point out that if the Gabelli
6 interests in Media General, C-Tech Corporation and
7 Paramount Communications are determined to be
8 attributable, there would be additional rule violations
9 of the Commissions rules and statutes, and the ones
10 that I have determined so far would include the
11 following, and I'll just run through them now.

12 There would be an overlap between Chris-
13 Craft's WWOR-TV, Chicaucas, New Jersey, and Paramount's
14 WTFX-TV in Philadelphia, Pennsylvania. There would be
15 an overlap between Chris-Craft's KMOL-TV in San
16 Antonio, Texas, and Paramount's KRRT-TV in Kurville,
17 Texas.

18 There would be an overlap between Chris-
19 Craft's KMSP-TV in Minneapolis, Minnesota, and C-Tech's
20 cable system at Bayport, Minnesota. There would be an
21 overlap between Chris-Craft's WWOR-TV, Chicaucas, New
22 Jersey, and C-Tech's cable systems at Bernardsville,
23 Far Hills, Gladstone and Princeton, New Jersey.

24 There would be an overlap of Paramount's
25 WTFX-TV, Philadelphia, Pennsylvania, and C-Tech's cable

1 system at Princeton, New Jersey. There would be an
2 overlap of Paramount's WDCA-TV in Washington, D.C., and
3 Media General's cable system in Fairfax County,
4 Virginia.

5 As to newspapers and broadcast cross-
6 ownership, as to WWOR-TV and Media General's newspapers
7 in Asayik, New Jersey, there would be an overlap.

8 As to WDCA-TV and Media General's daily
9 newspaper in Woodbridge, Virginia, there would be an
10 overlap.

11 And, finally, as to KBHK-TV, which is
12 licensed to Chris-Craft, San Francisco, California, it
13 would be an overlap of Media General's daily newspapers
14 in Alameda, Fremont, Hayward and Pleasanton,
15 California.

16 MR. NAFTALIN: We're not in a position to
17 comment at this time.

18 MR. MILLER: All right.

19 MR. NAFTALIN: At least I'm not.

20 MR. MILLER: There may be other rule
21 violations of the same nature that may exist that we
22 just haven't determined. I don't know.

23 In any event, the citation, we believe, is
24 sufficient specific that if new violations, for
25 instance, if Gabelli acquired an interest in -- an

1 attributable interest in another television station, we
2 wouldn't require a new notice of citation because he is
3 on notice now that he can't have attributable interests
4 in more than 12 stations.

5 So, the acquisition of an interest in another
6 television station or a new prohibited overlap wouldn't
7 require the Commission to issue another citation.

8 MR. NAFTALIN: That's your statement.

9 MR. MILLER: Yes. And I also wanted to
10 note -- all right. At this point, you're put on notice
11 as to what the rule -- apparent rule violations are and
12 that future or continued violations may be subject to
13 forfeitures.

14 It isn't -- our primary goal is not to impose
15 forfeitures. Our primary goal is to bring about
16 compliance with the Commission's rules, and I think
17 that's what we're seeking.

18 MR. NAFTALIN: Okay.

19 MR. MILLER: The Commission may feel
20 differently, but that's the way we feel at this point.

21 Now, are there any questions that you have
22 about the specifics?

23 MR. NAFTALIN: I don't think we have any that
24 we haven't raised. I don't necessarily agree with what
25 you last said, but I heard what you said.

1 MR. MILLER: All right. We don't necessarily
2 have to agree.

3 MR. NAFTALIN: I understand.

4 MR. MILLER: Do you have anything else to
5 add?

6 (No response.)

7 MR. MILLER: All right. In that event, our
8 meeting is over and our personal interview is
9 concluded.

10 (Whereupon, at 1:25 p.m., the meeting in
11 the above-entitled matter was concluded.)

12

- - -

13

14

15

16

17

18

19

20

21

22

23

24

25

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: MARIO J. GABELLI
Docket Number: 92-201
Place: WASHINGTON, D.C.
Date: SEPTEMBER 21, 1992

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

CAPITAL HILL REPORTING, INC.

BY Joseph C. Spector
Official Reporter