

differentiation between Raystay and Glendale. Assuming there were a misrepresentation by Raystay (which there was not), that misrepresentation should not be attributed to Glendale unless Glendale itself were guilty of a misrepresentation (which has never been claimed by anyone).

(c) WWOR-TV, Inc. 7 FCC Rcd. 636 (1992), affirmed sub nom. Garden State Broadcasting v. FCC, 996 F.2d 386 (D.C.Cir. 1993), TBF Conclusions at 508: In this gratuitously-cited case, the Commission held that the evidence showed that information concerning the date of a material meeting critical to the outcome of a comparative renewal case had been deliberately withheld during discovery, constituting lack of candor warranting disqualification of the applicant. In the instant case, Glendale and Mr. Berfield did not withhold any documents or information called for in the Commission's rules, policies, application form and instructions regarding the application form. When the undelying documents and information did surface during discovery and trial of this issue, they corroborated, supported and authenticated the accuracy of the information that was submitted to the Commission.

(d) RKO General, Inc. (WNAC-TV), 78 FCC2d 1, 47 RR2d 921, affirmed sub nom. RKO General, Inc. v. FCC, 670 F.2d 215 (D.C.Cir. 1981), cert. denied, 456 U.S. 927 (1982): TBF cites this case in two places as precedent governing the conduct of Raystay relative to the Red Lion assignment application, TBF Conclusions at 508, 513. Who is TBF kidding? This case led to

the downfall of one of the America's largest broadcast group operations. It included: reciprocal trade practices to use the broadcast stations to further the business of the General Tire Company for a period of many years; false annual financial reports for its broadcast stations and false statements to the Commission regarding those reports for a period of five years; failure to keep required records of barter transactions for reporting to the Commission; illegal domestic political contributions for a period dating back 20 years; defrauding foreign affiliated companies for a period dating back 20 years; bribing foreign officials for commercial gain for a period dating back 20 years; falsifying records of secret accounts for use of funds for illegal purposes for a period dating back 20 years; making false statements to the Commission in response to petitions filed by a challenging applicant; failure to report an SEC investigation at a time when charges of the very SEC irregularities were pending. For sure, this case is citable for both misrepresentation and lack of candor. The facts and circumstances bear no conceivable relationship to those here. There was no actual, appearance, allegation or investigation of any irregularity in the preparation and submission of the Red Lion expense certification for which Raystay withheld underlying information. The Red Lion expense certification was prepared carefully, accurately and in good faith without any earthly reason to withhold any information concerning how it was prepared.

(e) Continental Broadcasting, Inc., 14 RR2d 827 (Examiner Honig 1967), 15 FCC2d 120, 14 RR2d 813 (1968) (Chairman Hyde dissenting), recon. denied, 17 FCC2d 485, 16 RR2d 30 (1969), affirmed sub nom. Continental Broadcasting, Inc. v. FCC, 439 F.2d 580, [20 RR2d 2126] (D.C.Cir. 1971), cert. denied, June 7, 1971, TBF Conclusions at 511, 513: Again, who is TBF kidding? In this case, a radio station in Newark (the New York City market) lost its license because on a radio program that was broadcast every evening, six days a week, for a period of six years, there were violations of the time brokerage and logging rules then vigorously enforced by the Commission, the station personnel submitted to the Commission some 150 false and forged agreements with advertisers to cover up the violations, and throughout this entire period of time the station ownership did not supervise the operation to the extent necessary to uncover and correct, or guard against, such practices. In our case, there was no long-standing practice which George Gardner failed to supervise; he was away from the office for a few days and his subordinates attended to the expense certification and assignment application in his absence. During normal practices when he was in the office, he personally signed FCC applications himself. There was no long standing abdication of responsibility for which he might fairly be censured, as the Commission did in Continental. Moreover, the work of his subordinates and the Red Lion assignment application was for a different company having different interests, i.e., Raystay and its construction permits,

than the company here in question, i.e., Glendale applying for a new station license in Miami, Florida, whereas in Continental the penalty of license revocation was assessed against the company whose employees perpetrated the massive falsification of documents and whose ownership was totally failing in oversight of management over a six year period.

(f) Prattville Broadcasting Co., 4 FCC2d 555, 8 RR2d 120 (Rev.Bd.), recon. denied, 8 RR2d 1096 (1966), review denied, FCC 67-549 (1967), TBF Conclusions at 511, 513: a radio station license renewal application was denied for falsification of the composite week logs to list some 135 public service announcements that had never been broadcast. The falsification was done by the wife of the station owner in their home and in his presence, a station employee testified as to the falsification, and under these circumstances, the Commission was not persuaded of the lack of knowledge of the falsification as claimed by the owner himself. In the instant case, there was no wrongdoing by any employees of Raystay regarding the Red Lion assignment application, or any testimony or allegation that George Gardner was privy to that wrongdoing, if there were any (which there weren't). Moreover, we again draw the valid distinction that the Red Lion assignment application was the work of Raystay and its employees whereas we are here consider applicant credentials of Glendale and except for George Gardner's role in Raystay matters, Glendale has no responsibility or accountability for the conduct of Raystay affairs.

(g) United Broadcasting Co. of Florida, Inc., 55 FCC2d 832, 35 RR2d 119 (1975), recon. denied, 60 FCC2d 816, 38 RR2d 225, petition to set aside decision dismissed, 39 RR2d 448 (1976), TBF Conclusions at 511, 513: This station's license renewal application was denied because of widespread fraudulent billing over a period of a year and five months during which the ownership paid utterly no attention to station affairs even though there were warning signs of the fraudulent billing practice. Here, none of these elements is present. There has been no long standing course of conduct, only the preparation of an expense certification and signature to an FCC application in George Gardner's absence on the West Coast. There has been no warning signs of something untoward about that activity. George Gardner does not neglect to attend to the affairs of his businesses. He works there on site. When he is there, which is usually, he personally signs all FCC applications.⁸

(h) Sea Island Broadcasting Corp. of S.C., 60 FCC2d 146, 37 RR2d 1235 (1976), recon. denied, 64 FCC2d 721, 40 RR2d 1053 (1977), affirmed sub nom. Sea Island Broadcasting Corp. of S.C. v. FCC, 627 F.2d 240, [46 RR2d 1339] (D.C.Cir. 1980), TBF Conclusions at 513: this radio station's license was revoked for

⁸ The United cases, like Faulkner Radio, Inc., 88 FCC2d 612, 50 RR2d 814 (1981), are consistent with the general rule set forth in the Character Policy decision that misconduct at one station will not be attributed to another station at which the misconduct did not occur. United Broadcasting Co., Inc., 100 FCC2d 1574, 57 RR2d 485, 16 RR2d 30 (1969). So, too, here. Whatever TBF might fantasize occurred at Raystay is not attributable to Glendale if the latter did not do the same thing, and even in TBF's fantasies, that is not the case.

widespread fraudulent billing practices over a period of eight months and repeated false statements to the FCC to cover up those practices by the owner of the station. Here, the owner of Raystay and the principal of Glendale did not make false statements by anyone's account. Moreover, there was no long time continuing practice; rather, the event of signing an expense certification and assignment application. Moreover, there was nothing to cover up. The expense certification was consistent with and backed up by the underlying work sheets and invoices used in the certification.

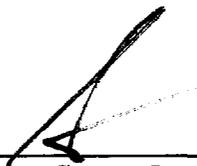
(i) Golden Broadcasting Systems, Inc., 68 FCC2d 1099, 43 RR2d 881 (1978), TBF Conclusions at 513: The license renewal application for a radio station in Lemoore, California was denied where the owner, one Clark E. Parker, filed one license renewal application with false programming figures, underwent a hearing at which those false programming figures came to light, and shortly thereafter filed the next renewal application bearing the same false figures, purporting to blame a consultant for preparing the false figures. Here, while George Gardner did have a brush with the FCC in conjunction with an earlier case, he has performed without fair or valid basis for criticism in the Red Lion assignment application. In his absence on the West Coast, his executive personnel and communications counsel of 30 years attended to the Red Lion filing in an exemplary fashion. The charges which have been leveled against them have been proven totally unfounded on this hearing record.

IX.
CONCLUSION

63. The certification of expenses submitted by Raystay was true and correct. The arguments to the contrary by TBF and the Bureau misstate the record and cannot be relied upon. The language of the rule concerning reimbursable expenses, the Integrated case, and the Presiding Judge's rulings all demonstrate that the certification was true and correct.

64. Accordingly, Glendale asks the Presiding Judge to resolve the Red Lion assignment application issue in its favor for the reasons stated above and in our opening proposed findings and conclusions.

Respectfully submitted,



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APPENDIX A

1 46 actually be submitted. I'd be happy to provide copies to
2 the Court and to the parties.

3 JUDGE CHACHKIN: You know, what fascinates me about
4 all this is the fact that Mr. Hoover has not been called. I
5 don't know if he's even been deposed. Is he still alive? And
6 if not, since he seems to be such a central player in all this
7 and he lives in Bethesda, why hasn't he been called? He's the
8 -- that's the one to testify about whether he sent an invoice
9 to Mr. Berfield, a copy of the invoice, whether he discussed
10 this specific invoice with Mr. Berfield, also, what he meant
11 in his invoice when he said what he said there.

12 I mean, why hasn't Mr. -- all the other witnesses --
13 you've found witnesses all over the world. He's the most
14 important witness, it seems to me, dealing with engineering
15 fees. Why is he being excluded? Is there some reason?

16 MR. HOLT: I'm not sure if there's a specific
17 reason, Your Honor. I believe that the invoice on its face --

18 JUDGE CHACHKIN: The invoice on its face says
19 nothing unless -- I mean, why -- if we have a witness who's
20 readily available, who can tell us what he meant by the
21 invoice, who can tell us about any conversations he had, could
22 tell us about what work he did in connection with any
23 particular permit. Why are we playing games with trying to
24 base it on what it says on the invoice and why -- I don't
25 understand it.

1 I mean, in this case, I think the parties have gone
2 through extreme lengths, and I say that conservatively, to
3 depose anyone imaginable who might have the least bit of
4 information and here we've skirted all around Mr. Hoover and
5 he's available and nobody has deposed him and nobody has
6 called him. I don't understand that frankly. I'm supposed to
7 guess what Mr. Hoover meant and about all these things,
8 testimony about Mr. Hoover, when nobody called up Mr. Hoover
9 to find him. Can anybody tell me why Mr. Hoover was not
10 called? Is there some reason?

11 MR. HOLT: Your Honor, Trinity believes the document
12 speaks for itself and --

13 JUDGE CHACKIN: The document doesn't speak for
14 itself. We don't know what Mr. Hoover meant by that as
15 practice. You can't draw conclusions from that. And if you
16 want to know about whether Mr. Hoover gave the -- what he said
17 to Mr. Berfield -- I mean, why wasn't -- isn't Mr. Hoover the
18 best witness, instead of asking this witness what Mr. Berfield
19 might've told him what he had from Mr. Hoover?

20 MR. HOLT: Your Honor, we believe the fact that Mr.
21 Berfield told David Gardner the day before his deposition that
22 he referred to the March 31st invoice when he prepared his
23 1991 letter establishes the facts that we want to establish.

24 MR. BECHTEL: Well, but he didn't -- he didn't
25 testify to that. He denied that in his testimony and this

1 witness' testimony is unclear.

2 MR. HOLT: Well, that's something that can be argued
3 in findings, Your Honor.

4 JUDGE CHACHKIN: Well, is there some reason why Mr.
5 Hoover wasn't called? Why didn't the Bureau? I mean, he is
6 in Bethesda. He's not far off somewhere. I assume the Bureau
7 can afford a phone call to Bethesda. It really escapes me why
8 Mr. Hoover, who -- and there's been more testimony about the
9 engineering than just about anything else, engineering and
10 legal, and we've had piles and piles of depositions and
11 documents and the witness is a local telephone call and
12 nobody's called him.

13 I find that extraordinary and I don't -- I'm not
14 going to draw any conclusions about what that document means.
15 I can't draw any conclusions from what Mr. Hoover meant. He
16 may have this practice of saying each because he did five
17 documents. I don't know which one he did more work for, which
18 one -- I mean, there's been testimony from Mr. Berfield that
19 there was a lot more work involved in one -- in the one than
20 there was in all the others, a lot more FAA work than all the
21 rest. I don't know.

22 What am I supposed to do with that when it's so easy
23 to have Mr. Hoover? So I -- it seems to me that if we're
24 going to place any reliance on Mr. Hoover -- I hate to extend
25 this extended hearing, but why don't we have Mr. Hoover here

1 to give us some answers to questions apparently which concern
2 you, Mr. Holt?

3 MR. HOLT: Your Honor, I'm not certain that there's
4 ever been any testimony that Mr. Hoover was involved in the
5 preparation of the certification or any allocation process and
6 --

7 JUDGE CHACHKIN: That may be so, but you questioned
8 whether -- what he meant in the document when he -- whether
9 this means anything. You say that's one of the, it seems to
10 me, one of your major points, that the document speaks for
11 itself. How can the document speak for itself? I don't know
12 what Mr. Hoover's practice is, whether he even considered when
13 he wrote the document that he was doing similar work for each
14 application in his judgement or whether this was his practice
15 since he had five applications, so he said -- I don't know
16 what he meant.

17 MR. HOLT: Your Honor, I think also the burden --

18 JUDGE CHACHKIN: And I don't know what he -- I don't
19 know what conversations, if any, he had with Mr. Berfield.

20 MR. HOLT: The burdens of proof in proceeding in
21 this issue, Your Honor, were assigned to Glendale and if he
22 had such information --

23 JUDGE CHACHKIN: Well, they made their case. They
24 said that there was nothing wrong with it. But you've gone
25 through an awful length -- awful trouble to bring out a lot of

1 witnesses, to insist on a lot of witnesses, and it would seem
2 to me that if you wanted to find out what was happening, you
3 would've called Mr. Hoover. You deposed everybody else
4 imaginable. He's one of the central people. Mr. Bechtel,
5 what are your views? Do we need Mr. Hoover?

6 MR. BECHTEL: My views are that the time has passed
7 for the opposing parties to try to bring him in and this
8 point, we've made our case and at this point, I don't see the
9 need to call him and delay this thing further. Perhaps if we
10 were back at the beginning of discovery, it would be something
11 else. But we've put our proofs in. It's been a long and
12 expensive effort and I think we ought to close it out.

13 JUDGE CHACHKIN: What's the Bureau's view?

14 MR. SCHONMAN: I would have to concur with Mr.
15 Bechtel. I don't see any need to call Mr. Hoover. I think
16 the record is -- will reflect what it states and we'll have to
17 draw conclusions from the record evidence, documents and
18 testimony.

19 JUDGE CHACHKIN: Well, I'll tell you right now, I'm
20 not going to draw any conclusion from Mr. Hoover's invoice as
21 to that in any way implies that he did more or less work on
22 behalf of one application as opposed to another application.
23 I can't draw any conclusion from that.

24 MR. SCHONMAN: Your Honor, might I speak to that?

25 JUDGE CHACHKIN: Yes.

1 MR. SCHONMAN: With all due respect, I think the
2 amount of work that Mr. Hoover may or may not have performed
3 is really not an issue. It's the amount of expenses that
4 Raystay incurred with respect to the Red Lion C.P. Now, if
5 that receipt reflects that Mr. Hoover charged Raystay \$1,500
6 less some discount for the Red Lion C.P. and a certain amount
7 also for FAA work, whatever amount is reflected on the bill,
8 that represents expenses that Raystay incurred specifically
9 for the Red Lion C.P.

10 JUDGE CHACHKIN: I don't agree with you frankly. I
11 think -- I think in determining whether it was reasonable of
12 Mr. Berfield to allocate it in the manner in which he did,
13 it's necessary to know exactly what work Mr. Hoover did and
14 not the fact that Mr. Hoover might've decided on his own to --
15 the way he broke it down, but it seems to me the substance is
16 important.

17 If, in fact, the work that was entailed by Mr.
18 Hoover -- and although Mr. Hoover may, as a shorthand,
19 might've put five of them -- the five applications, this is
20 the total figure, what in retrospect, if in fact the work that
21 Mr. Hoover performed was -- he expended much more time and he
22 could reflect it by the amount of time he expended for one
23 application as opposed to the other, then it seems to me
24 that's what governs whether it was reasonable to include Mr.
25 Hoover's fee, not the fact that he, for shorthand, for his

1 | bookkeeping purposes, he might've put down five applications,
2 | this is the figure.

3 | We're dealing with what was reasonable and the
4 | reasonableness, it seems to me, is based on what work was
5 | performed for each application, just as a lawyer. If a lawyer
6 | might've said, for instance -- done the exact same allocation,
7 | but in fact, if the lawyer did most of the work and billed
8 | most of the work, his hours, on behalf of one application as
9 | opposed to the other application, notwithstanding his
10 | invoice, that would govern what's reasonable.

11 | That's why I say why I believe that Mr. Hoover's
12 | important. If you want to make the argument -- because that's
13 | what's important, not what the invoice says, but what Mr.
14 | Hoover actually did and I can't determine what Mr. Hoover
15 | actually did on the basis of the invoice. I could only
16 | determine based on what Mr. Berfield has testified. That's
17 | the only evidence in this record so far as to why he believed
18 | that it was proper to allocate it in the manner in which he
19 | did.

20 | That's my view and I'm telling you right now, Mr.
21 | Holt, that's my view. I don't agree with you that the invoice
22 | by itself determines whether it was reasonable or not to
23 | allocate in the manner in which he did.

24 | MR. HOLT: Yes, Your Honor.

25 | JUDGE CHACHKIN: All right. So the parties have had

1 an opportunity to call Mr. Hoover and they've decided not to,
2 so -- you're excused, by the way, sir. I'm sorry to keep you
3 here.

4 WITNESS: This has been very interesting.

5 JUDGE CHACHKIN: I'm telling you, that's my view.
6 We're dealing with reasonableness and the record will reflect
7 what it reflects, that if the parties don't feel that Mr.
8 Hoover is necessary, then the record will be what it is.

9 MR. BECHTEL: That concludes our presentation

10 JUDGE CHACHKIN: All right. Then I'm prepared to
11 close the record, except you have some pages you wanted to --

12 MR. HOLT: Yes, Your Honor.

13 JUDGE CHACHKIN: I understand there's a number of
14 other exhibits of yours which have been identified and not
15 been offered -- before I close the record.

16 MR. HOLT: Thank you, Your Honor.

17 JUDGE CHACHKIN: What do you want to do about those
18 documents?

19 MR. HOLT: Your Honor, I believe that we've had
20 everything -- I moved everything into evidence that we intend
21 to move.

22 JUDGE CHACHKIN: So as far as all the other
23 documents, you're not offering them. Is that right?

24 MR. SHOOK: Your Honor, could we clarify for record
25 keeping purposes which of the Trinity documents are --

CERTIFICATE OF SERVICE

I certify that copies of the foregoing REPLY TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (RED LION ASSIGNMENT APPLICATION ISSUE) are served by hand delivery (denoted by *) or first class United States mail, postage prepaid, this 7th day of October 1994 to the following:

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