

*CONFIDENTIAL*

# FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of: )  
MARIO LOREDO )  
Order to Show Cause Why the )  
License for Station KZQD (FM) )  
in Liberal, Kansas Should )  
Not Be Revoked )

MM Docket No.: 96-172

FEDERAL COMMUNICATIONS  
COMMISSION  
WASHINGTON, D.C. 20541

NOV 8 1996

96-172

*Thomas C. Brantley*

OCT 23 9 47 AM '96

FCC-0ALJ RCD

C O R R E C T E D C O P Y

Volume: 1  
Pages: 1 through 13  
Place: Washington, D.C.  
Date: October 9, 1996

## HERITAGE REPORTING CORPORATION

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

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Wednesday,  
October 9, 1996

U.S. Federal Communications  
Commission  
2000 L Street, N.W.  
Courtroom No. 3  
Washington, D.C. 20554

The parties met, pursuant to the notice of the  
Judge, at 9:38 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of the Mass Media Bureau:

ROBERT ZAUNER, ESQ.  
JACKIE ELLINGTON, ESQ.  
Federal Communications Commission  
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On Behalf of Mario Loreda:

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I N D E X

Pre-Hearing Conference

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E X H I B I T S

None.

Hearing Began: 9:38 a.m.

Hearing Ended: 9:55 a.m.

P R O C E E D I N G S

(9:38 a.m.)

JUDGE SIPPEL: Good morning. We're on the record. We're proceeding in this show cause order case. I am going to ask at this time -- this is for Station KZQD (FM) in Liberal, Kansas. I want to ask counsel to please note their appearances at this time. And for the Bureau?

MR. ZAUNER: For the Bureau, it's Robert A. Zauner, and Jackie Ellington.

JUDGE SIPPEL: Good morning.

MR. ZAUNER: Good morning.

MS. ELLINGTON: Good morning.

JUDGE SIPPEL: And on behalf of Mr. Loreda?

MR. KITTNER: Yes. I'm Gerald Stevens-Kittner, with Arter & Hadden, and I was expecting an associate from that firm, Jodi Krame, to be with me. She may yet come. She will be assisting me in the case.

JUDGE SIPPEL: All right. That's fine. You are all ready to proceed though, I take it?

MR. KITTNER: Yes, we are.

JUDGE SIPPEL: All right. Well, I received a copy of your status reports yesterday, and it looks like there has been a considerable amount of work done up front. Are there settlement discussions going on, or possibilities at this stage?

1 MR. ZAUNER: No, Your Honor, there is not. This  
2 is a misrepresentation issue, and the Bureau's position is  
3 that we are going to try this case.

4 JUDGE SIPPEL: All right. Which you are entitled  
5 to do, and the show cause order did have some -- did take  
6 note of the fact that Mr. Loredo had voluntarily revealed  
7 the information.

8 MR. ZAUNER: Yes, Your Honor.

9 JUDGE SIPPEL: And I took that as a lead to maybe  
10 there might be some other way of resolving this. Yes, sir?

11 MR. KITNER: Let me just speak. We are prepared  
12 to proceed through a hearing, and have Mr. Loredo testify.  
13 He came to Washington, D.C., and spent some time with Mr.  
14 Zauner and Ms. Ellington.

15 We obviously would be interested in some sort of  
16 accelerated resolution of the case. Mr. Loredo -- from my  
17 perspective, I think Mr. Loredo has been dealt a bad hand  
18 here by the FM Branch. He made a mistake. I don't see  
19 anything in the FM Branch's order that suggests a motive.

20 And to find misrepresentation, one has to find a  
21 motive. You know, Mr. Loredo made a mistake. As I  
22 understood, Mr. Zauner, your position, it was that you were  
23 reluctant to talk about an accelerated resolution because  
24 you thought that we had an obligation to bring Mr. Loredo  
25 before Judge Sippel, and let Judge Sippel decide about his

1 candor and his credibility.

2 If Judge Sippel was open to a possible settlement,  
3 would you then consider it?

4 MR. ZAUNER: I don't believe --

5 JUDGE SIPPEL: You are putting the cart before --  
6 if you want to talk about settlement outside the courtroom,  
7 that's fine. I'm just simply trying to see what the status  
8 of the case is so that I can set some dates. I don't think  
9 that that is an appropriate thing to be discussing at this  
10 stage, and using me as a hypothetical.

11 Let's move on to some scheduling, and that's what  
12 we are really here for. I agree with what you said, Mr.  
13 Kittner, that -- I mean, I think I understood what you are  
14 saying, is that you would like a quick as possible  
15 disposition of the case.

16 And I can move the hearing date up by a month  
17 easily, but it sounds to me like that you have done a real  
18 fine job of getting the client in here voluntarily, and  
19 talking to the Bureau Counsel. There is no deposition  
20 needed. Documents are all taken care of, and we can get  
21 this case going.

22 MR. ZAUNER: In essence, Your Honor, the discovery  
23 has been completed.

24 JUDGE SIPPEL: Yes, I see that.

25 MR. ZAUNER: And well ahead of your December 6th

1 date.

2 JUDGE SIPPEL: I see that. I see that. Now, what  
3 I have done is I have marked out dates that would move  
4 everything up a month. I mean, I could do it even, I guess,  
5 earlier than that. In other words, when I say that, I've  
6 got a series of dates here on the prehearing order.

7 And I just jotted through my calendar, and I could  
8 start this hearing on December 16th instead of January 15th,  
9 but I could start even earlier than that.

10 MR. KITTNER: We are interested in going forward  
11 as soon as possible. He is anxious to get this behind him  
12 for a lot of different reasons, but he certainly wants to  
13 get the station up and operating, too.

14 JUDGE SIPPEL: Well, we could do it one of two  
15 ways. I will go off the record briefly here, and you can  
16 work out some dates, or you all can talk about it, and then  
17 get back to me.

18 MR. ZAUNER: If we could just go off the record  
19 now and see if we can agree on dates.

20 JUDGE SIPPEL: All right. Let's see what we can  
21 do. We are off the record.

22 (Discussion off the record.)

23 JUDGE SIPPEL: All right. We are back on the  
24 record. Let the record reflect that in an off-the-record  
25 discussion counsel and myself have agreed to the following

1 new dates in this case. These are procedural dates that  
2 will be firm as of this point, and I will get a written  
3 order out today confirming this.

4 Starting with November the 1st, Friday, November  
5 the 1st, will be an exchange of the direct cases. November  
6 the 5th will be a witness notification. At this point we  
7 only anticipate -- well, let me just make these comments on  
8 what is going to happen.

9 On November the 5th there will be witness  
10 notification. November the 7th, any objection to the  
11 witnesses so identified on the basis of relevancy; and the  
12 last date is November the 14th, which is a Thursday, and  
13 that will be the date for the hearing.

14 We can start that hearing at -- well, why don't we  
15 start it at 9:30 in the morning, with the expectation that  
16 we will certainly finish that day. But I will reserve the  
17 courtroom on the 15th as well just in case.

18 Now, that's all that I have. That's all that we  
19 definitively agreed to off the record. The question of the  
20 witnesses came up, and I want to be back on the record for  
21 that. Certainly Mr. Loreda is going to be a witness. Mr.  
22 Loreda's testimony is going to be put in written form.

23 He will be offered for purposes of cross-  
24 examination, and Mr. Zauner, and/or Ms. Ellington, there  
25 will be one of you that will have to be selected to do the

1 cross-examination, and I may ask whatever questions I think  
2 are appropriate.

3 Now, that leaves open to what your comment was,  
4 Mr. Zauner. You have some insight with respect to Mr.  
5 Kittner's prior involvement in this case. Not in the  
6 litigation phase of it, but in the application phase. And  
7 would you just articulate what you said for the record now?

8 MR. ZAUNER: Sure. Mr. Kittner had represented  
9 the Assignor in the assignment of the construction permit to  
10 Mario Loreda, and as part of his duties in that  
11 representation, he prepared not only the Assignor's portion,  
12 but he also prepared the Assignee's portion of the  
13 assignment application.

14 As such, Mr. Kittner, I believe, will be a  
15 necessary witness in this proceeding. After speaking with  
16 Mr. Kittner, and Mr. Loreda, the Bureau fully expects that  
17 Mr. Kittner will be submitting a statement, and that the  
18 Bureau will not be requesting him for cross-examination on  
19 that statement.

20 JUDGE SIPPEL: Well, you can't really commit to  
21 that, can you?

22 MR. ZAUNER: I can't commit to that until I see  
23 the statement, of course. But from what I know of the case,  
24 and from what Mr. Kittner has told us, I can say at this  
25 point that that appears to be the case.

1 JUDGE SIPPEL: All right. Well, let me ask Mr.  
2 Kittner then -- well, first of all, I understand -- and  
3 again you indicated this in the off-the-record discussion  
4 that you basically agreed to this ground rule.

5 MR. KITTNER: That's correct.

6 JUDGE SIPPEL: And I certainly don't want to get  
7 into an ethical consideration question unless it is going to  
8 create a problem. And thus far I don't see that at all.  
9 But it seems that if I am understanding this correctly, it's  
10 that you were advising Mr. Loredo with respect to the  
11 application that he filed, which is the subject of this  
12 misrepresentation claim?

13 MR. KITTNER: I was the seller's counsel.

14 JUDGE SIPPEL: Yes.

15 MR. KITTNER: And Mr. Loredo was not represented  
16 by counsel. It was a \$4,000 acquisition transaction. The  
17 seller and Mr. Loredo talked to each other, and it was done  
18 on a fairly casual basis, and both the seller and the buyer  
19 agreed that I would prepare the assignment application,  
20 fully expecting it to be straightforward.

21 And I went ahead and prepared both the assignor's  
22 and the assignee's portions of the application, and then  
23 sent the complete application to Mr. Loredo, with a  
24 transmittal letter that I have shared with the Bureau,  
25 presenting the Assignee's portion of the application to Mr.

1 Loredo, and telling him to review it carefully, and if it is  
2 accurate and complete to sign it, and send it back, which is  
3 what he did. And that's going to essentially be my  
4 testimony.

5 JUDGE SIPPEL: Okay. Did you ask him or did you  
6 give him any advice with respect to Section 310, or pursue  
7 that avenue with him at all?

8 MR. KITTNER: I didn't at all.

9 JUDGE SIPPEL: You just took the information that  
10 he gave you, and put it on the form, and that was it?

11 MR. KITTNER: I essentially took the information  
12 that the seller gave me.

13 JUDGE SIPPEL: I see. But what about that portion  
14 --

15 MR. KITTNER: That was never an issue that was  
16 discussed by anybody.

17 JUDGE SIPPEL: But who gave you the information on  
18 that?

19 MR. KITTNER: I assumed incorrectly that he was a  
20 U.S. Citizen, and the application reflected those answers.

21 JUDGE SIPPEL: And again this is just in the  
22 nature of a voir dire, but I take it that you did not  
23 confirm with Mr. Loredo -- you didn't call him up or talk to  
24 him, and say 'by the way, I completed this form. Are all  
25 these answers accurate?' You didn't conduct that procedure?

1 MR. KITTNER: I don't recall doing that.

2 JUDGE SIPPEL: Okay. Well, all right. We will  
3 just take it as it comes. I may feel at some point,  
4 depending on what Mr. Loredó's testimony is, I may feel it  
5 necessary to swear you in and ask you some questions.

6 MR. KITTNER: That's fine.

7 JUDGE SIPPEL: Now, with that --

8 MR. ZAUNER: That would not present a problem for  
9 the Bureau, Your Honor, because I think that where the real  
10 concern is in a lawyer testifying in a proceeding where he  
11 is also the attorney, is that it might confuse a jury.

12 Here we don't have a jury. We have an experienced  
13 jurist, yourself, and I have no concern that you could not  
14 distinguish between counsel's role as a witness, and  
15 counsel's role as counsel in a proceeding. So, that would  
16 not be a problem for the Bureau.

17 JUDGE SIPPEL: Well, as I say, as long as it is  
18 not a problem for the Bureau, then I don't see any point in  
19 pursuing it further at this time. I am satisfied that with  
20 this voir dire this morning that this case can go forward as  
21 you have outlined it, and that there is not going to be any  
22 prejudice to the case.

23 But again I do want to -- you know, everything is  
24 on the final -- the final answer to all these questions is  
25 on hold until the day of the hearing, and we start getting

1 into the live testimony.

2 And, Ms. Jodi Krame, you will be assisting in that  
3 case, in that litigation as well, at the hearing?

4 MS. KRAME: Right.

5 JUDGE SIPPEL: All right. Okay. Since Mr.  
6 Kittner is going to be a witness, I just want to be sure  
7 that you are prepared to pick up, at least at that point.

8 MS. KRAME: Right.

9 JUDGE SIPPEL: And be able to represent the  
10 client's interests, because at that point Mr. Kittner will  
11 be a witness, and not acting as counsel. All right. I  
12 don't have anything further.

13 You certainly are free to discuss -- I am not  
14 pushing settlement in this case at all. I am simply saying  
15 that if for some reason or other a settlement is seen to be  
16 a way of -- you think it might resolve it, I am open to  
17 listening to that. But I agree with what Mr. Zauner's  
18 opening statement in this is, is that this is a  
19 misrepresentation case.

20 And it is a very serious issue with the  
21 Commission, and I know that Mr. Kittner understands that,  
22 too. And clearly this is a classic case for credibility and  
23 demeanor in the evidence. And I am just going to assume  
24 that this is a firm hearing. That's all that I have. We  
25 are in recess then until the -- what did I say that date was

1 -- the 14th of November.

2 MR. KITTNER: Thank you.

3 MR. ZAUNER: Thank you, Your Honor.

4 (Whereupon, at approximately 9:55 a.m., the  
5 hearing was concluded.)

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**REPORTER'S CERTIFICATE**

**FCC DOCKET NO.:** 96-172  
**CASE TITLE:** MARIO LOREDO  
**HEARING DATE:** October 9, 1996  
**LOCATION:** Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:   10/09/96   Paul Intravia  
Official Reporter  
Heritage Reporting Corporation  
1220 "L" Street, N.W.  
Washington, D.C. 20005  
Paul Intravia

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date:   10/17/96   Paul Intravia  
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**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date:   10/21/96   Don Jennings  
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