

1           And we haven't made a decision on that. We're  
2 still evaluating. And if we do it, we'll do it soon. I  
3 just didn't want to have to file something four days from  
4 now, and Your Honor asked why we didn't raise the issue. If  
5 we do file anything, and again, we're still evaluating it,  
6 so we haven't -- we're not really prepared to make a  
7 presentation at this point because we're evaluating it  
8 ourselves, it will be shortly. And I don't believe it will  
9 impact on the scheduling at all.

10           THE COURT: Okay. Now, let me see if I've covered  
11 everything.

12           I just want to state this so that it's in the  
13 transcript. We've, obviously, hinted at it. I mean, and  
14 basically, if all the parties agree that there's no need to  
15 cross-examine a particular witness, then, of course, you  
16 don't have to bring that witness. Like the documents that  
17 there really isn't any controversy over, if everyone wants  
18 to stipulate that they can be received into evidence without  
19 a sponsoring witness, that would certainly be acceptable.

20           There's no -- again, there's no sense in putting a  
21 formal procedure in place if it's not necessary. It's only  
22 if it's necessary that we want to follow the formalities.

23           Now, there's one last thing that I want to say,  
24 and I really regret having to say this. And that concerns  
25 the tenor and tone of many of the pleadings that I've been

1 getting lately. And I find that they're containing more and  
2 more personal attacks on opposing counsel and opposing  
3 counsel's motives, opposing counsel's trial tactics,  
4 opposing counsel's good faith, et cetera, et cetera.

5 And I don't believe that attacks of that nature  
6 have any bearing on the questions and I have to reach -- the  
7 questions I have to decide, and they don't advance anybody's  
8 cause. I'm certainly not going to rule one way or another  
9 because counsel's dumped all over opposing counsel. And I  
10 would urge you to eliminate that stuff from your pleadings.

11  
12 Just "these are the facts, this is the legal  
13 argument, "this is what I want." And leave all that stuff  
14 out. I find that very distasteful. And in the future if I  
15 find that pleadings filed that contain material of that  
16 nature, I may just dismiss the pleadings, and you can refile  
17 them without that stuff in it.

18 There is Commission precedent saying that stuff  
19 like that doesn't belong in Commission filings. And if you  
20 want the precedent, I'll give it to you. One case is  
21 Valparaiso Broadcasting Company, 25 RR 530 at page 531. And  
22 that was a 1963 Review Board case. So, I'm reaching way  
23 back for that one.

24 MR. CARROCCIO: Your Honor, I'm sorry, I didn't  
25 get the volume citation.

1 THE COURT: Twenty-five RR.

2 MR. CARROCCIO: Thank you.

3 THE COURT: First series, not second series. And  
4 then there is City of New York Municipal Broadcasting  
5 System, 39 RR 2d 102. And that's a 1976 case. Basically,  
6 I've had my fill of stuff like that, and I just don't expect  
7 it to appear anymore. Whatever you want to write in letters  
8 between yourselves, that's fine, but I don't want that stuff  
9 in pleadings addressed to me.

10 Any questions? Anything further we have to talk  
11 about? Okay, then --

12 MR. CARROCCIO: Your Honor --

13 THE COURT: Yes.

14 MR. CARROCCIO: -- I understood you to say that we  
15 are going to have sort of a reverse witness notification.  
16 Is that -- am I mischaracterizing what you said?

17 THE COURT: Well, basically, we're assuming that  
18 everyone that's sponsoring a witness will be cross-examined  
19 unless there's agreement that they're not going to be cross-  
20 examined.

21 And I've done that for two reasons. Number one, I  
22 think everyone will be cross-examined, number one. And  
23 number two, you save a week or two by doing it that way.  
24 And I want to give enough time so that everyone has adequate  
25 time to prepare their exhibits.

1 I mean, if you want to make the exhibit exchange  
2 instead of August 11 whatever the next Tuesday is --  
3 probably, August 18, I'd have no problems with that, but I  
4 don't know if that would give time to prepare. I mean, I'd  
5 rather it be two weeks, rather than the one.

6 MR. CARROCCIO: Your Honor, I would not want to  
7 move that back. And what I would -- what I just was  
8 wondering if on the 11th, a party submits a direct case  
9 indicating that either testimony -- an affidavit from a  
10 particular individual or indicates that a particular  
11 document is sponsored -- will be sponsored by a particular  
12 individual, the cited individual will be expected to be here  
13 to be cross-examined unless all the parties --

14 THE COURT: Unless nobody wants him --

15 MR. CARROCCIO: -- consent, indicate that they  
16 don't want that person.

17 THE COURT: Yes. Now, maybe what you ought to do  
18 is schedule a conference call around the 14th or the 17th or  
19 the 18th and talk about that, and say, "Okay, we've got  
20 these direct cases. We've got these witnesses. Does  
21 anybody want a, b, c, d?" I'm not going to do it under my  
22 authority. I'm not going to require formal notification of  
23 witnesses desired for cross. I'd rather it be done  
24 informally. And if everyone agrees we don't need a witness,  
25 then you can say, "Okay, witness. You're off the hook."

1 But then I don't expect there to be any objection to the  
2 receipt of that exhibit into evidence.

3 MR. CARROCCIO: Your Honor, any witness that is  
4 not within the control of a party --

5 THE COURT: Be subpoenaed.

6 MR. CARROCCIO: And a party may request subpoenas  
7 immediately upon submission of their direct case?

8 THE COURT: Or before. I mean, whenever you get  
9 the subpoenas -- I mean, whenever you get the subpoenas  
10 ready, haul them over, I'll sign them.

11 MR. GORDIN: Then, that subpoena should just be  
12 for August 25 and continuing thereafter since we don't know  
13 the --

14 THE COURT: Yes, I think that would be better.

15 MR. GORDIN: And then we can work it out.

16 THE COURT: Right. And then you work it out with  
17 counsel. I mean, if counsel wants to get together -- I mean  
18 -- okay. Let me do this, too. If August 11 you get your  
19 direct cases, and you know who the witnesses are going to  
20 be, and this is the tentative order of the witnesses,  
21 counsel will all want to meet informally and say, "Okay" --  
22 and this is after -- perhaps, after they've spoken to the  
23 witnesses, too, and agree on a schedule.

24 And if you only want to agree on a schedule like  
25 three days at a time, and we say, "Okay. Let's see how far

1 we get the first three days." And then at the end of the  
2 third day or the middle of the second day, we say, "Okay,  
3 let's plan for the next three days." I think I would much  
4 prefer that. But what I'm trying to do is set up something  
5 where if there's a complete breakdown in communications  
6 among everybody, then this particular procedure will be set.

7 If you all want to modify it with all your  
8 consent, that's okay with me. The only thing that I would  
9 insist on would be the August 25 hearing. If you all want  
10 to consent to a different exhibit exchange date, that's okay  
11 with me. That doesn't impact me. But you know -- if you  
12 understand what I'm saying.

13 MS. LANCASTER: I understand what you're saying,  
14 Your Honor. I tend to think that they're going to end up  
15 being problems getting everyone to agree to excuse  
16 witnesses. There hasn't been that kind of cooperation so  
17 far that I've seen.

18 But I have still one concern about Reneat  
19 Milstein. I mean, we can subpoena her, and I can put August  
20 25 down and totally alienate my witness who has already told  
21 me she's going to be out of the country on August 25, and I  
22 don't --

23 THE COURT: Well, you just blame it on me. I  
24 would urge everyone to cooperate with scheduling Ms.  
25 Milstein. When is she supposed to be back?

1 MS. LANCASTER: She said she'd back the first week  
2 of September, the next week.

3 THE COURT: Well, then we'll do her the next week.  
4 I mean, what choice do we have? I, frankly, have set aside  
5 that last week in August and first week in September. The  
6 only thing I have is I have an ophthalmologist appointment  
7 on the afternoon of the fourth. And that's going to take  
8 probably an hour and a half, two hours, I can be back with  
9 hugely dilated eyes.

10 MR. CARROCCIO: Do you need a note from us to  
11 excuse you, Your Honor?

12 THE COURT: Yes, that would be nice.

13 MS. LANCASTER: May I ask one other question just  
14 to clarify something? When we brought up having the  
15 computer guys deposition after Ms. Power returns, I believe  
16 Your Honor said everyone's to kind of cooperate on that, but  
17 I haven't gotten a feel yet as to whether or not Mr. Lyon  
18 thinks that he will be able to make that week.

19 MR. CARROCCIO: Your Honor, right now I will  
20 consent to having those depositions taken on the 5th, the  
21 6th or the 7th of August.

22 THE COURT: Let me make a suggestion. We had an  
23 admissions session scheduled for the 6th, so all of you  
24 should have had the 6th blocked out for that. And I would  
25 urge that since you just found out today that the admission

1 session was canceled, before you schedule anything else for  
2 the 6th, you stick the depositions of the computer guys in  
3 on the 6th.

4 MR. LYON: Your Honor, I'm hopeful that with your  
5 note, I will be able to avoid jury service. So, I think the  
6 6th probably will work.

7 THE COURT: Is it in D.C.?

8 MR. LYON: Yes.

9 THE COURT: I thought you get one automatic  
10 excuse.

11 MR. LYON: Already taken it in order to go to San  
12 Francisco for the previous depositions. But I've been there  
13 several times, and I've never been picked. So, I'm hopeful  
14 that --

15 THE COURT: So, it's a certain amount of judgment  
16 on the people doing the selection.

17 MR. LYON: That's right. I'd probably find them  
18 guilty, Your Honor.

19 MR. CARROCCIO: I'd voir dire him out real quick,  
20 Your Honor.

21 MR. LYON: So, the 6th will be fine. Off the  
22 record, I would hope we'd be able to begin as early as  
23 possible during the day because I think my examination of  
24 Ross will go quite some time.

25 THE COURT: Anything further?

1 MS. LANCASTER: Your Honor, that does mean that  
2 the exhibits that have to do with those depositions and such  
3 are going to be due, and we have to get the transcripts  
4 back.

5 THE COURT: If you want to all agree that the  
6 computer guys' exhibits can be exchanged later, that's fine  
7 with me.

8 MS. LANCASTER: Perhaps that might be a good way  
9 to work it.

10 MR. LYON: No. I'm already concerned about how  
11 these dates are dropping back.

12 THE COURT: About what?

13 MR. LYON: About how these dates are dropping  
14 back.

15 THE COURT: Well, then I guess we might not have  
16 agreement. In which case, you might be able to -- maybe Ms.  
17 Lancaster can do those depositions.

18 MS. POWER: Oh, no, no. We'll do the depositions.  
19 I'm just concerned about the date for the -- well, okay. I  
20 see what you're saying. I'm sorry.

21 THE COURT: No. Your problem was that if the  
22 depositions are held on the 6th and the exchange is on the  
23 11th --

24 MS. POWER: Right --

25 THE COURT: -- that there won't be an adequate

1 time to get the transcripts back and do exhibits.

2 MS. POWER: That's correct.

3 THE COURT: Then maybe the depositions will have  
4 to be taken earlier. That's the alternative.

5 MR. CARROCCIO: Your Honor, I believe that if one  
6 party orders expedited transcripts, all parties would get  
7 the benefit of that.

8 THE COURT: I mean, everyone was ready to go  
9 during the week of the 27th. So --

10 MS. POWER: Right.

11 THE COURT: I have to remember that, too. If you  
12 all want to agree on a different date, that's fine with me.

13 MR. GORDIN: I think we should try to discuss  
14 this. There's also an open issue because we don't have all  
15 the tapes yet, and rather than trying to burden Your Honor  
16 with something, hopefully the parties should be able to work  
17 out themselves regarding when the expert witness reports  
18 should be exchanged given when the deposition date might be.  
19 We should probably try to work all this out in some logical  
20 fashion.

21 THE COURT: Okay. What --

22 MR. LYON: Excuse me. Can you clarify what tapes  
23 you have?

24 MR. GORDIN: I believe there's one -- I don't have  
25 in front of me -- that Mr. Pizalia produced recently that we

1 turned -- that we got briefly and turned back. We did not  
2 have time to make any copies because it was a lengthy piece  
3 of tape that we just got --

4 MR. LYON: Is that the second May 6th or whatever  
5 that funky tape drive was --

6 MR. GORDIN: I don't have it in front of me. And  
7 I believe we haven't gotten that yet. So, I'm saying we  
8 need --

9 MR. LYON: I'll give them back to you right now.  
10 We can't read them.

11 THE COURT: Okay. We don't need to do this on the  
12 record.

13 MR. GORDIN: No, that was my point. I think we  
14 can work all this out.

15 THE COURT: Okay. So, are we finished for today?  
16 No response, so I assume we're finished for today. If we  
17 need another conference, let me know. And if I can't talk  
18 you out of it, we'll have another conference.

19 (Whereupon, at 3:55 p.m., the hearing was  
20 concluded.)

21  
22  
23  
24  
25

**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 97-199  
CASE TITLE: IN RE: WESTEL SAMOA  
HEARING DATE: July 7, 1998  
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: 7-7-98 Scott D. Britt  
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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: 7-7-98 Nancy McHugh  
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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.

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