

1 MR. ENGEL: These are to the most recent request
2 for admissions. I haven't read this, but I can safely
3 assume that.

4 MR. COUZENS: May I be heard on that?

5 JUDGE SIPPEL: In a minute. You're certainly
6 going to have plenty of time. I'm trying to just figure
7 this out first from the Bureau's side. You're going to get
8 a lot of inferences out of your requests, unanswered
9 requests for admissions, your defaulted requests for
10 admissions. But it's the weight and the significance of
11 those admissions that I'm going to assign it. I don't want
12 to decide a case based on that kind of a record until,
13 again, at least I want to find out what the heck happened
14 at the time the world was born, at the time of creation, at
15 the time these -- what was the status of the people, what
16 was their state of mind, what were they told by Zawila?

17 Now, that might be an expensive operation to get
18 at. I don't know how much money you want to invest in
19 this. How much money are you willing to invest in this?

20 MR. COUZENS: If there's a deposition of Mr.
21 Zawila, I'll be happy to provide them with the names of
22 certified shorthand reporters in Southern California and I
23 will be happy to be there. I have a lot of questions for
24 Mr. Zawila.

25 JUDGE SIPPEL: All right. Well, then maybe you

1 can jointly -- I don't know how you do this. I want Zawila
2 to be subpoenaed by the government. And if that fails,
3 your Honor, then we go to plan B, whatever that is. This
4 is not going to be beating a dead horse item for item, but,
5 in my judgment, there just has not been enough done. I
6 mean, I know damn well if this were a merger case, believe
7 me, they'd get Zawila on the record. They care enough
8 about some crummy company, and nobody seems to care about
9 this facility, this public facility, enough to take a
10 deposition.

11 MS. KANE: Your Honor, with all due respect,
12 we've been waiting for written responses to
13 interrogatories, to requests for admissions, to documents.
14 Before we would invest in a cost to go and fly and take a
15 deposition, we should have been entitled to at least that
16 discovery, much of which we've been waiting for since July.
17 Your Honor is ruling on our motions to compel. We have
18 taken all appropriate steps to obtain that information
19 before investing in the cost for a deposition. We are
20 happy to take a deposition. However, your Honor, based on
21 the fact that for months now you've had both of these
22 parties on the phone at the same time. All we get are
23 inconsistent responses, and we've asked for documents
24 because documents are what is necessary to establish the
25 existence of these entities.

1 JUDGE SIPPEL: I've been saying that since the
2 time I was born in this agency. You've got to have the
3 documents. There's no question about that. Let's see
4 where we get. Mr. Couzens is going to provide you with
5 some document.

6 MS. KANE: Your Honor, we've gotten the
7 documents from Mr. Couzens. They are barely responsive to
8 the first set of document requests, let alone the second
9 set of document requests.

10 MR. COUZENS: May I be heard on this?

11 JUDGE SIPPEL: Well, wait, just let her finish.

12 MS. KANE: They don't include any documents that
13 are contemporaneous with the time period that you're asking
14 for, and they don't include any documents that reflect the
15 corporate entity. They don't even reflect documents that
16 reflect the corporate filings with the State of California.
17 Besides the fact that these documents were jointly
18 provided, there's nothing that indicates what documents are
19 --

20 JUDGE SIPPEL: What do you mean jointly
21 provided?

22 MS. KANE: That's what I'm saying, your Honor.
23 We got a pile of documents like this that said this is a
24 joint response from Avenal and Central Valley. They are
25 not organized by company. They are not, we can't --

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1 JUDGE SIPPEL: I thought you meant Zawila and --
2 oh, I see what you're saying.

3 MS. KANE: Jointly from -- two different parties
4 provided the same, a single set of documents --

5 JUDGE SIPPEL: Just hold your horses, Mr.
6 Couzens. We'll get to you.

7 MS. KANE: -- without identifying which
8 documents originated from which company.

9 JUDGE SIPPEL: All right. Let Mr. Couzens
10 address this.

11 MS. KANE: Nevertheless, your Honor, nothing on
12 the documents actually is responsive to any of our
13 discovery to date, and it's our understanding that that's
14 all we're going to get from him.

15 JUDGE SIPPEL: All right. Okay. You've said
16 your piece. It was very well stated. Mr. Couzens?

17 MR. COUZENS: All right. On the discovery, the
18 Bureau has, as is their right, they sent out requests for
19 dozens of admissions, dozens of interrogatories for each of
20 the parties, a very, very detailed document request. It's
21 costly to respond to this kind of discovery. It costs
22 hours and hours and hours, it costs thousands and thousands
23 of dollars, and I have been reluctant to have the client go
24 ahead and respond to that discovery until we could resolve
25 what your Honor calls the death sentence in this case. If

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1 we're still under the death sentence --

2 JUDGE SIPPEL: I didn't mean that literally, but
3 we know what we're talking about.

4 MR. COUZENS: Right. If we're going to, if
5 they're still under the threat of having the applications
6 with construction permits dismissed, then we do not feel
7 that we should go through thousands of dollars' worth of
8 discovery, over hundreds of questions, over weeks of time,
9 all of the stuff that they want.

10 Now, Mr. Zawila is in a somewhat different
11 category. If you go back and look at the hearing
12 designation order, demands for information remained on him
13 way back when, 2002.

14 JUDGE SIPPEL: Well, there was a lot of
15 wrongdoings there ascribed --

16 MR. COUZENS: He asked for extensions of time.
17 He asked for extensions of time, and then he still didn't
18 do anything. I'm going to gaze into my crystal ball and
19 predict that they are not going to get squat from Mr.
20 Zawila through written interrogatories and demands for
21 admission and so on and so on. They can send out hundreds
22 of these. They can hold him in default. They can file
23 pleadings. They're not going to get at Zawila for this
24 paperwork. They're going to have to sit him down for
25 deposition.

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1 JUDGE SIPPEL: Well, let me ask you this
2 question: do you think you can get something out of Zawila
3 in a deposition?

4 MR. COUZENS: Certainly.

5 JUDGE SIPPEL: Okay. I'm not talking from, I
6 mean, as a practical matter, do you think it's worth the
7 investment to take a deposition?

8 MR. COUZENS: Mr. White has told me that he
9 approached Zawila at the very beginning and had these
10 applications filed. Now --

11 JUDGE SIPPEL: You haven't answered my question,
12 though.

13 MR. COUZENS: What?

14 JUDGE SIPPEL: You still haven't answered my
15 question. Do you honestly believe that a Zawila deposition
16 would be productive?

17 MR. COUZENS: Absolutely.

18 JUDGE SIPPEL: Okay. Now tell me about Mr.
19 White.

20 MR. COUZENS: Well, Mr. White has told me and
21 we've stated in the papers that we mailed to the Bureau
22 last week and that I handed them --

23 JUDGE SIPPEL: Well, I can't make any findings
24 on this second-hand information but --

25 MR. COUZENS: No, that's fine.

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1 JUDGE SIPPEL: -- it's very important. Go
2 ahead.

3 MR. COUZENS: He has stated to me that he
4 approached Zawila in the first instance when this filing
5 opportunity arose because he had heard that channels were
6 available and asked him to file these applications in the
7 first instance. Now, it appears that what he thought was
8 in the applications was discrepant from what actually was
9 filed.

10 Now that I have a better impression of Zawila
11 than I did and studied his tactics, I can't say that I'm
12 surprised. But there are some records that he can be asked
13 about directly, and then the inconsistencies start to come
14 out and we find out what the fact is.

15 But I would like to ask him a bunch of questions
16 about the early days of these applications with Mr. White
17 in the room. I think that would be an excellent and very
18 illuminating experience.

19 JUDGE SIPPEL: That wouldn't lead to some kind
20 of a sidebar scumble or scrabble or whatever they call it,
21 scrum. I mean, it sounds like maybe they're not very good,
22 they don't think too much of each other.

23 MR. COUZENS: Well, the Enforcement Bureau can
24 notice the deposition, and they can control the situation,
25 and they can get a U.S. Marshal in there if they have to.

1 But I agree with you that they should depose Mr. Zawila.
2 And if they want to depose Mr. White also, that's fine.

3 JUDGE SIPPEL: Well, let me back up a little
4 bit. They don't seem, they're not ready to take a
5 deposition without, you know, more documents, more
6 ammunition. But you think it would be productive at this
7 time to take the deposition. I'm not asking you to pay the
8 expense. I'm just asking you if that's what you believe.

9 MR. COUZENS: Yes, I do.

10 JUDGE SIPPEL: I'm not setting you up.

11 MR. COUZENS: Right.

12 JUDGE SIPPEL: All right. Then why don't we let
13 Mr. Couzens take the lead on the deposition, and the Bureau
14 can have somebody go. You don't want to send two people
15 out. Send somebody out there to be at the deposition.
16 And, you know, I mean, I've always looked at, the first
17 deposition is only one deposition. There might be more
18 depositions. But, again, the nature of this case, the
19 nature of the parties, the nature of the finances, all that
20 kind of business, I don't think it's going to last that
21 long. But I do, I agree with this, but I can't tell. See,
22 I cannot tell, and Mr. Couzens, it sounds like he's making
23 a good faith offer in the sense of being able to get
24 something out of this deposition because you're right, if
25 we wait and wait and wait, as we've been waiting since

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1 2003, this case isn't going to move. It isn't going to
2 move.

3 MS. KANE: Your Honor, might we make a
4 suggestion?

5 JUDGE SIPPEL: Yes, please.

6 MS. KANE: There are five parties currently in
7 the case. You've got Mr. Zawila as an individual party.
8 You've got Linda Ware Broadcasting, Linda Ware doing
9 business as Lindsay Broadcasting. You have H.L. Charles
10 doing business as Ford City Broadcasting, and you have
11 Avenal and Central Valley.

12 As Mr. Engel asked earlier, we would like your
13 Honor to impose negative findings of fact against Mr.
14 Zawila personally, against Ford City Broadcasting, and
15 Lindsay Broadcasting, at a minimum, for their failure to
16 continuously respond to discovery and certainly for Mr.
17 Zawila and those three parties' failure to appear here
18 today.

19 JUDGE SIPPEL: Okay. But those other parties
20 are not in the same predicament as --

21 MS. KANE: So what we would ask, therefore, is
22 that those three parties, at that point, we would have both
23 requests for admissions that are deemed admitted against
24 those parties, and we would have negative findings of fact
25 against those parties. And the Bureau would be in a

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1 position to summarily request a summary decision and to
2 have those three parties out of this case.

3 JUDGE SIPPEL: Okay. So that's a part one or
4 part two?

5 MS. KANE: The part two then was that, if we
6 were to take a deposition, it would be limited, at this
7 point, to just the issues that seem to be at issue, which
8 is whether or not this company was incorporated or had a
9 legal entity as a company at the time of their application.

10 JUDGE SIPPEL: That's exactly right. That's
11 exactly right because, as Mr. Couzens has framed it so well
12 and as I reluctantly agree with him, this is almost a death
13 knell for the two parties if this comes out against him.
14 And so before I do that, I want to be sure I know what I'm
15 doing; that's all. I think it's worth the investment.

16 Believe me, this agency is not alone in the U.S.
17 government of wasting some money. This is not going to be
18 a waste of money. This is only a couple of bucks in the
19 scheme of things. It's going to be up to the chief. But,
20 yes, basically, I'm agreeing with what you're saying. I
21 mean, that's fine. We can do those other parties
22 independently of these two for this issue now, only for
23 this issue. But this issue does not exist for those other
24 parties; is that right?

25 MS. KANE: Correct, your Honor.

1 JUDGE SIPPEL: It's only this party. So these
2 are the ones that I'm worried about.

3 MR. COUZENS: Let's talk about the corporate
4 existence issue for a moment. I was hoping that that would
5 be resolved today based on the brief that I submitted.

6 JUDGE SIPPEL: Well, it's hard for me to do that
7 now because, again, I was not thinking in terms of an
8 unincorporated association when I -- so this is kind of new
9 to me, and I want to --

10 MR. COUZENS: May I be heard on this?

11 JUDGE SIPPEL: You can, but I'm not ready to go
12 there yet.

13 MR. COUZENS: Okay.

14 JUDGE SIPPEL: You understand what's going on
15 here with the Bureau, what the Bureau is suggesting. There
16 will be two phases, in a sense. Phase one would be Mr.
17 Zawila and the Ford and what was the other one --

18 MS. KANE: Linda Ware, your Honor.

19 JUDGE SIPPEL: Yes, Linda Ware. That have
20 nothing to do with your issue. The second phase is going
21 to be, let's call it the Couzens issues or the White
22 issues; I don't care. So she has proposed a procedure, and
23 I want to know if you would agree with that or object to it
24 or have any problem with it.

25 MR. COUZENS: Well, I object to it.

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1 JUDGE SIPPEL: Why?

2 MR. COUZENS: Because I don't want these clients
3 to incur the vast expense of possibly going through a
4 deposition, responding to the unresolved discovery,
5 etcetera, etcetera, etcetera, when we can't get a ruling on
6 the matter of law of whether or not they should be
7 dismissed retroactively based on this case law. Why can't
8 we get a ruling on that?

9 JUDGE SIPPEL: Okay, all right. That sounds
10 reasonable. Whoa, whoa, wait a minute. Can we do a little
11 better briefing job than I have now?

12 MS. KANE: Well, your Honor, you've already
13 given a second bite of the apple with his briefing. We're
14 happy to --

15 JUDGE SIPPEL: Move forward with a third bite.
16 Nobody is going to die.

17 MS. KANE: Well, your Honor, because every
18 single time you ask him to provide new briefing, we get new
19 arguments. This unincorporated association is a brand new
20 argument, your Honor. You've been asking these parties
21 since last June what their corporate status was, and we've
22 had multiple briefings. In fact, Mr. Couzens has raised
23 this same argument in almost every pleading he's filed
24 since September, including his motion to dismiss. And,
25 yet, this is the first time we've heard unincorporated

1 association.

2 We haven't had an opportunity, we thought we'd
3 be able to raise the issue today with you, your Honor, and
4 resolve --

5 JUDGE SIPPEL: What issue?

6 MS. KANE: Resolve the question of whether or
7 not they were required to have a corporate, a governing
8 entity status at the time of their application. That is --

9 JUDGE SIPPEL: So you agree with Mr. Couzens? I
10 should cut to the chase, get that issue out of the way, and
11 then see where we are from there?

12 MS. KANE: That is a tantamount issue, your
13 Honor, because if, in fact, as --

14 JUDGE SIPPEL: You think I have enough
15 ammunition to do that with? That's what I'm trying to get
16 at.

17 MS. KANE: Well, I think, your Honor, it's
18 almost the absence of ammunition. They have the burden of
19 proof to establish that they were a legally-recognized
20 entity, whether they were incorporated or unincorporated,
21 at the time of their application. That is what our rules
22 say, that is what the Hammock case says, and, yet, they
23 have provided none of that information. So in the absence
24 of that information, your Honor, yes, I believe, the Bureau
25 believes that you have sufficient information to find that

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1 they were not a qualified applicant. They did not meet the
2 NCE qualification status of being a legally-identifiable
3 entity at the time of their application.

4 JUDGE SIPPEL: What about the other side of the
5 coin, though? You think I have enough information to find
6 otherwise, that they, you know, that they are, that, in
7 light of the equity in the case and the circumstances, that
8 they would be entitled to consider themselves registered?

9 MS. KANE: I don't see any evidence in the
10 record to support that position, your Honor. The only
11 documentary evidence in this case actually indicates that
12 they lied to the Commission and they indicated that they
13 were an incorporated entity when they weren't, not for many
14 more years later. So I don't see anything -- as I said,
15 this is an argument made of folk law. There is nothing
16 that supports that they were an unincorporated association.
17 They haven't provided any documents that show that they
18 were a legally-recognizable entity. There were
19 requirements that they could have done with the State of
20 California --

21 JUDGE SIPPEL: Okay.

22 MS. KANE: -- to do that, and Mr. Couzens has
23 provided any of that. So, yes, your Honor, we believe,
24 based on the evidence today, you have sufficient
25 information to show what they were required to do and what

1 they did not do.

2 JUDGE SIPPEL: Okay. Is there a motion pending,
3 a motion pending on your -- I set the issue down, but is
4 there a motion pending to dismiss those applications for
5 the reasons that you've just annunciated?

6 MS. KANE: We haven't filed a separate motion,
7 your Honor, but it's an issue that you added to the case.

8 JUDGE SIPPEL: I can decide this summarily on
9 the issue?

10 MS. KANE: Well, you've asked Mr. Couzens for
11 additional briefs.

12 JUDGE SIPPEL: Okay.

13 MS. KANE: And if you recall the procedural --

14 JUDGE SIPPEL: I do, I do.

15 MS. KANE: -- your Honor, is that we asked to
16 have that issue added to the case. You have added that
17 issue to the case --

18 JUDGE SIPPEL: Yes, it's there.

19 MS. KANE: -- as part of an order. In response
20 to that order, Mr. Couzens, on behalf of Avenal and Central
21 Valley, filed a request to appeal that order.

22 JUDGE SIPPEL: That's right.

23 MS. KANE: In response to that request for
24 appeal, you provided him the opportunity to provide
25 additional briefing --

1 JUDGE SIPPEL: Okay.

2 MS. KANE: -- in which he's raised his new
3 argument. We're happy to file a responsive pleading to
4 that, as you indicated in your order for last week, but we
5 would need a little bit of an extension because I leave
6 tomorrow for Europe, so I won't be able to respond to that
7 by the deadline of next week.

8 JUDGE SIPPEL: Well, be careful where you go.

9 MS. KANE: I will try, your Honor. So we would
10 request additional time if you would like additional
11 briefing, but, frankly, your Honor, we will raise exactly
12 what I just raised here today, which is our rules require
13 that you be an organized entity. You cannot have a non-
14 commercial educational station as an individual. So they
15 have to show that they were an organized entity.

16 JUDGE SIPPEL: I'm just trying to see what
17 procedural paths you were in, trying to understand that. I
18 mean, you have a pleading coming in. You're going to
19 Europe. That's okay. That's no problem.

20 MS. KANE: We're happy to file a motion if --

21 JUDGE SIPPEL: Wait a minute --

22 MS. KANE: -- you need some guidance as to how
23 you would like it placed.

24 JUDGE SIPPEL: -- because I'm trying to think,
25 and you're interrupting me.

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1 MS. KANE: I apologize, your Honor.

2 JUDGE SIPPEL: I'm not sure. I mean, we've got
3 an appeal request on that. I gave the extra time for him
4 to supplement his argument. You have the time to respond
5 to that. It seems to me I've got to get to that issue
6 first. So the next question is do I consider this, do I
7 treat this as a motion for summary decision or do I want to
8 get the motion to dismiss for failure to, you know, failure
9 for the parties to, basically for the parties, there's no
10 parties in existence, and the case should be -- I guess
11 it's all part of the same ball of wax. I'm going to come
12 out the same way anyway.

13 MR. COUZENS: May I be heard?

14 JUDGE SIPPEL: Wait just a minute now. Just a
15 second. I think it would be helpful if you guys -- I'm
16 going to treat it as a motion for summary decision. I'm
17 going to give you the extra time to do your thing, if you
18 want to.

19 I think that what I'd want from you would be a
20 declaration from Mr. White giving all the --

21 MR. COUZENS: May I be heard on the legal issue?

22 JUDGE SIPPEL: Yes, you can, but I just want to
23 --

24 MR. COUZENS: She had a lot to say. She's been
25 very repetitive.

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1 JUDGE SIPPEL: I know that, but while I have
2 this in my mind I want to get it on the table. I'm still
3 going to come back to you on that. But I'm trying to think
4 what procedure do I want to use, the vehicle to get this
5 thing decided, and I think that's the way I want to go. I
6 want to just be sure I have enough -- a summary decision is
7 based on, basically there's no factual matter in dispute.
8 And I think Mr. White's deposition, not deposition, I'm
9 sorry, his declaration would help convince me on that.

10 MR. COUZENS: Facts are not in dispute, your
11 Honor.

12 JUDGE SIPPEL: They're not?

13 MR. COUZENS: They're not in dispute, no.

14 JUDGE SIPPEL: All right. Then forget I said
15 that. Tell me what you want to say.

16 MR. COUZENS: All right. The reason this issue
17 came up again this week was that the Court issued an order
18 recognizing for the first time that these applications were
19 made in the non-reserved band. The first time. We have
20 raised that issue again and again and again and again, and,
21 finally, the Court said, oh, you may have a point, now why
22 don't you give us a briefing and we'll talk about it?
23 Okay?

24 Now, we find out this morning that they are
25 still pounding on the Hammock case, a case that involved

1 the non-commercial band. So they're still refusing to
2 acknowledge that there's a distinction here. My brief
3 points out the distinction.

4 Now, let's examine this for just a moment,
5 examine the fact that they were filed in the non-reserved
6 band. What that means is that the non-commercial status of
7 the applicant could be changed by sending a letter to the
8 Commission saying we've changed the status, or they could
9 go back to non-commercial if they wanted to. And whether
10 or not they were non-commercial on day one is not
11 important. Whether they had articles filed on day one is
12 not important. And it turns out that, whenever it was, six
13 - seven years later, they finally got the articles done,
14 the opposing counsel has the nerve to say that they lied.
15 There's no evidence that they lied. They put the wrong
16 check block. So what? It was in the non-reserved band.

17 Now, let's talk about recourse on the
18 Commission's part if they falsely stated that they were
19 non-commercial. What the Bureau wants to do is take all of
20 these cases from Low Power FM, which they have deceptively
21 told the Court were NCA cases, which they're not. They're
22 LPFM cases.

23 JUDGE SIPPEL: Where do they say that?

24 MS. KANE: We did not say that, your Honor.

25 JUDGE SIPPEL: I know they were LPFM cases.

1 MR. COUZENS: I've said that in my brief. I'm
2 just saying it again. These --

3 JUDGE SIPPEL: Calm down now. Calm down, calm
4 down.

5 MR. COUZENS: These LPFM cases were decided
6 years later. They want to take those and go back and use
7 those to strangle this applicant because they didn't comply
8 with LPFM rules that didn't exist when they filed on day
9 one.

10 Well, let's talk about the remedy here, though.
11 We have the option, I suppose --

12 JUDGE SIPPEL: Go ahead. I'm sorry.

13 MR. COUZENS: -- if there was this horrible
14 defect in the application because Mr. Zawila checked the
15 wrong block, let's stipulate there was that horrible defect
16 in the application, it seems like the Court would have the
17 option to say, okay, after all these years, after the fact
18 that Central Valley has been on the air doing non-
19 commercial service for 12 years, we're going to say that
20 you should never receive construction permits and that your
21 permits are dismissed without recourse and the call signs
22 are deleted. That's one option.

23 Well, let's look at another option. Suppose we
24 say you really should have had your non-commercial status
25 cleared up at the beginning, so we are going to deny you

1 the privilege of being a non-commercial. We're going to
2 say you're going to have to convert these stations to
3 commercial and not any longer claim to be NCE. That would
4 be a possibility to.

5 Now, it's interesting that in the --

6 JUDGE SIPPEL: Are you sure that you're able to
7 do that under the rules? Can you just flip things around
8 like that? I don't know.

9 MR. COUZENS: Yes. The Bureau never told you
10 otherwise, and they don't have any information --

11 JUDGE SIPPEL: I never asked them the question.

12 MR. COUZENS: All right. So what are we going
13 to do at this point? Are we going to destroy these
14 facilities because of a defect that was not known to be a
15 defect at the time? That's ridiculous. That's ridiculous.

16 JUDGE SIPPEL: Well, I'll tell you, Mr. Couzens,
17 the stronger you argue to me that way, the more I'm
18 convinced that there might be something here that I'm
19 missing. Just slow down, slow down. I'm not going to be
20 that fast a runner. You're pushing me. Hold on just a
21 second.

22 MS. KANE: Your Honor, if I might, your Honor --

23 JUDGE SIPPEL: No, no, wait a wait, wait a
24 minute, wait a minute. Mr. Couzens --

25 MS. KANE: Well, Mr. Couzens has provided you

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1 with incorrect law, your Honor. So I just wanted to
2 clarify the record.

3 JUDGE SIPPEL: No, no, no, no, no, no, no, not
4 now, not now. I think what you're trying to do is get this
5 case up to the Commission somehow. I think that's what you
6 want. And that doesn't bother me. That doesn't bother me.
7 You're trying to avoid a hearing. You're trying to avoid
8 doing, for your client's sake, you're trying to protect
9 your client's pocketbook by not getting into this thing too
10 deeply and going up on some kind of an appeal.

11 That's all well and good. I don't care. All
12 I'm concerned about, I want to convince myself that I'm
13 getting it right at this level. If I'm convinced of that,
14 then you go with my blessings, one way or the other. You
15 don't have to comment on that. You don't have to agree
16 with it or disagree with it. I'm just saying I see this
17 thing developing this way.

18 Now, don't get mad at me. Are you getting
19 upset?

20 MR. COUZENS: I'm not mad at you at all.

21 JUDGE SIPPEL: Well, you kind of looked at me
22 like -- okay. That's okay. I'm sorry. I feel much better
23 now.

24 All right. Now, your point is that he's
25 misstating, misrepresented all kinds of things to me.

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1 MS. KANE: He has, your Honor. He's
2 misrepresenting the fact that he seems to want to convince
3 you that there are different application requirements for
4 an NCE station based on channel, based on band. That is
5 not accurate. Our rules do not make that distinction.
6 They filed an application to be a non-commercial
7 educational station. Whether in the reserved or non-
8 reserved band, they still had to be an organized entity at
9 the time of their application. That is what our rules
10 require. That is what Hammock requires. Hammock is not an
11 LPFM case. It is purely an NCE case.

12 JUDGE SIPPEL: Wait a minute. Whoa, whoa, whoa.
13 Is that right?

14 MR. COUZENS: In the reserved band, yes.

15 JUDGE SIPPEL: It is an NCE case?

16 MR. COUZENS: In the reserved band.

17 MS. KANE: It doesn't matter, your Honor. We'll
18 still make that distinction.

19 JUDGE SIPPEL: No, I hear you both, I hear you
20 both. I just want to be sure I'm not tripping over myself.
21 I hear you both. Okay. Go ahead.

22 MS. KANE: Your Honor, so there is no
23 distinction in -- yes, it's true that in the non-reserved
24 band they can change their mind later in time and become a
25 commercial station. First of all, they've never done.

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1 They've never asked to do that, and they didn't apply for a
2 commercial station. They applied to be a non-commercial
3 educational station, an NCE station.

4 By virtue of that, our rules require that they
5 be a non-profit organized entity at the time of
6 application. Now --

7 MR. COUZENS: That's not the rule. Not the
8 rule.

9 JUDGE SIPPEL: Well, wait a minute. She's, you
10 know, you can't --

11 MS. KANE: I have the rules in front of me, your
12 Honor.

13 JUDGE SIPPEL: You can't interrupt each other.
14 Go ahead. You tell me what your position is.

15 MS. KANE: That is our position is that the
16 rules require, and I can cite to the specific rule, which
17 is Rule 73.503(a) requires that a non-commercial
18 educational FM broadcast station will be licensed only to a
19 non-profit educational organization. They have to have
20 established that they were a non-profit educational
21 organization.

22 JUDGE SIPPEL: Let me have that cite again.

23 MS. KANE: It is 73.503(a).

24 JUDGE SIPPEL: 73.503?

25 MS. KANE: A.

1 JUDGE SIPPEL: I remember looking at that
2 earlier. Yes, okay, I know what you're talking about.

3 MS. KANE: The Hammock case interprets that very
4 same section as to what it means to be a non-profit
5 organized entity, and that specific case identifies that
6 the timing for making that decision is at the time of
7 application.

8 JUDGE SIPPEL: Okay.

9 MS. KANE: That is a purely NCE case. There is
10 nothing in 73.503, in fact any portion of that section,
11 that requires it only in the reserved band. It simply says
12 if you are applying to be a non-commercial station, a non-
13 commercial educational station, you are required to be a
14 non-profit organization. That is based on the status of
15 the entity, not on the channel that you're seeking. So in
16 suggesting otherwise, we would take issue with Mr. Couzens'
17 interpretation of that rule.

18 JUDGE SIPPEL: Mr. Couzens, do you have any
19 authority that goes contra to what she is saying that
20 Hammock stands for?

21 MR. COUZENS: Yes, your Honor. First of all --

22 JUDGE SIPPEL: What authority?

23 MR. COUZENS: -- you'd notice that the specific
24 language of 503(a) says "licensed." And, indeed, these
25 applicants will show that they're eligible to be licensed

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