

1 as non-commercial. Licensing is a latter stage in the  
2 process. It's not initial application. Their claim that  
3 503(a) says anything about what paperwork has to be done at  
4 the inception is not correct.

5 Now, in the brief, I quoted a case where an  
6 applicant attempted to, attempted to show, basically --

7 JUDGE SIPPEL: Give us that, what is the name of  
8 that case you were just looking at?

9 MR. COUZENS: What? The Hammock?

10 JUDGE SIPPEL: No, the one that you're looking  
11 at. You said you cited a case.

12 MR. COUZENS: Oh, this is of rulings that were  
13 made, application for review and decisions regarding six  
14 applications for new Low Power FM stations, 28 FCC records,  
15 13390, referenced in Footnote 9 of my brief and quoted in  
16 the brief.

17 JUDGE SIPPEL: Okay. Let me have that page  
18 again, 28 FCC record at what?

19 MR. COUZENS: 13390.

20 JUDGE SIPPEL: 13390. Okay. That's in Footnote  
21 9.

22 MR. COUZENS: Yes. And here's the statement.  
23 "Unlike a non-reserved band FM station, an LPFM station  
24 must operate as an NCE station and, thus, an LPFM licensee  
25 must maintain eligibility at all times," implying that in

1 the non-reserved band that is not necessary, not necessary  
2 at day one, not necessary at day 1,001.

3 JUDGE SIPPEL: I've got your brief right here.  
4 Now, what paragraph? Paragraph four?

5 MR. COUZENS: It's the very top of page four.

6 JUDGE SIPPEL: Paragraph four?

7 MR. COUZENS: Yes.

8 JUDGE SIPPEL: "Unlike a non-reserved . . ."

9 MR. COUZENS: Yes.

10 JUDGE SIPPEL: Okay. So that's citing from  
11 what? That's citing from -- this is what the policy is,  
12 and this is the policy was misstated at an LPFM are --  
13 okay, okay. Unlike a non-reserved band FM station,  
14 stations, an LPFM station must operate as an NCE station  
15 and, thus, an LPFM licensee must maintain eligibility at  
16 all times. LP is what? Low power?

17 MS. KANE: Low Power FM station, your Honor.  
18 This is not inconsistent with what we just argued, your  
19 Honor, which is we agree that a non-reserved FM band  
20 station can be commercial, but you can't be an NCE station,  
21 you can't be a commercial station and a non-commercial  
22 educational station. All this is saying is that the LPFM  
23 stations must, by rule, always be an NCE station. They  
24 can't change to be commercial.

25 We understand that if, in fact, they had filed

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1 in a non-reserved band as an NCE station, they could later  
2 change their status as an entity to a commercial status.  
3 But that doesn't change the fact that at the time they  
4 applied for this application they checked the box to be a  
5 non-commercial entity. And because of that, they were  
6 required to meet at the time of their application the non-  
7 profit association requirement.

8 JUDGE SIPPEL: Okay. Hold on just a second.  
9 This brief that you gave us on that point, just what you  
10 quoted from and whatnot, is this your best shot? The brief  
11 in response to order that was filed very recently, is that  
12 your best shot? In other words, are you satisfied that  
13 your position has been stated as best as you can reasonably  
14 state it in this document?

15 MR. COUZENS: Yes, your Honor.

16 JUDGE SIPPEL: Okay. Why don't you use the time  
17 to just respond to this point by point?

18 MS. KANE: We can do that, your Honor.

19 JUDGE SIPPEL: And then I'll make the decision.

20 MS. KANE: Do you want us to do that in writing,  
21 your Honor?

22 JUDGE SIPPEL: I'd like you to do it in writing.

23 MS. KANE: Then may we have a short extension  
24 from the April 8th date so that I can accommodate the time  
25 that I -- I don't get back into the States until the 11th

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1 of April. Can we have until the end of that week?

2 JUDGE SIPPEL: The 11th of April is what?

3 MS. KANE: Is a Monday, your Honor.

4 JUDGE SIPPEL: And you want to get until Friday?

5 MS. KANE: Until that following Friday? That  
6 would be great.

7 JUDGE SIPPEL: And that would be what date? I  
8 guess you'd add five days to that, 12, 13, 14, 15 --

9 MS. KANE: It should be the 15th, your Honor.

10 JUDGE SIPPEL: 15th or 16th?

11 MS. KANE: The 15th, your Honor.

12 JUDGE SIPPEL: 15 April? 15 April. Roger that.  
13 Sure. You know what I'm asking for now?

14 MS. KANE: I understand, if I understand  
15 correctly, your Honor, you're asking for us to respond to  
16 the paper that Mr. Couzens --

17 JUDGE SIPPEL: His brief.

18 MS. KANE: -- submitted last Friday.

19 JUDGE SIPPEL: Yes.

20 MS. KANE: Yes.

21 JUDGE SIPPEL: Point by point.

22 MS. KANE: Point by point, your Honor. We will  
23 do that.

24 JUDGE SIPPEL: And then I will decide the case.  
25 I mean, I'll decide that issue.

1 MR. COUZENS: All right. And as a corollary to  
2 that, would we be relieved of any obligation to continue to  
3 do this discovery until the ruling?

4 JUDGE SIPPEL: Absolutely.

5 MR. COUZENS: Okay.

6 JUDGE SIPPEL: It's in abeyance, and I will rule  
7 on this as promptly as I can.

8 MR. COUZENS: And, lastly, I would say that, as  
9 far as what they want to do about Mr. Zawila's non-  
10 compliance, that's not in abeyance because it's not this  
11 issue, so how do we proceed there?

12 JUDGE SIPPEL: Well, they're getting the relief  
13 they want right now in the sense they're going to draw the  
14 adverse inferences on his failures to admit. I don't think  
15 you're going to, you don't want to draw the same inferences  
16 against this man, though. That's not going to be  
17 necessary.

18 MS. KANE: At this time, your Honor, we are  
19 willing to put in abeyance the issues regarding Central  
20 Valley and Avenal until you resolve the underlying question  
21 of whether they were --

22 JUDGE SIPPEL: Exactly right.

23 MS. KANE: -- the applicant. Correct.

24 JUDGE SIPPEL: But, again, recognizing that  
25 you're going to be away for a bit, we're going to proceed

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1 as you outlined your procedure with respect to the handling  
2 of the other, you know, Linda Ware, etcetera, H.L. Charles.

3 MS. KANE: Correct, your Honor. Is there a  
4 particular process by which you'd like us, do you want us  
5 to just provide you with a proposed order? Would you like  
6 us --

7 JUDGE SIPPEL: Yes, a proposed order.

8 MS. KANE: Okay.

9 JUDGE SIPPEL: A proposed order, yes. But,  
10 again, I want you to, it's got to be very specific. I  
11 mean, the best order is going to be a very specific order  
12 and, you know, you don't have to put everything in here but  
13 the kitchen sink. I mean, you can ferret out what you  
14 don't need and just keep in what you need.

15 MS. KANE: Understood, your Honor.

16 JUDGE SIPPEL: So, you know, so take time to do  
17 it. That's all I'm -- I'm not trying to push on that at  
18 all because the more, actually the more time I give you the  
19 easier the job is going to be for me, in terms of a good  
20 solid order, which is all I want. Zawila, for all  
21 practical purposes, he's shut off from communicating with  
22 me.

23 MR. ENGEL: Your Honor, for clarification then,  
24 the request for admission that we're directed towards,  
25 William Zawila, the permittee of KNKS; H.L. Charles, the

1 permittee of KZPE; and Linda Ware, Lindsay Broadcasting,  
2 KZPO. The request for admission that were directed towards  
3 those three parties are deemed admitted?

4 JUDGE SIPPEL: Yes, sir.

5 MR. ENGEL: Thank you, your Honor.

6 JUDGE SIPPEL: Yes, sir. We're only dealing  
7 with -- okay.

8 MR. ENGEL: And, your Honor, we'll provide you  
9 the proposed order then that has the negative findings of  
10 fact, proposed negative findings of fact regarding those  
11 three parties only.

12 JUDGE SIPPEL: Exactly.

13 MR. ENGEL: We have a draft, but we need to sub-  
14 out Central Valley and Avenal, and we'll provide that.

15 JUDGE SIPPEL: Correct. Sub those out.

16 MR. ENGEL: We will have that for you today,  
17 your Honor.

18 JUDGE SIPPEL: And then -- well, you know, if  
19 you want to do it today, that's fine. Okay. I'm not going  
20 to say anything more --

21 MR. ENGEL: We might take a little more time  
22 with that, your Honor.

23 JUDGE SIPPEL: Well, I'm glad to hear that  
24 because I don't know, well, I don't know what I'm going to  
25 be doing this afternoon. That's fine. No problem, no

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1 problem. We know what your date is. You will get a timely  
2 decision out of me on this one, I can assure you of that.  
3 I've got an excellent legal advisor here to help me, and  
4 we're paying attention to this.

5 And I can't think of anything else. I mean, I  
6 think this covers the waterfront.

7 I wanted to know this, though. What about Mr.  
8 Turner? Mr. Turner seems to me -- do I have that name  
9 right?

10 MR. ENGEL: Yes, your Honor.

11 JUDGE SIPPEL: He's got some interesting  
12 information about the status of the construction. Not that  
13 that enters int your issue, Mr. Couzens. It doesn't.

14 MR. ENGEL: His name is in HDO. I think he was  
15 an engineer, your Honor.

16 JUDGE SIPPEL: That's right. But they used him,  
17 I mean, I guess the Bureau relied on him when they sent it  
18 down for hearing.

19 MR. ENGEL: Well, your Honor, I think you're  
20 getting close to closing the proceeding, but there remains  
21 some motions that are outstanding that, just for  
22 housekeeping purposes, we'd like to raise with the Court.  
23 We think they're either mooted or the underlying issues  
24 have been ruled upon.

25 JUDGE SIPPEL: Yes.

1 MR. ENGEL: The motions that regard Avenal and  
2 Central Valley discovery, I think we'll just agree that  
3 those will be held in abeyance.

4 JUDGE SIPPEL: Yes.

5 MR. ENGEL: But there's some other motions that  
6 I'd like to raise with the Court, and I think it would  
7 assist you and Ms. Funk to organize how we're going to,  
8 just the record --

9 JUDGE SIPPEL: You want to do that now or some  
10 other time?

11 MR. ENGEL: I can do it right now very quickly,  
12 your Honor.

13 JUDGE SIPPEL: We're right here. That's exactly  
14 right. That's exactly right. I guess I should use the  
15 back page of my yellow pad to save the government money,  
16 but I'm not going to do that. Okay, shoot. Well, I  
17 shouldn't tell a soldier that.

18 MR. ENGEL: It's fire, engage your target. Your  
19 Honor, we filed motions to compel against Avenal and  
20 Central Valley, but that was with the Avenal and Central  
21 Valley that Mr. Zawila purports to represent. And I'll --

22 JUDGE SIPPEL: Oh.

23 MR. ENGEL: And so that's a separate issue, but  
24 that goes to the negative inferences if we end up having to  
25 have those against Mr. Zawila's client, Central Valley and

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1 Avenal.

2 JUDGE SIPPEL: Okay. So wait a minute. So what  
3 do I do with those? Just ignore those?

4 MR. ENGEL: Well, there are motions that are  
5 unopposed, your Honor, so you can ignore them or you can  
6 grant them, and that would mean that Mr. Zawila would need  
7 to respond to those interrogatories, or you just found that  
8 he's broken the rules on his discovery obligations and  
9 we'll have negative findings of fact versus his findings.  
10 But I think that might complicate it so --

11 JUDGE SIPPEL: I don't want to tinker with --

12 MR. ENGEL: Then let's leave Avenal and Central  
13 Valley aside.

14 JUDGE SIPPEL: I mean, there's no way you can  
15 succeed when you do things like that, if Zawila represents.

16 MR. ENGEL: On February 25th, your Honor, there  
17 was a motion to compel Mr. Zawila to provide responses to  
18 the Enforcement Bureau's second discovery request, and that  
19 motion was unopposed. Similarly, the same motion was filed  
20 against --

21 JUDGE SIPPEL: That was the second one that was  
22 in February?

23 MR. ENGEL: That was February 25th. There were  
24 three motions filed on February 25th against Mr. Zawila,  
25 Linda Ware, and Ford City. Those motions to compel were

1 unopposed, but, I believe, with your Honor granting the  
2 request for the deemed admitted request for admission and  
3 the forthcoming negative inferences, those motions to  
4 compel will be mooted, I believe.

5 JUDGE SIPPEL: Right.

6 MR. ENGEL: On February 20th, 2016, Mr. Zawila  
7 filed a motion to join the motion for protection. That  
8 motion was denied by your Honor on February 29th, so Mr.  
9 Zawila's motion to join the denied motion is moot, your  
10 Honor. We just need a ruling.

11 JUDGE SIPPEL: You need a ruling on that one?

12 MR. COUZENS: There's no problem with that.

13 MR. ENGEL: It's just pending. It's a pending  
14 motion. It wasn't listed in the motion denying the  
15 protecting order, so it's still an outstanding motion.  
16 Just housekeeping, your Honor.

17 JUDGE SIPPEL: All right. I see what you're  
18 saying.

19 MR. ENGEL: February 20, 2016. That was Mr.  
20 Zawila's motion to join the protective order motion that  
21 was --

22 MR. COUZENS: But it was denied, right? So  
23 what's left to decide?

24 MR. ENGEL: Technically, Mr. Zawila has a motion  
25 out. It's just an outstanding motion. What's left to

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1 decide? That your Honor would say that --

2 MR. COUZENS: It hasn't been decided?

3 MS. KANE: His pending --

4 MR. ENGEL: Mr. Zawila's motion.

5 MS. KANE: -- motion to join the original motion  
6 for protection has not been ruled on.

7 JUDGE SIPPEL: It has not been ruled on? I can  
8 just moot it out?

9 MR. ENGEL: Correct, your Honor, if your Honor  
10 so orders.

11 MR. COUZENS: You can deny it today on the  
12 record.

13 JUDGE SIPPEL: Well, I'd rather do this, I know  
14 this is not the most efficient way, but I'd rather not do  
15 that right now.

16 MR. COUZENS: Fair enough.

17 JUDGE SIPPEL: You know what? I'm going to do  
18 that.

19 MR. ENGEL: What would you prefer, your Honor?

20 JUDGE SIPPEL: I'm going to do it on the record  
21 that his motion to join the protective order sought by Mr.  
22 Couzens is denied for failure to appear. Denied by  
23 default.

24 MR. ENGEL: Your Honor, on July 6, 2015, Avenal  
25 and Central Valley, as represented by Mr. Couzens, filed a

1 motion to strike the Enforcement Bureau's motion to add  
2 issues. Those issues were later, in fact, added to the  
3 case, your Honor, so that motion, I believe, is moot at  
4 this point.

5 JUDGE SIPPEL: Motion to strike?

6 MR. ENGEL: Yes, your Honor, from July 6, 2015.  
7 And your Honor added the issues in the 16(m)-02.

8 JUDGE SIPPEL: Okay.

9 MR. COUZENS: Well, that goes to the timeliness  
10 of all this stuff that they brought out 17 years after the  
11 fact, so I think that motion should be part of the record.

12 JUDGE SIPPEL: Your point is what?

13 MR. ENGEL: That doesn't mean anything. Your  
14 Honor added the issues, so we moved the Court to add issues  
15 and the Court, in fact, added the issues. There's no --

16 MR. COUZENS: It's part of the record on this  
17 issue.

18 JUDGE SIPPEL: Well, it's going to stay in the  
19 record. I'm not going to throw it out, but I can rule on  
20 it right here. He's right. It's moot because -- I'm  
21 considering it moot. A higher authority may consider it  
22 otherwise, but it's in the record. You have the record to  
23 appeal on. Unless I hear a --

24 MR. COUZENS: Better to deny it on the record  
25 then.

1 JUDGE SIPPEL: Well, I wanted to tell you if I  
2 don't hear a better argument than that, I'm going to deny  
3 it on the record.

4 MR. COUZENS: Go ahead.

5 JUDGE SIPPEL: So I'm going to, the motion to  
6 strike is denied. Denied for mootness. Okay.

7 MR. ENGEL: Similarly, on July 23rd, your Honor,  
8 we filed a motion to strike which was related to the same  
9 issues, the order to add issues. So you can deny our  
10 motion, in fact, your Honor, for the July 23rd --

11 JUDGE SIPPEL: You have a pending motion to  
12 strike?

13 MR. ENGEL: We had a pending motion to strike  
14 Avenal and Central Valley's, we called it an unauthorized  
15 reply brief. There's a long title to it, but it's our  
16 pending motion to strike.

17 JUDGE SIPPEL: Okay. Then I'm going to deny  
18 that motion for mootness.

19 MR. ENGEL: On September 22nd, your Honor,  
20 Avenal and Central Valley, as represented by Mr. Couzens,  
21 filed a motion to dismiss. The only argument in that  
22 motion, your Honor, was based on the ten-year policy issue  
23 that your Honor decided --

24 JUDGE SIPPEL: Yes.

25 MR. ENGEL: -- in order 16(m)-05 and 16(m)-10.

1 And since your Honor has already decided that issue, that  
2 previously-existing motion should be denied. And I think,  
3 if Mr. Couzens wants to appeal that or request to appeal  
4 that, that would ripen it, I think. The issue has already  
5 been addressed by the Court.

6 MR. COUZENS: I don't agree that the issue has  
7 been squarely decided in an opinion by the Court.

8 JUDGE SIPPEL: I think I did, didn't I?

9 MS. KANE: There's two orders, your Honor, in  
10 which you addressed the ten-year policy, the alleged ten-  
11 year policy, and identified that the Court and the  
12 Commission has the discretion to go well beyond that ten  
13 years should it decide.

14 JUDGE SIPPEL: That's correct.

15 MR. COUZENS: Well, but not in an order that  
16 squarely addressed the pleadings on it. It was just almost  
17 like an aside.

18 JUDGE SIPPEL: Oh, no, it was very much  
19 otherwise, as I recall.

20 MR. ENGEL: I hesitate, as an attorney, to say  
21 anything is clear, your Honor, but it was crystal clear.  
22 Your Honor addressed the ten-year issue squarely. And  
23 there's a good bit of discussion about it.

24 JUDGE SIPPEL: You just helped your career  
25 immensely.

1 MR. ENGEL: Thank you, your Honor.

2 JUDGE SIPPEL: This has to do with the motion to  
3 deal with the ten-year issue. The division does not forego  
4 the discussion to investigate. This is the last paragraph,  
5 "Mr. Couzens and two parties argue that they're entitled to  
6 from discovery. There's no precedent and no merit to such  
7 argument. The Commission does not forego the discussion to  
8 investigate discovery and consider conduct that occurred  
9 beyond ten years, if circumstances so warrant." Maybe  
10 that's the condition that you want.

11 "If there are no subjective issues, such as  
12 character reputation or truth or opinion --" no, there's no  
13 if before that sentence. "There are no subjective issues,  
14 such as character reputation or truth or opinion. In the  
15 absence of other highly unusual circumstances, the evidence  
16 ought to establish historical organic facts, such as  
17 ownership, incorporation, or representation, has no time  
18 limitation in a licensing case." That's my holding.

19 MR. COUZENS: All right. May I ask you a  
20 question about that?

21 JUDGE SIPPEL: That's one of the better  
22 decisions. Go ahead.

23 MR. COUZENS: I will tell you how I read that  
24 holding, and you can tell me if I'm wrong. The way I read  
25 that holding was that there was no bar to exploring

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1 ownership or the issue that they raised about documentation  
2 beyond ten years but that issues that related to character  
3 where there would be testimony, demeanor evidence, and so  
4 forth, would definitely be barred after ten years.

5 JUDGE SIPPEL: So I made that distinction,  
6 though.

7 MR. COUZENS: Is that your holding?

8 JUDGE SIPPEL: I made the distinction. Now, my  
9 holding wasn't that squarely made. My holding was that  
10 there are no such issues, so I didn't have to address that.  
11 There are no character issues at this posture of the case.  
12 Nobody has asked the opportunity to have, you know, nobody  
13 has asked for a character witness or anything like that.

14 MR. COUZENS: What I'm trying to understand from  
15 the holding is, once we get the favorable ruling on the  
16 documentation and are back in the case full bore and  
17 cooperating with their discovery, can we object to an  
18 interrogatory because it goes to, basically, a character  
19 issue that's more than ten years old?

20 JUDGE SIPPEL: Then I'll decide at that point.  
21 I'm saying I drew the distinction. I said there are no  
22 such issues in this case, so I didn't have to address it.

23 MS. KANE: Your Honor, for clarification, you  
24 did address the ten-year limit on proving character  
25 misconduct in order 16(m)-10.

1 JUDGE SIPPEL: An earlier one?

2 MS. KANE: No, it's a later order. It's March  
3 21st, 2016. There's five paragraphs on it, and the  
4 conclusion is that you've already addressed the argument  
5 that the allegations in the HDO include conduct that  
6 occurred over ten years ago and, therefore, should not be  
7 considered. The Commission has the responsibility and  
8 discretion to investigate, discovery, and consider conduct  
9 that occurred beyond ten years if circumstances so warrant.

10 MR. COUZENS: Isn't that the same --

11 JUDGE SIPPEL: The same thing.

12 MR. COUZENS: -- that he was reading from --

13 MS. KANE: No.

14 JUDGE SIPPEL: It's substantially the same.

15 MS. KANE: It's substantially the same, but the  
16 following says, "See in the matter of contemporary media,"  
17 and there's a quote to all of the misconduct occurred  
18 within the ten-year period the Commission deems relevant to  
19 character inquiries. So this is all related to character  
20 inquiries. And, in fact, you also recognized that the ten-  
21 year delay was due to the stay that was granted by the  
22 prior judge at the request of Mr. Zawila and of the parties  
23 that Mr. Couzens allegedly represents, so they should not  
24 be entitled to benefit from a delay in addressing the  
25 issues in the HDO which were ripe at the of the HDO because

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1 they asked for a stay that's been in play for ten years.  
2 That you've already ruled on, your Honor, and that's  
3 essentially what he's asking you to do. He's asking you to  
4 stymie the Bureau's discovery efforts on allegations that  
5 are contained in the HDO because they asked for a stay that  
6 lasted for ten years.

7 MR. COUZENS: Did they ask for a ten-year stay,  
8 or did they ask for a stay?

9 JUDGE SIPPEL: Well, they asked for a stay, and  
10 they didn't ask for a ten-year stay.

11 MS. KANE: They asked for a stay twice, your  
12 Honor. There was an initial stay --

13 JUDGE SIPPEL: I know, I know.

14 MS. KANE: -- and a second stay, and it was the  
15 Bureau who finally moved to have the stay lifted after Mr.  
16 Zawila and I believe Mr. White filed multiple filings with  
17 the Licensing Bureau.

18 JUDGE SIPPEL: Okay. Well, aside from all that,  
19 in the event -- I'm reading again from the same order on  
20 page two, the last paragraph, "In any event, the ten-year  
21 period is counted from the release date of the HDO, not the  
22 current date." So it's the date of the HDO.

23 MR. COUZENS: Well, there's an ID to that  
24 effect. It has no, it's not binding on this court.

25 MS. KANE: Well, your Honor, even so, the HDO

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1 was released in 2003.

2 JUDGE SIPPEL: Yes.

3 MS. KANE: And because of the stay, we're now in  
4 2016, we're beyond the ten-year time period.

5 JUDGE SIPPEL: Yes, but you count back from 2003  
6 and it's going to get you back to what? It's going to get  
7 you, from 2003, ten years back, it's going to get you down  
8 to what? 1993?

9 MS. KANE: Right. That's our point, your Honor.

10 JUDGE SIPPEL: That's my point, too.

11 MS. KANE: Okay, all right. We just want to  
12 make sure.

13 JUDGE SIPPEL: Where do you count, where do you  
14 start to count from?

15 MR. COUZENS: Okay. So the ten-year bar in the  
16 character policy statement is overridden by the issuance of  
17 an HDO, and then the thing can go on in perpetuity? Is  
18 that it?

19 JUDGE SIPPEL: No, I'm saying this is what the  
20 law holds.

21 MR. COUZENS: Well, it's just an ID, a citation  
22 to an ID. It's not binding on this court.

23 MS. KANE: Your Honor, there was, and I'm sure  
24 you're aware of this, there was a most recent binding  
25 decision by the Commission in Titus in which the Commission

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1 identified the fact that the ten-year policy or recommended  
2 policy is not absolute, that the Commission retains that  
3 discretion in circumstances. And, in fact, the character  
4 policy so says. There's no binding rule on this Commission  
5 that they cannot investigate matters beyond ten years.

6 MR. COUZENS: Well, you're telling the Judge --

7 JUDGE SIPPEL: Well, I wrote the Titus decision  
8 that was appealed.

9 MR. COUZENS: It was your case. You wrote the  
10 decision.

11 JUDGE SIPPEL: No, she's talking about the  
12 Commission decision.

13 MR. COUZENS: Right.

14 JUDGE SIPPEL: The Commission didn't treat me  
15 too nicely in that decision.

16 MR. COUZENS: Oh, I remember that but --

17 JUDGE SIPPEL: You remember that. Everybody  
18 always remembers those kinds of cases.

19 MR. COUZENS: I didn't read anything in the  
20 Commission decision there that created a loophole on the  
21 ten-year limit.

22 JUDGE SIPPEL: Well, I don't know if there's a  
23 loophole. We're all going to go back and read the Titus  
24 case again. Obviously, I mean, I don't think Ms. Kane  
25 would cite that case without having a reason to do it. I

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1 haven't recently looked at that case, but we will, we will.  
2 I think I've said as much as I possibly can. I've written  
3 on it twice. I don't want to undercut myself by talking  
4 about it three times. It is what it is, okay? When the  
5 issue comes up about character and the time frame, if and  
6 when it does, I'll address it then.

7 MR. COUZENS: Excellent statement.

8 JUDGE SIPPEL: And that's it. So right now  
9 let's not worry about what we don't have to do. So the  
10 last one I have down is September 22nd motion to --

11 MR. ENGEL: That's the motion to dismiss based  
12 on --

13 JUDGE SIPPEL: On the ten-year policy.

14 MR. ENGEL: And we believe that the law of the  
15 case has been settled on that issue.

16 JUDGE SIPPEL: Exactly.

17 MR. ENGEL: So it's moot or denied, however --

18 MR. COUZENS: Well, I don't believe the law has  
19 been settled on that at all.

20 JUDGE SIPPEL: Well, for purpose of this case.  
21 I mean, I made my decision in this case. That's how it's  
22 going to be. Take me upstairs and maybe you'll get a  
23 different result.

24 MR. ENGEL: I actually, if I may direct counsel  
25 directly, I don't think we're opposed on this particular

1 point. I just think that this ripens that issue for your  
2 client, sir. I think that the argument is made the same in  
3 various pleadings about the ten-year policy. This argument  
4 and this pleading, this ten-year argument, doesn't differ  
5 from Avenal and Central Valley's other pleadings, and so  
6 the issue is just ripe. Otherwise, this motion will be  
7 outstanding and --

8 JUDGE SIPPEL: Yes. In other words, it  
9 basically already has been ruled on. It is what it is.  
10 You don't have to agree with it. A lot of my rulings you  
11 don't have to agree with. I'm not asking for you to agree  
12 with it, but the status of the case is that we don't have  
13 to address it again right now.

14 MR. COUZENS: All right. Well, as long as we  
15 reserve the right to bring it up again depending on -- you  
16 know, we're just using the language here --

17 JUDGE SIPPEL: Okay. That's not a good way to  
18 say it, but, you know, let's go to the next one. That's  
19 moot. Basically, that's moot.

20 MR. ENGEL: Your Honor, for the same reasons the  
21 Mr. Zawila moved to join that motion on February 24th,  
22 2016, so Mr. Zawila joined the motion with --

23 JUDGE SIPPEL: It's very moot.

24 MR. ENGEL: And then finally, your Honor, one  
25 last motion that's pending is February 5th, 2016, Mr.

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1 Zawila requested a right to appeal, to file an  
2 interlocutory appeal of order 16(m)-02.

3 JUDGE SIPPEL: February 25th?

4 MR. ENGEL: I have February 5th, your Honor.

5 JUDGE SIPPEL: Oh, I'm sorry. February 5th.

6 MR. ENGEL: And he is not here to defend his  
7 motion.

8 JUDGE SIPPEL: He moved what? To --

9 MS. KANE: He requested the right to appeal the  
10 order --

11 JUDGE SIPPEL: Oh.

12 MS. KANE: -- to add issues to the case.

13 JUDGE SIPPEL: It's 16(m), let me have the cite  
14 again.

15 MS. KANE: 02.

16 JUDGE SIPPEL: (M)-02. Okay. Okay. That  
17 motion is denied, basically, for forfeiting his right to  
18 proceed in the case. Okay. Anything else?

19 MS. KANE: That's it for right now, your Honor.

20 JUDGE SIPPEL: Do you have anything, Mr.  
21 Couzens?

22 MR. COUZENS: Only, as long as we're doing this  
23 housekeeping, and I thank the Bureau for doing this because  
24 there did need to be a lot of clean-up in the record, so  
25 that was a good job of going through the list.

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1 JUDGE SIPPEL: Thank you.

2 MR. COUZENS: On the caption here, Western  
3 Pacific Broadcasting, Inc., for renewal of KKFO, Coalinga,  
4 California.

5 JUDGE SIPPEL: Yes.

6 MR. COUZENS: That's moot. That facility has  
7 been expunged, the call sign has been deleted. It hasn't  
8 been in the database for two years.

9 MR. ENGEL: I think it's a typo. It appears in  
10 some captions but not others. We agree. It shouldn't be  
11 on the caption.

12 MR. COUZENS: So can we dismiss that? It would  
13 be nice to dismiss it because then the caption of these  
14 papers would show up on the first page.

15 JUDGE SIPPEL: Yes, it would. No, I think that,  
16 again, that's just really just an oversight that it's in  
17 there, but I would say just don't include that any further  
18 in the case. Western Pacific, it's an error.

19 MS. KANE: It's already been, in previous  
20 filings it's already been dismissed either as part of  
21 previous status reports or conferences. So there doesn't  
22 need to be anything filed on ECFS with regard to that.  
23 That's already been done. It's just a matter of fixing the  
24 caption.

25 MR. COUZENS: I move to dismiss Western Pacific

1 Broadcasting, Inc., as a party in this case.

2 MS. KANE: It's already been done.

3 MR. ENGEL: It's already been done.

4 JUDGE SIPPEL: It's done, it's done. Asked and  
5 done. But Western Pacific will no longer be referred to in  
6 the caption of the case. It's an editing matter. And you  
7 say some captions don't have it.

8 MR. ENGEL: That's correct, your Honor.

9 JUDGE SIPPEL: So they're inconsistent. So I  
10 think you probably want to remove that from your database  
11 or however you have your thing set up, your machine set up  
12 or something. It must still have that included. Just take  
13 it out. When I say this, I mean Western Pacific. But  
14 thank you for bringing that to our attention.

15 MR. ENGEL: Your Honor, one alibi from the  
16 Bureau, if I may. You issued an order to show cause to Mr.  
17 Zawila about the emails and the service.

18 JUDGE SIPPEL: Yes, yes, yes, yes, yes.

19 MR. ENGEL: He's still dropping filings.  
20 They're not appearing on ECFS. We get the fax, we don't  
21 get an email. I think the deadline was yesterday for that,  
22 your Honor, and we still haven't seen anything. I don't  
23 think it's adversarial, and it's not the Bureau's position  
24 today to take, we're not going to take a position on that  
25 today, but that's still outstanding.

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