

FEDERAL COMMUNICATIONS COMMISSION

In re Applications of) MM Docket No. 97-128
)
Martin Hoffman,) File No. BRCT-881201LG
Trustee-in-Bankruptcy For)
Astroline Communications)
Company Limited Partnership)
)
SHURBERG BROADCASTING OF HARTFORD) File No. BPCT-831202KF
)
For Construction Permit for a New)
Television Station to Operate on)
Channel 18, Hartford, Connecticut)
)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	
)	

Courtroom 2
FCC
2000 L Street, N.W.
Washington, D.C.

Tuesday
August 25, 1998

The parties met, pursuant to the notice of the
Judge, at 2:00 p.m.

BEFORE: HON. JOHN M. FRYSIAK
Administrative Law Judge

APPEARANCES:

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1 MS. SCHMELTZER: Could I address the slippage
2 issue, please?

3 JUDGE FRYSIAK: Which issue?

4 MS. SCHMELTZER: I want to address the issue of
5 rescheduling the dates.

6 JUDGE FRYSIAK: Okay. What do you need to say?

7 MS. SCHMELTZER: Well, first of all, in order to
8 expedite this case, we wanted to be able to stipulate to
9 certain facts. There is a very lengthy record from the
10 Connecticut bankruptcy case. We don't want to put that
11 whole record into evidence, so there has to be some
12 stipulation among the parties, and the parties haven't
13 gotten to that phase yet. Mr. Shook has been busy. I
14 haven't gotten anything from Mr. Cole as to what he wants to
15 stipulate to.

16 So, in order to expedite the hearing, we need to
17 agree on certain stipulations. Then we need to go forward
18 with the exhibits. I represent the intervenor here;
19 however, Mr. Ramirez is one of the critical people in this
20 proceeding in terms of his testimony, and Mr. Shurberg has
21 in the past year got extension after extension for the
22 purpose of settlement. Mr. Ramirez is now in the position
23 of, since there was no settlement, Mr. Ramirez is in the

1 position of going forward, and we have to prepare an
2 extensive direct case.

3 JUDGE FRYSIAK: Well, you must know your case by
4 now.

5 MS. SCHMELTZER: Well, Your Honor, I don't think
6 we were under any obligation to do work for an intervenor
7 when the whole proceeding was stayed for the purposes of
8 discussing settlement.

9 JUDGE FRYSIAK: What facts have to be stipulated
10 to, Mr. Cole?

11 MR. COLE: Your Honor, I'm not aware of any facts
12 that have to be stipulated to. What I have discussed with
13 Mr. O'Connell, because he and I both have the burdens is
14 possibly stipulating to the authenticity of certain
15 documents which were introduced in evidence in the Hartford
16 proceeding. Originally, I had proposed that we get together
17 and go through a list.

18 I believe Mr. O'Connell can correct me if I
19 misrecollect this, but my recollection is that his
20 suggestion back, and I thought he indicated this was a
21 suggestion he had gotten from Mr. Topel, but, again, I leave
22 it to them to correct me if I misunderstood, was that we
23 could just stipulate to all documents that were in the

1 record, that were evidence accepted into the record because
2 there was evidence up there; and, therefore, we wouldn't
3 have to go through an extensive, piece-by-piece nitpicking
4 of documents.

5 On that basis, I've sat back, assuming that if it
6 were in the record in Hartford, I could be reasonably
7 confident it would be admissible here, at least for
8 authenticity purposes, and everybody can argue as to
9 relevant and materiality, and so forth. And so from that
10 basis, I'm also perfectly content to, and I assume the other
11 parties would want this, to allow Judge Krushevsky's opinion
12 into the record as well, for what it's worth. So, you know,
13 as far as that's concerned, that's what I perceive to be the
14 basis for stipulations.

15 MR. O'CONNELL: Well, Your Honor, that's correct
16 in part, but Mr. Topel had not been part of that
17 conversation, and when I discussed it with Mr. Topel, he
18 felt that it would be preferable for the parties to identify
19 the various parts of the record that they wanted to
20 introduce rather than do it en masse. Recognizing that, I
21 assumed that the parties would then have to do so when it
22 came closer to the hearing.

23 I didn't realize that we would be stipulating

1 prior to the direct cases, which obviously is not one of the
2 issues. But I have circulated to the parties a draft
3 stipulation which everyone is satisfied with in form but
4 doesn't have the specific matters from the Connecticut
5 record that each party wants to identify and introduce.
6 That's where that stipulation stands.

7 JUDGE FRYSIK: So what do you propose?

8 MR. TOPEL: Your Honor, this is Howard Topel on
9 behalf of Two If By Sea. What Mr. O'Connell says about my
10 position is accurate. I had understood that we would all
11 agree that documents that were in that lengthy trial in
12 Connecticut, the authenticity of all of those documents be
13 agreed upon ahead of an evidentiary admission session in
14 this case, but that each document to be relevant to this
15 proceeding, or material or any other grounds of objection
16 that might exist, would have to qualify under the issues
17 framed in this case.

18 And rather than have a complete surprise on the
19 day of hearing as to what's coming in, it seems to me it
20 makes sense for all concerned, including Your Honor, to have
21 the specific exhibits that the party is intending to offer
22 identified in advance. I had understood that we had reached
23 agreement that we were going to do that.

1 The problem is that there are hundreds and
2 hundreds of documents, and all four parties need to cull
3 through them to pull out the ones that they want to have
4 admitted into evidence to list them, and then the parties
5 need to get together and agree on a stipulation. That's one
6 aspect of the evidentiary admission issue.

7 The second aspect that I'd like to speak to is
8 simply the issue of the importance of the case, the length
9 of time that the underlying facts encompass, because we're
10 talking about facts that go back to the early eighties and
11 continue into the nineties. There is a great deal of
12 information here, and it's a very unusual case, in that I
13 think it's the first time that I'm aware of that the
14 Commission has moved to possibly disqualify a trustee in
15 bankruptcy.

16 There are innocent creditors who have interests in
17 the outcome of the case, and I guess my view, TIB's view, is
18 that if an additional six weeks or seven weeks, the amount
19 of time that's been requested, is necessary for the parties
20 to prepare their evidence properly, that in the grand scheme
21 of the case and given the unusual delays that have occurred
22 previously, that it would be appropriate to grant the time
23 to allow the exhibits to be prepared thoroughly, now that we

1 know the case settlement discussions haven't succeeded.

2 MR. O'CONNELL: Although I might mention, Your
3 Honor, that it should be noted that settlement discussions
4 are going forward, and I've been participating in those in
5 the past two, three, or four weeks, which has taken some of
6 the time I otherwise might have devoted to the case because
7 I have thought that from time to time settlement was
8 imminent. I don't think we have foreclosed that
9 possibility, but certainly we haven't reached a settlement
10 yet.

11 MS. SCHMELTZER: I would just like to add that as
12 far as my time, I thought I was going to have everything
13 clear after the 14th of August, when I believed that
14 discovery would have closed, but instead, I have spent the
15 substantial part of four days already and a fifth day coming
16 up on depositions.

17 JUDGE FRYSIK: Well, Ms. Schmeltzer, I'd be
18 willing to give you that latitude. If you have to file a
19 direct exhibit based on the deposition that is about to be
20 taken, then I'd let you file late. But I still don't
21 understand why you people cannot be ready for this hearing
22 as scheduled. The stipulations that you want, Mr. Topel,
23 depending on the direct exhibits that are exchanged, that's

1 still to happen, isn't it?

2 MR. TOPEL: Well, I had understood that the
3 stipulation would be part of the direct exchange.

4 MS. SCHMELTZER: In other words, we don't want to
5 have --

6 MR. TOPEL: And Your Honor would get a copy as
7 well.

8 MS. SCHMELTZER: The documents that Mr. Ramirez
9 would attach to his testimony may well be duplicative, if we
10 are able to stipulate to certain documents.

11 JUDGE FRYSIK: Well, I don't understand why you
12 can't stipulate to documents before the exchange. I mean,
13 you're saying now that there's too many documents to
14 consider them. This case is 16 months old. I mean, haven't
15 you looked at documents up until now?

16 MS. SCHMELTZER: Well, it's a matter of all of us
17 getting together. Mr. Shook, I understand, is tied up in
18 another hearing proceeding right now. Mr. Cole has not told
19 us which documents he would like to have stipulated to. We
20 only have a week left. That's the problem.

21 JUDGE FRYSIK: Mr. Cole, what's your solution to
22 this quandary?

23 MR. COLE: Your Honor, it seems to me that the

1 parties can go forward with a direct-case exchange. To the
2 extent that they are relying on documents which were or may
3 be subject to stipulations, they can so indicate. They can
4 have a separate set of their -- a separate portion of their
5 direct-case exhibits indicating these are derived from this
6 aspect of the Hartford record, and, therefore, subject to
7 stipulation; and if there is an objection to that because
8 it's not a part of the Hartford record or for some other
9 reason along those lines, that can be brought to the Judge's
10 attention, the Court's attention at the time of the
11 admissions session.

12 As far as the ultimate admissibility for relevance
13 and materiality, that, I assume, is going to be addressed at
14 the admissions session in any event, whether it's a
15 stipulated document or not a stipulated document. I don't
16 understand why everyone is stipulating to absolute
17 admissibility. They are stipulating to the authenticity of
18 the documents.

19 So, from that point of view, it seems to me that
20 it will be possible for the parties, even if we don't all
21 get together and come up with a nice, compact list for all
22 of us, each of us to generate a list of documents to be
23 exchanged next Monday in the time between the exhibit

1 exchange on the 31st. And when the trial goes forward,
2 we're certainly in a position to identify duplicative
3 documents and to agree among ourselves that that document
4 will appear in Shurberg Exhibit whatever or Hoffman Exhibit
5 whatever or Ramirez Exhibit whatever, so that the record is
6 stripped of duplicates by the time we get to the admissions
7 session in front of Your Honor in September.

8 As far as the number of documents is concerned,
9 again, I believe that the total number of exhibits
10 introduced and received in evidence in Hartford, and, again,
11 the record will speak for itself, but I believe it's in the
12 range of 300 to 350 exhibits. There is at least one that I
13 believe that I've seen comprehensive listing of those that
14 was introduced by stipulation up in the Hartford proceeding,
15 which I assume everybody else has in their records because I
16 find it in the documents which were provided to me.

17 So that at least gives us a road map to what's
18 there, that a document from Hartford, which is a listing of
19 the various and sundry exhibits that were received in
20 evidence there. That, I think, is an excellent place to
21 start.

22 Now, admittedly, there are 18 to 20 boxes worth of
23 stuff at least that I've seen from Mr. O'Connell and Mr.

1 Topel, but much of that is not from the Hartford proceeding
2 evidentiary phase and would not, I don't believe, be subject
3 to the stipulations. So I think we focus on the exhibits
4 which were received in evidence in Hartford and the formal
5 papers arising in Hartford. That's a fairly discrete number
6 of documents that I have to look at.

7 JUDGE FRYSIAK: Well, I'm still at a loss. I
8 can't see why I have to have any slippage in this case. I'm
9 going to deny the motion for rescheduling.

10 MS. SCHMELTZER: Your Honor, can we at least have
11 an extra week, because we've lost at least five days as a
12 result of depositions that have occurred in late-August that
13 were unanticipated.

14 JUDGE FRYSIAK: Mr. Cole suggested you go to the
15 week prior to the scheduled hearing date.

16 MR. TOPEL: I think Ms. Schmeltzer is talking
17 about exchange of hearing exhibits.

18 MS. SCHMELTZER: Right.

19 MR. TOPEL: Right now, hearing exhibits are due
20 when?

21 MS. SCHMELTZER: On Monday.

22 MR. O'CONNELL: Monday, the 31st.

23 JUDGE FRYSIAK: Oh, sure. Any problem with that?

1 MR. O'CONNELL: Well, I would prefer to keep to
2 the schedule that we have, but as long as we're keeping it a
3 hearing schedule, that is, going forward into September,
4 then I can probably live with a later exhibit exchange by a
5 week. That puts us over into Labor Day, past Labor Day, the
6 day after Labor Day.

7 JUDGE FRYSIAK: So that would be the 8th, then.

8 MR. O'CONNELL: Yes, sir.

9 JUDGE FRYSIAK: Getting back to my first question,
10 how much time are we going to lose because of the holy day
11 observance?

12 MR. TOPEL: I would imagine we'll definitely lose
13 Wednesday, and I would think Tuesday it would be likely Mr.
14 Hoffman would observe that, and he will be here for the
15 hearing.

16 JUDGE FRYSIAK: Half a day, did you say?

17 MR. TOPEL: I think we'd probably lose that day,
18 again, unless you wanted to have a half session in the
19 morning.

20 JUDGE FRYSIAK: Three or four hours are pretty
21 good, a lot of time.

22 MS. SCHMELTZER: I think the problem is that
23 people want to be home before sundown, and I don't know how

1 Mr. Hoffman would be able to do that.

2 JUDGE FRYSIAK: I didn't hear your remark.

3 MS. SCHMELTZER: People like to be home before
4 sundown on Yom Kippur.

5 JUDGE FRYSIAK: Mr. Hoffman would have to travel.

6 MS. SCHMELTZER: Right.

7 MR. TOPEL: He would have to travel to Hartford.

8 MR. O'CONNELL: Your Honor, I believe that my
9 experience is that a flight to Hartford is approximately an
10 hour to an hour and a half, and if were to adjourn at noon,
11 noon to 1 o'clock, I would anticipate there are flights
12 available that we could get a half a day of hearing in and
13 still enable Mr. Hoffman to be home by sundown.

14 JUDGE FRYSIAK: Okay. That sounds good to me. I
15 think that we can have some time on Tuesday and session. So
16 the 30th is out, half a day. Now, how about the 28th? Are
17 we scheduled for the 28th?

18 MS. SCHMELTZER: We weren't scheduled to start
19 until the 29th.

20 JUDGE FRYSIAK: Pardon?

21 MS. SCHMELTZER: We were scheduled to start on the
22 29th.

23 JUDGE FRYSIAK: Right. What about the 28th?

1 MS. SCHMELTZER: I may have to be at another
2 deposition in another case on that day.

3 JUDGE FRYSIAK: What do you mean, you may have to
4 be?

5 MS. SCHMELTZER: Well, I'd have to see if I could
6 get someone else to go, but right now I'm scheduled to be at
7 another deposition in another case on that morning.

8 JUDGE FRYSIAK: What about the week before that?
9 What days are you free?

10 MR. O'CONNELL: Rosh Hashanah, I believe, is
11 Monday and Tuesday, on 21 and 22.

12 MR. TOPEL: Your Honor, could I throw out a
13 suggestion, at the risk of incurring disfavor in terms of
14 moving things back ever so slightly? Would it work if we
15 started the hearing on Thursday, October 4th, and then we
16 wouldn't have to resatisfy any part-days, and we just go
17 straight through from October 1st to whenever we finish?

18 MS. WITHERS: Your Honor, the Bureau has a problem
19 with a hearing that extends into October 6th. We have
20 another hearing that begins October 6th, and we would prefer
21 not to have two that week.

22 MS. SCHMELTZER: This may not be concluded by
23 then, you realize.

1 JUDGE FRYSIAK: No one else in the Bureau can
2 handle the case?

3 MS. WITHERS: I mean, certainly we could, Your
4 Honor, if we had to; but Mr. Shook is handling primarily
5 both cases.

6 JUDGE FRYSIAK: Well, what do you mean about if
7 you had to? Are you objecting?

8 MS. WITHERS: We would prefer not to have a
9 hearing scheduled to begin that first week, beginning of
10 October 6th. We were hoping that this proceeding would be
11 concluded, at least primarily, up through that point.

12 JUDGE FRYSIAK: Mr. Topel?

13 MS. WITHERS: So if we were going to delay
14 further, we would prefer to delay after that point.

15 JUDGE FRYSIAK: There are other complications
16 after that point, aren't there?

17 MS. WITHERS: Well, in light of the fact that Your
18 Honor does not want to delay hearing, yes. We anticipate
19 that the hearing beginning October 6th will run through most
20 of October, at least two weeks.

21 MS. SCHMELTZER: I guess there is the possibility,
22 Your Honor, of starting on or about the 20th of October if
23 that would facilitate matters for the Mass Media Bureau.

1 MS. WITHERS: Your Honor, I'm not completely aware
2 of the schedule of the other hearing. I know that it's due
3 to begin October 6th, and I know that we anticipate that Mr.
4 Shook, in particular, will be tied up for two or three weeks
5 after that date.

6 MR. COLE: Your Honor, I may have missed
7 something. I'm still not sure why it is that starting on
8 September 23rd, the day after Rosh Hashanah, which would be
9 the week prior to the currently-scheduled start date or
10 sometime later in that week -- that's Wednesday, Thursday,
11 or Friday of that week, would not give us an extra day or
12 two and enable us then to go forward with a full seven days
13 of hearing, by my calculation, at least six and a half,
14 depending on how long we go on Tuesday, the start date at
15 sundown of Yom Kippur.

16 JUDGE FRYSIAK: Mr. Topel didn't address that. He
17 wanted an easy out, but what do you say to what Mr. Cole
18 says now?

19 MR. TOPEL: Well, Your Honor, obviously I joined
20 in the motion, and I support the motion. As far as starting
21 the 23rd, the witnesses who will be appearing on behalf of
22 the Trustee are represented by Mr. O'Connell and Ms.
23 Schmeltzer. I can be here on September 23rd if that's the

1 date you set.

2 JUDGE FRYSIAK: The 24th and the 25th as well as
3 the 28th, except for you.

4 MS. SCHMELTZER: I would have to confirm the
5 availability of those dates with my client because I had not
6 previously discussed those dates; I had discussed the
7 following week.

8 JUDGE FRYSIAK: All right.

9 MR. O'CONNELL: I would like to be able to consult
10 with Mr. Hoffman also, Your Honor, if possible.

11 JUDGE FRYSIAK: Well, it's too bad you didn't
12 consider the opposition before you came --

13 MR. O'CONNELL: Well, I was speaking to the dates
14 that you just mentioned. We could accommodate the late-
15 September for Mr. Hoffman. It's when we move earlier in the
16 month I'd have to check.

17 JUDGE FRYSIAK: Okay. Here is what I propose to
18 do. We will meet on the 23rd, 24th, 25th, 28th, and October
19 1, 2. If we can't proceed because of a lack of counsel,
20 then we'll simply adjourn until the next day. Fair enough,
21 Mr. Cole?

22 MR. COLE: Thank you, Your Honor. And am I
23 correct that the exhibit exchange has been put off until the

1 Tuesday after Labor Day and that it's moved ahead a week?

2 MS. SCHMELTZER: Your Honor, what I would like to
3 do, if it's acceptable to you, is to have exhibit exchange
4 on the 9th and witness notification on the 16th, and that
5 should allow everyone plenty of time.

6 JUDGE FRYSIAK: I'll ask Mr. Cole. What do you
7 say to that?

8 MR. COLE: I have no problem with that.

9 JUDGE FRYSIAK: Okay.

10 MR. COLE: Notification on the 16th?

11 MS. SCHMELTZER: Yes.

12 MR. COLE: Thank you.

13 JUDGE FRYSIAK: Anything else for us to consider?

14 MR. COLE: No, Your Honor.

15 JUDGE FRYSIAK: All right. Thank you very much.
16 We'll see you all on the 23rd.

17 (Whereupon, at 2:25 p.m., the hearing was
18 adjourned.)

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22

23

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 97-128
CASE TITLE: In Re: Martin Hoffman
HEARING DATE: August 25, 1998
LOCATION: Washington, DC

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: 8-25-98 Theodore Fambro
Official Reporter
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1220 "L" Street, N.W.
Washington, D.C. 20005

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: 8-26-98 Theodore Fambro
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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: 8-26-98 Bob Moser
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