

1 Berks County, somewhere around 23 - 24 percent of the county
2 population was Hispanic.

3 Additionally, we had hoped to reach over into
4 Philadelphia as well.

5 Q In response to questions from Mr. Southard, who
6 directed your attention to certain deposition testimony, you
7 indicated that your testimony at deposition, particularly I
8 believe it was at page 10, line 15, that is, when you were
9 asked in deposition did you have any understanding or any
10 discussion with other Adams principals as to what
11 programming Adams would air of Adams were successful prior
12 to four or five months previous to the deposition, you
13 answered no.

14 I believe you stated that there was an explanation
15 for your "no" answer. Am I correct in that?

16 A That's correct.

17 Q Could you provide that explanation now?

18 A I was always under the assumption -- I was always
19 under the assumption that it was designed to be an Hispanic
20 station. Never did I consider that any kind of conversation
21 was necessary.

22 Q Are you personally familiar with Mr. Gilbert?

23 A Yes, I am.

24 Q How long have you known Mr. Gilbert?

25 A Twenty-three - 24 years.

1 Q Could you describe your relationship with Mr.
2 Gilbert?

3 A Mr. Gilbert is a colleague as far as business is
4 concerned. Additionally, he's a good friend.

5 Q About how often on average do you communicate with
6 Mr. Gilbert either in person or over the telephone?

7 A Oh, at least once a month.

8 Q Are you familiar with Mr. Haag?

9 A Yes, I am.

10 Q Could you describe your relationship with Mr.
11 Haag?

12 A Mr. Haag and I met each other. He was my client
13 in 1963, and we became very close friends. We worked
14 together as agency and client until his retirement, and I'm
15 not sure exactly when that was, but it should have been
16 somewhere between 12 years later after 1963. But we kept in
17 contact because we were friends.

18 Q About how often do you communicate with Mr. Haag
19 either in person or by telephone?

20 A Not quite as often because he's in Palm Springs.
21 I talk to him perhaps over a year's time maybe four or five
22 times.

23 MR. COLE: I have no further questions, Your
24 Honor.

25 JUDGE SIPPEN: Mr. Shook?

1 RECROSS-EXAMINATION

2 BY MR. SHOOK:

3 Q Mr. Fickinger, my name is James Shook. I'm with
4 the Commission's Enforcement Bureau.5 The understanding that was referenced in your
6 conversation here with Mr. Cole a very short while ago, when
7 you said you had an understanding that the station was going
8 to deal with Hispanic programming.

9 A Yes.

10 Q Would you explain to us what that understanding
11 was based on?12 A Well, my interest specifically was Hispanic
13 broadcasting, and I'll just a little bit past this. When I
14 was president of Thompson, I was one of the first persons
15 who formed the unit to advertise to Hispanics.16 In the Monroe situation, I felt very strongly
17 about that. As a matter of fact, we were the ones who came
18 up with the idea of Hispanic advertising more generally or
19 whatever. That was picked up by the owner.20 It's always been my feeling, strong feeling that
21 the Hispanic market is the place we should be. As I said,
22 it looks at this point in time, it looks like in a very few
23 years Hispanics -- Hispanics are going to be the largest
24 minority group in the United States, and for us not to
25 capitalize on that in a good and sound way I think would be

1 dumb. That's why it was never, never that we were going to
2 do anything but Hispanic advertising as far as I was
3 concerned.

4 Q That more or less explains to me what your
5 personal understanding was and the basis for it. I think
6 the question though is more focused on whether Adams as a
7 group had any kind of understanding or discussions prior to
8 the time the application was filed in June of '94 as to what
9 its programming plans would be.

10 And if that were -- first of all, did that happen?

11 A Once again, Mr. Shook, I must say that perhaps I
12 was naive, but I believed after we were done with Monroe, I
13 felt very strongly that we all agreed that we would try
14 again to hit the Hispanic market.

15 So in answer to your question, a formal discussion
16 of what kind of programming, I don't remember anything like
17 that. I just didn't think it was necessary. I don't think
18 anyone else did either.

19 Q So if I understand your answer correctly, what we
20 have essentially is a carryover understanding in the sense
21 of what Monroe planned to do?

22 A That's what I understand.

23 Q Your assumption was that --

24 A Yes.

25 Q -- Adams would carry on as well?

1 A Yes.

2 Q And so is that an explanation as to why you
3 answered no to the question that was posed to you in
4 deposition?

5 A Yeah. Yeah, I just assumed that they were taking
6 about a change in attitude, and no, we didn't change
7 attitude.

8 Q So if I understand you, there was not a formal
9 discussion among the --

10 A No.

11 Q -- Adams principals as to what programming plans
12 there would be?

13 A No, there wasn't. You are right.

14 MR. SHOOK: I have nothing further.

15 MR. SOUTHARD: Your Honor, I have some follow-up.

16 JUDGE SIPPEL: Yes, sir.

17 RE-CROSS-EXAMINATION

18 BY MR. SOUTHARD:

19 Q Mr. Fickinger, isn't it true that the first time
20 you had any discussions about providing Spanish language
21 broadcasting wasn't until May or June of 1999?

22 A Oh, no.

23 Q Oh, no?

24 A No.

25 Q Would you take a look at your deposition, page 9,

1 line 8?

2 Question: "Have you had any discussions with any
3 other stockholders of Adams Communications about the
4 programming that Adams would air on their station if Adams
5 is successful?"

6 Answer: I talked with two of the leaders, yes."

7 Question: "What was the nature of that
8 discussion?"

9 Answer: "Hispanic is what we currently would be
10 planning to do."

11 Question: "When did you have that discussion?"

12 Answer: "The first time around -- I'm going to
13 say about four or five months ago and this morning."

14 And that was in October of 1999.

15 A Right.

16 Q Was that testimony true at the time you gave it?

17 A Yes, it was because --

18 Q Thank you.

19 At the time of the Monroe settlement, you're
20 familiar with the time?

21 A Yes.

22 Q Would you have considered yourself the foremost
23 expert in the country on Spanish language television?

24 A By no means.

25 Q Would it surprise you that Mr. Gilbert testified

1 that you were at that time the foremost expert of Spanish
2 language television?

3 A I think Mr. Gilbert -- yes, it would surprise me.
4 I think Mr. Gilbert exaggerated a little bit.

5 Q You were given a copy of your deposition to review
6 and to make corrections to, were you not?

7 A Yes.

8 Q And you did not make any changes, did you?

9 A No.

10 MR. SOUTHARD: I have nothing else, Your Honor.

11 JUDGE SIPPPEL: Mr. Cole?

12 FURTHER REDIRECT EXAMINATION

13 BY MR. COLE:

14 Q Mr. Fickinger, in response to questions from Mr.
15 Southard just right now, he asked you about an exchange that
16 occurred in your deposition, and whether your answer in that
17 deposition was accurate, and you said no, and began an
18 explanation which he cut you off.

19 Would you please offer that explanation now?

20 MR. SOUTHARD: Objection, Your Honor.

21 JUDGE SIPPPEL: What's the objection?

22 MR. SOUTHARD: Perhaps he could cite me to the
23 section in the transcript that he's referring to, but my
24 recollection was his answer was that it was accurate, and
25 maybe we're referring to a different section.

1 JUDGE SIPPEL: No, no, no. Let Mr. Cole finish
2 his question.

3 BY MR. COLE:

4 Q Do you recall the testimony that I'm discussing
5 where you responded to Mr. Southard "No, because" and he
6 stopped you?

7 A Mm-hmm.

8 Q Could you finish the sentence that you started
9 when you said, "No, because"?

10 A No, because, once again, going back to early to
11 mid 1990s, if something was, on my part at least, that we
12 were going Hispanic. There was just no doubt about it.
13 There was no need for any further discussion. We are in a
14 position to do -- to do the kind of -- to do the kind of
15 long-range planning under these circumstances was almost
16 impossible.

17 MR. COLE: Thank you, Your Honor. I have nothing
18 further.

19 JUDGE SIPPEL: Anybody else have anything?

20 MR. SHOOK: Nothing further.

21 MR. SOUTHARD: No, Your Honor.

22 JUDGE SIPPEL: I've got just a couple questions
23 here.

24 If you wanted to put on Spanish programming, what
25 markets were you thinking about putting it on?

1 THE WITNESS: Your Honor, we were looking for a
2 vulnerable station that was located in the midst of a heavy
3 Hispanic population.

4 JUDGE SIPPEL: Those are the two criteria?

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: And how did Reading get picked, as
7 far as you know?

8 THE WITNESS: Because as I suggested before, we
9 know that Reading was in a position about -- I can't be
10 exact, but about 25 percent of Berks County is Hispanic
11 already and it's growing very fast.

12 And the second reason was -- this comes down to a
13 personal thing -- I just felt as though the home shopping
14 channel was vulnerable. I look upon the home shopping
15 channel as a 12 - 24-hour advertising, and I felt it was
16 vulnerable.

17 JUDGE SIPPEL: Vulnerable in what sense?

18 THE WITNESS: Vulnerable in that it wasn't so
19 easy to --

20 JUDGE SIPPEL: Did you know the FCC was addressing
21 that question in a policy rulemaking setting?

22 THE WITNESS: No, I didn't. No, I didn't, Your
23 Honor.

24 JUDGE SIPPEL: You were part of the Monroe Group?

25 THE WITNESS: Yes, I was.

1 JUDGE SIPPEL: And were you satisfied with the
2 outcome in that situation, in that instance?

3 THE WITNESS: I can't say I was satisfied.

4 JUDGE SIPPEL: You weren't.

5 THE WITNESS: It was the position -- if I could
6 elaborate.

7 JUDGE SIPPEL: Sure, go ahead.

8 THE WITNESS: It was in the position where I think
9 the -- the Hispanic -- we acquired the station for Hispanic
10 advertising. But we got into the position where the two
11 major networks, Telemundo and UniVision, where UniVision
12 contracted another station in town and Telemundo was going
13 broke. They were in Chapter 11.

14 I had -- as I say, I know a little bit -- I might
15 not be the world's expert in advertising in the Hispanic
16 market, but I know a little bit about it, and I do know that
17 it was critical, absolutely critical for a successful
18 Hispanic station to have network and network programming.

19 What do I mean by network programming? If I had
20 to bring it down to one word it would be "novella". Novella
21 is sort of a soap opera, but it was critical for Spanish
22 viewers. The novella is a very popular thing, and the only
23 place that I knew of, and I know of that now, is to get it
24 at the network level.

25 And so we were faced with the situation, we were

1 faced with acquiring a station with no network
2 possibilities, and I didn't think that would be very
3 successful.

4 JUDGE SIPPEL: You mean that there would be no, in
5 the Monroe, in the station in Chicago.

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: There would be -- you felt that you
8 could not put on Spanish broadcasting because you are not
9 able to get an affiliation with a Spanish network?

10 THE WITNESS: It would be very difficult and very
11 iffy -- the success of such a thing would be very iffy
12 without network participation.

13 JUDGE SIPPEL: How long did it take you to figure
14 that out?

15 THE WITNESS: Well, it didn't take us very long
16 because when we were about ready to have the situation make
17 a decision one way or the other, that's when Telemundo went
18 bankrupt and we were told by UniVision that they would like
19 get another, so it didn't take very long.

20 JUDGE SIPPEL: Did they go into Chapter 7 or
21 Chapter 11?

22 THE WITNESS: I think it was Chapter 11.

23 JUDGE SIPPEL: It happens.

24 THE WITNESS: Yeah.

25 JUDGE SIPPEL: So what was your other option?

1 THE WITNESS: We could have looked into another
2 kind of advertising, other kind of programming, but the
3 market in Chicago is such that we would have an awfully hard
4 time to try and develop another kind of programming, and we
5 just felt that we were in a box and we couldn't get out.

6 JUDGE SIPPEL: There would be nothing that would
7 be satisfactory say on an interim basis until, you know,
8 maybe Telemundo came out of Chapter 11 or something like
9 that.

10 THE WITNESS: I didn't feel that way, Your Honor.
11 I felt -- I felt very strongly about Hispanic, and I still
12 do, because I just think we -- I just think that it's going
13 to be the coming thing, a great opportunity. As I said
14 before, it won't be too long until the Hispanics will be the
15 largest minority in the United States.

16 JUDGE SIPPEL: So you couldn't do a Spanish -- you
17 couldn't present a Spanish format, so what did you decide to
18 do?

19 THE WITNESS: Well, we decided to sell. We were
20 offered an arrangement and we decided to sell.

21 JUDGE SIPPEL: You took the money and walked in a
22 sense?

23 THE WITNESS: Yeah, it was not -- I felt bad. I
24 agreed with them, but I felt from a business standpoint, it
25 was not a good decision but it was the only decision I felt

1 that we had at the time.

2 JUDGE SIPPEL: Was there any other options
3 considered?

4 THE WITNESS: Well, we talked about other kinds of
5 programming but no one could come up with anything in a
6 market the size of Chicago that we thought would be
7 successful.

8 JUDGE SIPPEL: So how much did you come away with,
9 not you personally, but I mean, the group, how much did --

10 THE WITNESS: It was \$18 million.

11 JUDGE SIPPEL: Okay. All right. So you knew
12 that, well, obviously, you had lived through that scenario
13 when you filed for --

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: -- Reading, which was considered to
16 be a vulnerable station. Was it vulnerable in any other --
17 you are using vulnerable in the sense of home shopping
18 program. Was it vulnerable in any other sense?

19 THE WITNESS: Well, in the sense of -- as far as
20 we could determine, there was no public service, none. It
21 was strictly a 12-to-24-hour, whatever it was,
22 advertisement.

23 JUDGE SIPPEL: But it took awhile to determine
24 that, didn't it? I mean, you couldn't just -- you couldn't
25 just say Reading home shopping, no public service

1 broadcasting. Somehow or another, you had to find out more
2 information about that, didn't you?

3 THE WITNESS: Well, Mr. Gilbert had some tapes
4 that we looked at, and we just didn't see any future, change
5 in the future, I guess.

6 JUDGE SIPPEL: All right. Okay. Was it
7 vulnerable in any other sense? I mean, looking at it as
8 businessman, you got home shopping programming. You've
9 got -- there was a perceived insufficiency of public service
10 broadcasting.

11 THE WITNESS: Yes. I felt it so. I have to say
12 in this case we felt that. It needed -- it needed a boost
13 insofar as getting into the Philadelphia market as well. If
14 we were going to capitalize on this growing Hispanic -- we
15 think that the new antenna should have gotten up and gotten
16 over into the Philadelphia area. So I think there was a
17 vulnerability there. The vulnerability being a limited
18 market for us to operate in insofar as making money.

19 JUDGE SIPPEL: All right, that's all I have.

20 You all set?

21 MR. SOUTHARD: Your Honor?

22 JUDGE SIPPEL: Anybody want to ask him anymore
23 questions about what I asked him?

24 MR. SOUTHARD: I do, but rather than go into it,
25 I'd ask -- the testimony he just gave is inconsistent with

1 the testimony he gave at his deposition. And instead of go
2 back through it --

3 JUDGE SIPPEL: It's in the record, isn't it?

4 MR. SOUTHARD: Well, I would move that it be
5 admitted then. It's been identified but it hasn't been yet
6 admitted.

7 JUDGE SIPPEL: Oh, it hasn't been moved in?

8 JUDGE SIPPEL: I believe your ruling was that you
9 would not exclude it but that Mr. Fickinger would testify,
10 and at this point I simply offer it.

11 JUDGE SIPPEL: All right. Do you have any
12 objection to that?

13 MR. COLE: Yes, Your Honor. He's testified. Why
14 do we need his deposition? If Mr. Southard believes that
15 any testimony in the deposition is inconsistent, then I
16 think the proper approach is for him to ask the witness
17 about it and determine whether or not there was an
18 inconsistency or an explanation for the inconsistency, and
19 then move forward.

20 JUDGE SIPPEL: Are you prepared to go forward that
21 way?

22 MR. SOUTHARD: I can.

23 JUDGE SIPPEL: Let's do it.

24 JUDGE SIPPEL: Mr. Fickinger, if you want to take
25 a break at some point, let me know.

1 THE WITNESS: No.

2 JUDGE SIPPEL: Okay.

3 RE-CROSS-EXAMINATION.

4 BY MR. SOUTHARD:

5 Q If you could take a look at page 35 of your
6 deposition?

7 MR. SOUTHARD: For the record, it's Reading
8 Exhibit 43, page 36.

9 THE WITNESS: Yeah.

10 JUDGE SIPPEL: I want the record to be clear too
11 that I didn't read this deposition before I asked him these
12 questions.

13 MR. SOUTHARD: Very good, Your Honor.

14 BY MR. SOUTHARD:

15 Q Line 10.

16 A On which page?

17 Q Page 35.

18 A Yeah.

19 Q Question: "Can you tell me why Monroe agreed to
20 dismiss its application?"

21 Answer: "No, I really can't tell you why."

22 Do you see that?

23 A Yes.

24 Q And that was accurate at the time you gave it?

25 A Can I say something?

1 Q Yes, sir.

2 A Because you go down a few lines, I think you can
3 see what I was getting at. I said here, "Were you consulted
4 in the decision to dismiss the application?"

5 "Yes."

6 "Did you concur in that decision?"

7 "Yes, I did."

8 "Why did you concur in the decision?" And I went
9 into it.

10 Q Okay, why don't you read that for us. Line 19.

11 JUDGE SIPPEL: Line 19?

12 THE WITNESS: "Primarily because I can see your
13 problem. We were led to believe by Harriscope that insofar
14 as getting the station into operation, they would be of no
15 help whatsoever. True. In other words, we would have to
16 start out with a new antenna. We would have to start out
17 with new equipment. In building, we saw difficulty in
18 getting that done in the required one year to get the
19 station on the air again."

20 MR. SOUTHARD: Thank you. Nothing else, Your
21 Honor.

22 JUDGE SIPPEL: Anything further?

23 MR. COLE: Nothing, Your Honor.

24 JUDGE SIPPEL: Mr. Shook?

25 //

1 FURTHER RECROSS-EXAMINATION

2 BY MR. SHOOK:

3 Q When Mr. Southard referred you to your deposition,
4 the explanation that was given as to why Monroe settled had
5 to do with Harriscope, correct?

6 A That was part of the reason, yes.

7 Q Part of the reason.

8 So are you saying that the Harriscope matter was
9 the part of the reason that came to your mind at that point
10 in time?

11 A Yes.

12 Q The absence or the possible absence of programming
13 from Telemundo did not come into your mind aa.b.t that
14 point?

15 A Oh, yeah, that was part of it.

16 Q Did you --

17 A I explained that we were -- excuse me, Mr. Shook.
18 We were confronted with a hostile situation, and the
19 combination of Harriscope hostility and the fact that
20 Telemundo, who had been -- we were a little concerned about
21 it.22 Q Telemundo had gone into Chapter 11 approximately
23 when?24 A I don't know. It was in that -- it was in that
25 time, that time frame. I don't know exactly when.

1 Q So for purposes of clarifying the record, your
2 understanding as to why Monroe settled basically has two
3 components to it; one being Harriscope and the other being
4 Telemundo?

5 A Yes.

6 Q Okay, is there any other -- was there any other
7 reason?

8 A Well, I would elaborate a little bit on Harriscope
9 in the hostility that was there. As I said in the
10 deposition, we had to start practically from scratch, get a
11 building and people and all of it that goes with it, in
12 addition to the Telemundo topic. It was a very, very
13 difficult assignment.

14 Q So, yes, it comes down to Harriscope and Telemundo
15 but inside Harriscope very hostile and difficult situation.
16 They threw up every barrier they could possibly find.

17 Q And these barriers were going to, I take it,
18 increase the cost dramatically of starting up the station,
19 which was something that you had not anticipated beforehand?

20 A The cost was a factor but it was the time that it
21 would take, the time to get people, to get equipment, to get
22 everything there and ready.

23 MR. SHOOK: Thank you.

24 MR. SOUTHARD: Nothing else, Your Honor.

25 MR. COLE: Nothing, Your Honor.

1 JUDGE SIPPEL: I have no further questions.

2 Thank you very much.

3 THE WITNESS: Thank you.

4 JUDGE SIPPEL: You're excused as a witness, and if
5 you care to, you may remain in the courtroom or you may find
6 someplace that's more beneficial to do. (Laughter.)

7 JUDGE SIPPEL: You may do that also.

8 (Witness excused.)

9 JUDGE SIPPEL: Go off the record until --
10 (Whereupon, a recess was taken.)

11 JUDGE SIPPEL: We are on the record.

12 Mr. Gilbert, you are on the stand. You may still
13 be under oath from the last time you testified, but I think
14 I'm going to administer the oath again.

15 Would you please rise and raise your right hand?

16 Whereupon,

17 HOWARD N. GILBERT

18 having been duly sworn, was called as a witness
19 and was examined and testified as follows:

20 JUDGE SIPPEL: Thank you, sir.

21 DIRECT EXAMINATION

22 BY MR. COLE:

23 Q Mr. Gilbert, would you please state your name and
24 address for the record?

25 A Howard N. Gilbert. 180 East Pearson, Apartment