

1 JUDGE SIPPEL: All right. Well,
2 Mr. Brown, do you want to respond?

3 MR. BROWN: I appreciate the April
4 6th. Yes, I put April 2nd. I hadn't gotten
5 the response until now, and my wisdom slowly
6 being developed with regard to the timing and
7 issues, I thought April 6th would be a date
8 that would work better for all of us. Or at
9 least for me, to make sure that it was done on
10 time. And I appreciate both the Court's and
11 Enforcement Bureau's acceptance of that, and
12 I will be mindful of dates. Again, I know
13 there are all kinds of firms that do this in
14 Washington, DC, and there's big firms that
15 work. I'm working for an individual who
16 doesn't necessarily have a lot of money, and
17 I know that's not a concern of yours, who's
18 been thrown into something because of
19 something that he did fourteen years ago, and
20 he is trying to make sure things go forward,
21 but attempt to do it efficiently as we go
22 along.

1 So I appreciate the Court's ruling
2 on April 6th, and we will, of course, attempt
3 to be timely on all dates in the future.

4 JUDGE SIPPPEL: Well, all right. I
5 think that certainly addresses everything, all
6 the concerns you've heard from this end. I
7 want you to know, I mean, I'm not completely
8 - I'mnot oblivious to the fact that Mr. Titus
9 is not a Clear Channel operation. That's a
10 good - that went into my decision right away
11 in terms of permitting this to be done by
12 speaker phone today. So I just want you to
13 know that I am sensitive that, but it
14 certainly is not going to be controlling if it
15 comes to something like does he have to show
16 up for the hearing.

17 MR. BROWN: Sure.

18 JUDGE SIPPPEL: Okay. Let me point
19 out for the record, since I have exercised
20 discretion here in giving you the additional
21 four days, that there are a couple of observed
22 holidays that week.

NEAL R. GROSS
COURTREPORTERSANDTRANSCRIBERS
1323 RHODE ISLAND AVE.. N.W.
WASHINGTON, D.C. 20005-3701

{202} 234-4433

www.nealrgros?.com

1 MR. BROWN: Yes, you're right.

2 JUDGE SIPPEL: And as I said
3 before, I'm going to be out of the country.
4 I'm going to be in Europe, visiting with my
5 family in Europe. I've got grandchildren that
6 live in Europe, and that's where I'm going to
7 be until I get back in the office on the 16th.
8 So I think if we move these dates to the 6th
9 for Mr. Titus, and to the 16th for the Bureau,
10 that that would accommodate everybody. Is the
11 16th okay with you, Mr. Schonman?

12 MR. SCHONMAN: I'm sorry, can you
13 give us one moment?

14 JUDGE SIPPEL: Okay, go off the
15 record.

16 (Whereupon, the above-entitled
17 matter went off the record briefly)

18 JUDGE SIPPEL: We're going back on
19 the record.

20 MR. SCHONMAN: Your Honor, could
21 you clarify for me the dates that you're
22 proposing? What is that for, please?

1 JUDGE SIPPPEL: Well, Mr. Titus has
2 responded, in a general way, to your initial
3 discovery requests, which are requests for
4 documents and interrogatories. That filing of
5 his was made - it was March the 22nd, I
6 believe. Yes, and it came into our fax
7 machine on March the 22nd at 1800. So that is
8 something that you responded to yesterday,
9 that is, you being the Enforcement Bureau
10 counsel.

11 MR. SCHONMAN: Correct.

12 JUDGE SIPPPEL: Now, what he has to
13 do is he has to respond fully to the request.
14 And that is, he has to answer the questions or
15 object to the questions. And he has provide
16 the documents or object to certain of the
17 documents that have been requested. And that
18 task is going to be completed by the 6th of
19 April.

20 MR. SCHONMAN: Up to now it was my
21 understanding we were talking about his
22 interrogatory responses -

1 JUDGE SIPPET: That's just what I
2 said.

3 MR. SCHONMAN: -- Would be due by
4 the 6th. And is it also your ruling that he
5 has to provide the requested documents by the
6 6th as well.

7 JUDGE SIPPET: Yes, I just said
8 that.

9 MR. SCHONMAN: Okay.

10 JUDGE SIPPET: I just said that.

11 MR. SCHONMAN: All right.

12 JUDGE SIPPET: Answers to
13 interrogatories, and documents, and objections
14 to those that are not provided, whether they
15 be answers or documents, has to come in on the
16 6th of April. And then the Bureau would have
17 until the 16th of April to decide whether or
18 not they want to oppose the objections, to ask
19 for a motion to compel, you know, whatever
20 pleadings that you feel are appropriate or
21 that you need to get to the next step.

22 I'm sorry Mr. Brown, we're just

1 consulting. I may be shortening the time that
2 the rules give them.

3 MR. SCHONMAN: Would you mind, sir,
4 if we had until the 18th to interpose a motion
5 to compel as to the interrogatories and
6 document requests, if we find that it's
7 necessary?

8 JUDGE SIPPEL: Is that what the
9 rules give you?

10 MR. SCHONMAN: I believe.

11 JUDGE SIPPEL: Well, I'm going to
12 go along with that. I'm assuming that the
13 rules give them until the 18th.

14 MR. BROWN: I don't have any
15 problem with that.

16 JUDGE SIPPEL: Okay. Well, you've
17 got until the 18th.

18 MR. SCHONMAN: Okay.

19 MR. BROWN: Yes, no problem.

20 MR. SCHONMAN: Thank you, sir.

21 JUDGE SIPPEL: All right. Now, on
22 the documents, if there are documents that are

1 being withheld, and you do raise this point in
2 your preliminary objections, Mr. Brown, but if
3 there are documents that are being withheld
4 because of privilege, whether it be attorney-
5 client or work product, I've got certain
6 conditions with respect to those documents.
7 Documents which are claimed to be privileged,
8 they must be identified. You can do this in
9 your answers or you can do it in a separate
10 document. However you feel comfortable with
11 it.

12 But each document that is
13 withheld, which is responsive to the request,
14 but you contend are privileged, has to
15 identify the author, the recipient, the date
16 of the document, any person or persons who are
17 copied on the document, the subject matter of
18 the document, and the basis for the privilege
19 asserted.

20 MR. BROWN: Sure. A privilege log
21 is what you're requesting.

22 JUDGE SIPPEL: There you go.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234.4433

www.nealrgross.com

1 MR. BROWN: The practical
2 difficulty we have here is there may be
3 documents that exist but the documents - and
4 I would think they would be privileged or work
5 product, but neither Mr. Titus, nor certainly
6 us, because we weren't involved in this
7 fourteen years ago and earlier, have any of
8 those documents or know much about them. So
9 my general concern that way goes to that.
10 Certainly if there are documents that we have
11 from our work with Mr. Titus, or that he has
12 that we're withholding on privilege, we will
13 be happy to provide a log.

14 JUDGE SIPPEL: All right. Well I
15 never even focused on your first point. It
16 would seem to me - well, let me put one twist
17 on that. If you look at some of these
18 earlier-on documents which might be
19 privileged, but you feel that it's in his
20 interest to have them disclosed -

21 MR. BROWN: Sure.

22 JUDGE SIPPEL: -- That might open

1 up the door to having all of them disclosed.

2 MR. BROWN: Right.

3 JUDGE SIPPEL: Now I would
4 certainly give you the opportunity to do it on
5 a document by document basis. To say, "Well,
6 here, we're going to let this one in, we're
7 going to give you this one on your discovery,
8 Bureau counsel, but we're going to hold out
9 this other two documents," for whatever
10 reason, they're more sensitive, or whatever,
11 they're just duplicative, not privileged but
12 duplicative, something like that.

13 MR. BROWN: Right. My concern,
14 your Honor, is that there are documents that
15 we don't know about and we don't have, and Mr.
16 Titus doesn't have.

17 JUDGE SIPPEL: Okay.

18 MR. BROWN: And these documents, if
19 anything, are available to either party in
20 court files. Certainly if he has copies of
21 court documents, we'll produce **them**, although
22 my concern about having a protective order is

1 that, given the public availability of items
2 before the Commission, this is something that
3 in response, in this particular case, Mr.
4 Titus will comply with, but he's not
5 particularly interested in having his - the
6 records of this offense from when he was
7 eighteen publicized online with all the
8 details, etcetera.

9 JUDGE SIPPPEL: Well, he's going to
10 have to file something separate on those types
11 of documents, that they want to be filed under
12 seal. Either until the trial or all the way
13 through. And I'll have to rule on those. But
14 the Bureau has to get copies of those, **of**
15 course. They would be subject to the same
16 protective order, and then, as to whether or
17 not they need to go on the public record, the
18 Bureau would have an opportunity to give their
19 opinions too, their positions.

20 I want to add to that, quickly,
21 that I am very much inclined to put anything
22 that's considered as evidence in the case,

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE. N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 particularly if it's really probative
2 evidence, I am very much inclined to put them
3 on the record. Because I'm as much interested
4 in the "public," whoever that might be,
5 knowing the basis for my ruling, than I am for
6 somebody's sensitivities. But I do understand
7 exactly where you're coming from, and I will
8 consider any request for a protective order on
9 any particular document in the first instance.

10 MR. BROWN: Okay.

11 JUDGE SIPPEL: Mr. Schonman, do you
12 have anything to add to that?

13 MR. SCHONMAN: Your Honor, I agree
14 wholeheartedly with what you're saying. I
15 would like to add that the Bureau has no
16 interest in unnecessarily disparaging anyone's
17 character. That's not the purpose of this
18 hearing. We certainly would like to work
19 closely with Mr. Brown in obtaining documents,
20 relevant documents that he might have, and we
21 are sensitive too. There are matters which
22 are relevant to this hearing and there may be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 matters which are not. And we have no
2 interest in disparaging, unnecessarily,
3 anyone's character.

4 We would note, though, in our
5 document request, that the definition of
6 documents includes materials that are in his
7 possession, custody, or control. To the
8 extent he doesn't have anything, or doesn't
9 have a particular document, I'm not sure that
10 it falls into the definition of a document.

11 MR. BROWN: Oh, and I understand
12 and appreciate that.

13 MR. SCHONMAN: But if during the
14 course of providing materials to us, if Mr.
15 Brown would like to call us and talk with us
16 about any concerns or problems he's having, I
17 think that we can speed things along and try
18 to work out an arrangement. Keeping in mind
19 the procedures that you, your Honor, have
20 explained about protective orders or providing
21 things under seal. We certainly want to
22 cooperate in that respect.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 JUDGE SIPPEL: All right. This is
2 going along just fine. Yes, I didn't pick
3 that up, but if the request has even replied
4 that much, then -

5 MR. BROWN: Yes, and I appreciate
6 that.

7 JUDGE SIPPEL: -- That's an
8 excellent point. On the other hand, it
9 wouldn't surprise me at all to see Mr. Titus
10 wanting to put in some evidence from that
11 previous proceeding. Not for purposes of
12 proving the crime, whether the crime occurred
13 or was committed by him, but for the **purpose**
14 of explaining - there might be some
15 circumstantial evidence in there, as to frame
16 of mind, this type of thing, that he would
17 want me to consider.

18 So there you go. I mean, the
19 Bureau may not see it the same way - when they
20 see the individual evidence, they may not see
21 it my way, or the way that I'm saying it now,
22 but at a minimum, I certainly would look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 anything that he wants to put in the record
2 that's probative, that doesn't constitute a
3 collateral attack on the conviction, to me
4 it's fair game in the first instance.

5 MR. SCHONMAN: Your Honor, I would
6 agree with that. We're not here to re-
7 litigate any criminal convictions or any of
8 the number of a adjudications that he was
9 involved with, that Mr. Titus was involved
10 with as a juvenile. But all that information
11 certainly may be probative.

12 JUDGE SIPPEL: Okay. All right. I
13 think we're making some progress here. Let me
14 continue to go down my list. Use of sworn
15 testimony at trial. Now, Mr. Titus would be
16 expected and in all likelihood be required to
17 come in and testify.

18 MR. BROWN: Understood.

19 JUDGE SIPPEL: But the other
20 witnesses who you say you would be asking -
21 well, let's say other witnesses. Other
22 witnesses that you - there would be two

1 categories. Other witnesses that for some
2 reason or other you feel it would be wise to
3 bring them in. They would - we have a
4 practice here at the Commission that they
5 would initially testify through written
6 testimony. In fact, I'm going to let Mr.
7 Schonman address this more specifically, even
8 Mr. Titus himself can present his affirmative
9 evidence by way of a written statement, or
10 written testimony. It has to be sworn to.

11 MR. BROWN: Got it.

12 JUDGE SIPPEL: And then presented
13 for cross examination. I'm going to ask the
14 parties to work out an agreement on that, but
15 that's normally what the practice is. Now, I
16 don't want to get into any qualifications on
17 that, but like everything else, it depends on
18 the witness. But as a general rule, that's
19 how we do it here. Okay, I've got you on the
20 dates. Depositions. Anybody interested in
21 depositions at this stage?

22 MR. SCHONMAN: You know, at this

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE. N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 stage, we're not sure - the Bureau's not sure
2 whether we would want to take depositions.
3 Among the interrogatories that we have asked
4 of Mr. Titus is for him to identify potential
5 individuals who he might bring in to testify
6 on his behalf. We'd certainly like to be able
7 to speak with those individuals before the
8 trial. Whether we take formal depositions, we
9 just haven't decided. It's also a budgetary
10 concern as well, about traveling out to
11 Seattle. We have our own budget problems, Mr.
12 Brown.

13 JUDGE SIPPEL: Yes, we're not Clear
14 Channel either.

15 MR. BROWN: I'm heartened to hear
16 it.

17 JUDGE SIPPEL: Yes, I know. I'm
18 sure that's a real tear-jerker, isn't it?

19 MR. SCHONMAN: So the answer is, we
20 don't know. There is a possibility that there
21 might be depositions, but we're not sure.

22 JUDGE SIPPEL: All right.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SCHONMAN: I think, in part, it
2 depends on the comprehensiveness of the
3 responses to our interrogatories and document
4 requests.

5 JUDGE SIPPEL: All right. It might
6 be helpful if witnesses, if the Bureau becomes
7 interested in several witnesses as possible
8 targets for depositions, that they receive a
9 - I mean, I would think that they'd only be
10 interested in witnesses who might testify, as
11 a general rule. And that there be some kind
12 of a proffer, as to a general proffer as to
13 what this witness might testify to. So that
14 they can make a determination as to whether or
15 not they think it's important enough to depose
16 the person. But I leave that up to counsel in
17 the first instance, and if there's any
18 problem, you know, then an appropriate motion
19 or a request for a pre-hearing conference,
20 we'll work to get it straightened out.

21 I think that covers my list. I
22 will say this, again, if it's just a question

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 of a status conference or a conference where
2 I feel that we can work this out on the phone,
3 I might even be inclined to do this on an
4 informal telephone conference, if you don't
5 have any objection to that Mr. Brown or
6 Schonman.

7 MR. BROWN: I have no objection.

8 MR. SCHONMAN: The Bureau would
9 fine with that.

10 JUDGE SIPPEL: We wouldn't have a
11 court reporter involved in that. Okay. I
12 take pretty good notes, and in situations like
13 that, I invariably get an order out right
14 after the conference, so that to that extent
15 there is a record. I don't know what counsel
16 do these days. I've heard, sometimes,
17 computer keys going in the background, taking
18 me down verbatim. Whatever you want to **do**, it
19 doesn't bother me. Okay, does anybody else
20 have anything more? Let me ask the Bureau
21 first, because they've got the burden on this.
22 Is there anything further, Mr. Schonman?

1 MR. SCHONMAN: Well, just the -
2 will your Honor be releasing an order
3 memorializing the Apr 1 6th and April 18th
4 dates?

5 JUDGE SIPPEL: Yes I will.

6 MR. SCHONMAN: And I think there
7 was some concern expressed by Mr. Brown, and
8 I'm characterizing here. If I'm doing it
9 incorrectly, Mr. Brown, please jump in. I
10 think there was some concern as to where he
11 would produce the documents that we've all
12 agreed will be due on the 6th. And we would
13 like to have those documents delivered to the
14 Bureau offices on April 6th.

15 JUDGE SIPPEL: Okay, Mr. Brown?

16 MR. BROWN: To the extent we have
17 documents in possession, custody, or control
18 of Mr. Titus, that our responsive, we would
19 send them to the Bureau.

20 JUDGE SIPPEL: That's fine. I
21 don't need them, and the secretary doesn't
22 need them. The secretary just needs the

1 pleadings.

2 MR. BROWN: Exactly.

3 JUDGE SIPPEL: I think that's
4 understood. Well, okay, you understand what
5 the Bureau's asking for and there's no
6 objection to it. I will issue an order that
7 may not cover each and every point that we're
8 discussing here, but the transcript will
9 control anything that's not included in my
10 order or that's inconsistent with my order.
11 The transcript here controls - But there
12 shouldn't be any - we're not into anything
13 being contested here.

14 MR. BROWN: Right.

15 MR. SCHONMAN: Your Honor, if I may
16 as well, do you anticipate having another **pre-**
17 hearing conference, either informally or
18 formally, regarding the closing of discovery,
19 exchange of exhibits, notification of
20 witnesses for cross examination, and things of
21 that nature?

22 JUDGE SIPPEL: I will be issuing an

1 order at an appropriate time on what has to be
2 done for purposes of putting this - filing the
3 case for trial, which would include the dates
4 for documents, the dates for noticing
5 witnesses for cross examination, that type of
6 thing. I am interested in a discovery date
7 closure on this, even independently of what
8 I've just outlined. But I know you can't
9 really give me that until you figure out what
10 you're going to do with depositions and see
11 where these requests for motions to compel and
12 everything are going. So I think it's just
13 premature for that.

14 MR. SCHONMAN: Okay.

15 JUDGE SIPPEL: You know, I take it
16 first things first. But yes, we can work that
17 out, either - my preference is that if I have
18 a concern on something like that or I'm ready
19 to require something like that, I'm going to
20 issue probably - it'd be a short order, you
21 know, requiring counsel to get together and
22 give me some dates. If that can't be done, if

1 there's any glitch that comes up in any of
2 this, then we try it first by telephone
3 conference, and if that doesn't work, we'll go
4 back on the record again. But I'm certainly
5 going to look for every way possible not to
6 drag counsel in from Seattle, Washington, for
7 any kind of a pretrial matter.

8 MR. BROWN: I appreciate that.

9 JUDGE SIPPEL: This is just not
10 that type of case. Okay, anything else
11 anybody have?

12 MR. BROWN: Not here.

13 JUDGE SIPPEL: Mr. Schonman has
14 asked for just a minute here.

15 MR. SCHONMAN: We're okay. Thank
16 you.

17 JUDGE SIPPEL: **Okay.**

18 MR. SCHONMAN: Can we, the parties
19 and your Honor, discuss something off the
20 record once we close this session?

21 JUDGE SIPPEL: Can you hang on for
22 a couple of minutes after we go off the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 record?

2 MR. BROWN: Sure.

3 JUDGE SIPPEL: I think that
4 accomplishes what we accomplished today. Then
5 this pre-hearing conference is concluded
6 subject to my next call, which will be **by** way
7 of order.

8 (Whereupon, the above-entitled
9 matter was concluded at 10:16 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

DAVID L. TITUS

Name of Hearing

EB DOCKET NO. 07-13

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

March 27, 2007

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 47, inclusive, are the true, accurate and complete transcript prepared from the reporting by Katherine Sykora (Reporter'sName) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

April 16, 2007 Katherine Sykora *Katherine Sykora*

Date Legible Name and Signature of Reporter Name of Company: Neal Gross Co.

April 16, 2007 Alex Patton *Alex Patton*

Date Legible Name and Signature of Transcriber Name of Company: Neal Gross Co.

April 16, 2007 Mallory Trimyer *Mallory Trimyer*

Date Legible Name and Signature of Proofreader Name of Company: Neal Gross Co.