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TRANSCRIPT OF PROCEEDINGS

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

In the Matter of:

Eddie Floyd, et al

MB Docket No. 10-157

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WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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PRE-HEARING CONFERENCE

+ + + + +

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IN THE MATTER OF: :

:MB #10-157

EDDIE FLOYD :

Licensee of FM Translator Station:NAL/ACCT No.

K273AF, Carson City, Nevada :201041410018

:

EDDIE FLOYD :FRN:

:0011733425

and :

:Facility ID

WILKS LICENSE COMPANY - RENO LLC :No. 13529

For Assignment of License of FM :

Translator Station K273AF, Carson:File No.

City, Nevada :BALFT-200709

:04ACU

EDDIE FLOYD :

For Modification of License of FM:File No.

Translator Station K273AF, Carson:BMLFT-200712

City, Nevada :18ABH

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Tuesday
September 28, 2010
Courtroom TW A363
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

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WASHINGTON, D.C. 20005-3701

Appearances:On behalf of Federal Communications
Commission:

DANA LEAVITT, ESQ.

Special Counsel

ANITA J. PANTAKAR-STOLL, ESQ.

Attorney Advisory

of: Investigations and Hearings Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
(202) 418-1317

On behalf of Wilks License Company -
Reno, LLC:

RICHARD R. ZARAGOZA, ESQ.

PAUL A. CICELSKI, ESQ.

of: Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1122
(202) 663-8000

On behalf of Eddie Floyd:

EDDIE FLOYD, PRO SE

665 South Wells Avenue

Reno, Nevada 89502

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P-R-O-C-E-E-D-I-N-G-S

(9:30 A.M.)

JUDGE SIPPEL: We're going to start this proceeding. First thing I'm going to do is have everyone identify themselves. And then we're going to go through some -- we're just going to start with setting dates to do certain things. And then we'll get into things, so that you'll be able to have an opportunity to talk a little more later. But right now we just want to conduct business. Okay?

This is the pre-hearing conference, called at my order, in the matter of Eddie Floyd et al. And I'm going to start with the Bureau counsel. Please identify yourself for the record.

MS. LEAVITT: Yes, Your Honor. Dana Leavitt and Anita Patankar-Stoll representing the Enforcement Bureau.

JUDGE SIPPEL: Thank you very much. And on behalf of Mr. Floyd, Mr. Floyd,

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1 you're here representing yourself. Is that
2 correct?

3 MR. FLOYD: Yes, sir.
4 Unfortunately.

5 JUDGE SIPPEL: That's all right.
6 No adjectives. I understand that, and I --
7 all I can do is urge you to do the best you
8 can to obtain counsel. They don't all charge
9 as much, and some of them might have an
10 interest in representing you as a pro bono
11 client.

12 But I'll say no more about that
13 right now, but your appearance, subject to any
14 objection by any counsel or by -- your
15 appearance is accepted at this time and we'll
16 talk more about paperwork later.

17 MR. FLOYD: Thank you.

18 JUDGE SIPPEL: And on behalf of
19 Wilks License Company?

20 MR. ZARAGOZA: On behalf of Wilks
21 License Company - Reno LLC, Richard R.
22 Zaragoza and Paul Cicelski from the law firm

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1 of Pillsbury Winthrop Shaw Pittman. Mr.
2 Harington, who has been on the pleadings to
3 date, is out of the country, so I am
4 substituting for him today, sir.

5 JUDGE SIPPEL: Okay. Thank you,
6 Mr. Zaragoza.

7 MR. ZARAGOZA: Thank you.

8 JUDGE SIPPEL: It's been a while
9 since we've seen you in court.

10 MR. ZARAGOZA: It has, and it's a
11 pleasure to be back.

12 JUDGE SIPPEL: Good to hear. All
13 right, then. What I want to accomplish today
14 is setting a date for a hearing, and then
15 backing up from that into any pre-hearing
16 matters that might need to be accomplished.
17 And I am going to get to -- I understand that
18 there is a motion for the voluntary dismissal
19 of the Wilks Alliance entity, and we'll get to
20 that.

21 Let's start with a hearing date.
22 Does anybody have -- have you given this any

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1 thought? Do you have a preference on this?

2 MS. LEAVITT: Yes, Your Honor. We
3 have discussed with the Enforcement Bureau --
4 we have a position on where we think the
5 hearing might occur. But given the
6 uncertainty about whether Wilks is going to
7 remain a party, you know, we don't have any
8 input from them, and of course we have not
9 spoken with Mr. Floyd about this.

10 But, without further ado, do you
11 want me to propose some dates?

12 JUDGE SIPPEL: Please do.

13 MS. LEAVITT: We anticipate filing
14 admissions, serving admissions on both parties
15 by October fourth, which would render the
16 responses due by the fourteenth, barring any
17 objections or any other interlocutory motions
18 regarding admissions.

19 We would anticipate around
20 November first serving interrogatories and
21 request for genuineness of documents. If all
22 goes well and runs smoothly, mid-November

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1 would be a response deadline. November
2 fifteenth, let's say.

3 We then anticipate, if depositions
4 are warranted, issuing notices of deposition
5 around mid-December, December thirteenth.

6 And, of course, given the
7 budgetary issues with Congress, much of our
8 deposition work will depend on when the budget
9 is approved, because that will, we anticipate,
10 involve some expense.

11 So the Bureau may be operating
12 under some financial constraints. Then we
13 anticipate, in January, January tenth to the
14 thirty-first, conducting depositions if all
15 goes well.

16 And then, in the month of
17 February, drafting stipulations and presenting
18 the written direct cases. So --

19 JUDGE SIPPEL: What was the date
20 in February you said?

21 MS. LEAVITT: During February. We
22 didn't set any specific dates, Your Honor.

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1 JUDGE SIPPEL: Okay.

2 MS. LEAVITT: And then, hopefully,
3 conduct the hearing in March. Start the
4 hearing sometime late March.

5 JUDGE SIPPEL: Okay. Well, I
6 think for the date, sometime with a question
7 mark in March for the hearing date.

8 MS. LEAVITT: It's a bit
9 aggressive, and it probably doesn't take into
10 account the vagaries of litigating some of the
11 discovery issues, but that's what we propose.

12 JUDGE SIPPEL: All right. Now,
13 Mr. Floyd. I don't know if you have -- do you
14 understand -- well, I have to explain to you,
15 really, what the significance of those dates
16 are, perhaps.

17 MR. FLOYD: I do understand them,
18 Your Honor.

19 JUDGE SIPPEL: Great. That's
20 great.

21 MR. FLOYD: I took notes, and I do
22 understand them. And at this juncture, I have

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1 no problem with the proposed dates whatsoever.

2 JUDGE SIPPEL: All right. Now
3 then, I'm going to ask Mr. Zaragoza if he
4 would address this. I don't have -- I'm not
5 prepared for a ruling today.

6 But I would think that under the -
7 - whichever way that went, and I want to hear
8 more about it beforehand, I would think those
9 dates are pretty far out. What would be your
10 reaction? What would be your feelings about
11 this?

12 MR. ZARAGOZA: We have no
13 objection. Admittedly, and as counsel stated,
14 that we had no foreknowledge of the particular
15 dates, on their face they seem to be
16 reasonable.

17 I'd want to emphasize that, just
18 as the process is burdensome to the FCC, it
19 certainly will be to our client, who believes
20 they were duped. You know, in this
21 transaction.

22 But putting that aside for a

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1 moment, you have our commitment to cooperation
2 whether we're in the case as a party or
3 outside the case. So that we would
4 participate as required under either of those
5 scenarios.

6 What we would like to do, though,
7 is just to reduce the burden on this
8 particular company.

9 JUDGE SIPPEL: Thank you very
10 much. That solves the scheduling problem, or
11 issue, or question. And I'll reduce all those
12 dates to writing, and I'll give you some more
13 firm dates in February and March so we can be
14 working against those dates.

15 I had one question, and I will --
16 I also just want to pass along, Mr. Zaragoza,
17 I am going to give this motion full time and
18 attention once I hear from counsel today.

19 But I want the opportunity to get
20 some views on the record, also.

21 MR. ZARAGOZA: I fully support
22 that, Your Honor.

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1 JUDGE SIPPEL: Okay. Now, the
2 question of the depositions, that's what came
3 across to me. You're quite sure that you're
4 going to need deposition testimony?

5 MS. LEAVITT: Well, Your Honor, we
6 don't know. But we want to build that into
7 the schedule so that it's not a sudden
8 surprise if we do.

9 It's not the Bureau's intent to
10 hold depositions just for the sake of holding
11 depositions. And I think as discovery
12 progresses, we'll know better where we are.
13 But we haven't even issued admissions yet.

14 So we have built that in. I
15 suspect with probably some of Mr. Floyd's
16 witnesses, and Mr. Floyd will definitely want
17 to be conducting depositions, I suspect. But
18 again, we haven't talked to Mr. Floyd or his
19 witnesses at this point yet.

20 JUDGE SIPPEL: Well, that's one
21 thing that you really want to do, is get
22 together with Mr. Floyd by phone or emails or

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1 whatnot, and try and hash some of this out to
2 the best that you can.

3 I know that you can't definitively
4 say anything today, but it seems to me that --
5 well, as I say, I'm lukewarm on depositions in
6 a case like this. Certainly if you make out
7 a case for depositions, you'll get the
8 depositions.

9 But I'm going to involve myself
10 more than usual, perhaps, when you decide you
11 want a deposition and I may want to have a
12 conference or a telephone conference or
13 something and try to find out exactly why you
14 think you need it.

15 And again, I'm not in charge of
16 the budget. I'm not even in charge of my home
17 budget, so that's not what I'm concerned
18 about. But Mr. Floyd is in a difficult
19 position in terms of representing himself in
20 this case, and I just want to be sure that
21 nothing is done that's not needed to be done.
22 Other than that, we're playing by the rules.

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1 Mr. Floyd, you understand what
2 we're talking about here? Depositions, I
3 guess you're familiar with depositions.

4 MR. FLOYD: Sir, I am. I am
5 familiar with them, and if it's required, than
6 it's something that I'll make myself available
7 for, as well be available to have conducted.

8 JUDGE SIPPEL: Thank you. Okay, I
9 have nothing more, then, on the procedures.
10 Does anybody else have any questions about the
11 procedures, the dates, or any such thing?

12 Okay, let's move on to the motion.
13 Becuase I'd like this opportunity to get
14 better educated and to get a better focus for
15 myself. You've filed a motion -- the motion
16 has been filed to dismiss.

17 And let me start with the Bureau.
18 Why is it that you feel you need this party in
19 the case, since they want out of any business
20 association with Mr. Floyd?

21 And don't feel -- nothing personal
22 directed against you, Mr. Floyd, but we have

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1 to talk in terms of the context of the case,
2 that's all.

3 MR. FLOYD: I understand.

4 JUDGE SIPPEL: All right. Mr.
5 Harington filed the motion, and there's also -
6 - before you respond, there is also an order
7 to show cause with respect to assessing a fine
8 or apparent liability for forfeiture that ties
9 in with this case. Am I correct about that?

10 MS. LEAVITT: Yes, Your Honor.

11 JUDGE SIPPEL: Now does that have
12 any bearing with respect to this motion? To
13 the merits of this motion, or the substance of
14 the motion?

15 MS. LEAVITT: I don't believe so,
16 Your Honor. The reason the Bureau opposed
17 Wilks's dismissal as a party at this
18 particular point in the proceeding is because
19 the Bureau is developing a record.

20 And in the course of preparing for
21 this pre-hearing conference we received
22 information from Mr. Floyd indicating that

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1 Wilks may have acquired the license or
2 attempted to acquire the license without his
3 knowledge or consent. And that's a very
4 serious issue regarding an application, the
5 assignment application, its amendment, and
6 then a modification application.

7 All these documents were filed
8 electronically. We've got to obtain
9 signatures. There's going to be substantial
10 factual material that we have got to acquire.
11 And at this point in the hearing, at least, it
12 would be very helpful -- and I know that Wilks
13 has acknowledged that they will be
14 cooperative, and the Bureau appreciates that.
15 And to the extent that all parties cooperate
16 and respond to admissions and answer questions
17 fully, it probably will reduce the need for
18 depositions.

19 But at this point, the Bureau is
20 faced with allegations, the weight of them to
21 be accorded later as discovery develops, that
22 Wilks may have, in fact, been involved in

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1 knowingly or with willfull blindness filing
2 applications while Mr. Floyd was in prison.

3 JUDGE SIPPEL: Well, but what's
4 your basis for that information?

5 MS. LEAVITT: On August twenty-
6 fourth, Mr. Floyd communicated with Tom Hutton
7 in the Enforcement Bureau via an email. And
8 the Bureau received the email, I think it was
9 on November seventh, that Mr. Floyd was making
10 this allegation.

11 And that was the foundation of our
12 basis for opposing dismissal of Wilks as a
13 party.

14 JUDGE SIPPEL: All right. But it
15 sounds to me like that is a separate issue,
16 over and apart from what's been charged in the
17 hearing designation order. Or am I wrong on
18 that?

19 MS. LEAVITT: Your Honor, the
20 issues specified tn the HDO are whether Mr.
21 Floyd misrepresented material facts as to any
22 adverse findings. He certified that there

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1 were no adverse findings. If it turns out
2 through discovery that another party prepared
3 these applications, either with Mr. Floyd's
4 knowledge or without it, the question arises
5 then as to who did certify.

6 Did Mr. Floyd certify that he had
7 no adverse findings, or did some other party
8 do so? At this point, we don't know whether
9 it might have been Wilks, or some other
10 entity, or maybe Mr. Floyd's power of attorney
11 or somebody acting on his behalf.

12 There are just some significant
13 questions raised as to who was actually filing
14 and filling out and submitting these
15 applications, albeit ostensibly on Mr. Floyd's
16 behalf.

17 And I would point out in Mr.
18 Floyd's recently filed, as of last night,
19 self-styled notice of appearance, he repeats
20 these claims. I mean, allegations about
21 whether somebody has been operating the
22 station without his authority or knowledge.

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1 And I'm afraid that it's factually a little
2 bit complicated at this point.

3 I think if Wilks is involved as a
4 party at this point in discovery, we will be
5 able to quickly adduce evidence and determine
6 what the facts are as they relate to the
7 specified issues.

8 JUDGE SIPPEL: Right. I am very
9 interested in what you are saying, but
10 nonetheless the hearing designation order
11 makes -- all the hearing designation order
12 does is it makes allegations with respect to
13 Mr. Floyd misrepresenting or miscertifying
14 that there hadn't been a conviction when there
15 actually had been one.

16 And your question -- there's no
17 question at the time the HDO was issued as to
18 whether or not there was any involvement by
19 the Wilks Group in preparing that
20 certification. Is that correct?

21 MS. LEAVITT: Your Honor, Wilks is
22 the assignee on this.

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1 JUDGE SIPPEL: I understand.

2 MS. LEAVITT: So our understanding
3 of the facts as they are today is that Mr.
4 Floyd was in prison while these applications,
5 all these applications were filed. So
6 somebody filed these applications, not him,
7 electronically.

8 JUDGE SIPPEL: The assignment?

9 MS. LEAVITT: Yes, the assignment
10 as well as the modification application, Your
11 Honor. And because of --

12 JUDGE SIPPEL: I'm sorry to
13 interrupt, but was his signature on the
14 assignment documents in some way, shape, or
15 form?

16 MS. LEAVITT: Well, we have -- we
17 recently received based on Wilks's reply to
18 our opposition --

19 JUDGE SIPPEL: Yes?

20 MS. LEAVITT: The actual excerpt
21 of the application where it looks like Sherrie
22 Floyd, Mr. Floyd's power of attorney, signed

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1 on his behalf.

2 JUDGE SIPPEL: Would Sherrie Floyd
3 be -- is this a relation to Mr. Floyd of some
4 kind? Family?

5 MS. LEAVITT: We believe she is
6 his wife, but I think he probably could
7 address that better.

8 JUDGE SIPPEL: Is that true, Mr.
9 Floyd? Is that Sherrie Floyd? Is that your
10 wife?

11 MR. FLOYD: That's her. She is
12 right next to me right now, taking notes.
13 Yes, sir. The FCC is correct in that
14 assumption. Okay?

15 JUDGE SIPPEL: All right. But
16 that's the relationship. She is your wife.

17 MR. FLOYD: Yes, sir.

18 JUDGE SIPPEL: Correct?

19 MR. FLOYD: Yes, sir.

20 JUDGE SIPPEL: And she did sign
21 with your power of attorney?

22 MR. FLOYD: Yes, sir.

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1 JUDGE SIPPEL: All right. Well,
2 here's what I'm going to -- let me hear from
3 Mr. Zaragoza. Now, of course, Mr. Zaragoza,
4 are you prepared to discuss this?

5 MR. ZARAGOZA: Yes, Your Honor,
6 but what I'd rather do is, as you properly
7 just did, is elicited any further comments
8 updating from Bureau counsel. I'd like to
9 know Mr. Floyd's position on this motion,
10 because he has not spoken to it yet. He may
11 have no objection to the motion being granted
12 on the condition that we continue to
13 cooperate.

14 Because it seems right now that it
15 is very relevant. He has just admitted over
16 the telephone that his wife held a power of
17 attorney. I don't know if she still holds it,
18 and that's precisely the basis on which we
19 proceeded with that transaction. Working
20 through her holding a power of attorney, but
21 without any knowledge as to why she held the
22 power of attorney, because we didn't even have

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1 the document at the time, and didn't even know
2 that he was in jail at the time.

3 And that's why we felt that we
4 were duped in this whole thing. But I'd like
5 you, respectfully, Your Honor, to ask Mr.
6 Floyd's position on this matter, so that I can
7 then respond to the positions of both parties.

8 JUDGE SIPPEL: That is a good
9 point. I'm going to ask that question of you
10 in just a minute, Mr. Floyd. But I'm still
11 trying to get clear in my mind what is the
12 connection of this incident, with respect to
13 assignment documents, have to do with Mr.
14 Floyd's -- the case against Mr. Floyd for his
15 license renewal?

16 MS. LEAVITT: Well, Your Honor,
17 based on the evidence that Mr. Floyd -- or
18 information that he has presented to the
19 Bureau, indicating that somebody else filed
20 the documents without his knowledge, it would
21 tend to exonerate him or exculpate him as
22 having had intent to misrepresent adverse

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1 findings to the Commission, and may shift
2 suspicion on other parties maybe having either
3 collaborated or attempted to represent facts
4 that are not true to the Commission, in order
5 to acquire the station.

6 JUDGE SIPPEL: Is one of your
7 theories that they, as Mr. Zaragoza put it,
8 that they might have -- that Mr. Floyd, while
9 he was in prison, may have been, quote,
10 "duped" into giving his license away?

11 For all practical purposes, I
12 mean, the assignment. Is that what you're
13 suggesting, or one of your theories, or --

14 MS. LEAVITT: Possibly, Your
15 Honor. Quite frankly, because discovery is --
16 you know, we've delayed discovery until we got
17 notices of appearance, and there were some
18 glitches with that. The Bureau really is at
19 a loss as to be able to ascertain with
20 specificity exactly what the theory is.

21 And our goal is to have Wilks as a
22 party at this particular point, because of

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1 potential allegations that Mr. Floyd, the
2 licensee, may in fact not have submitted the
3 application and may not have made
4 misrepresentations.

5 If the assignee made
6 misrepresentations, or both parties colluded,
7 or --

8 JUDGE SIPPEL: Well, all right.
9 You don't have to take it any further than
10 that, because all of this is speculation
11 anyway. But I'm still trying to think of a
12 theory that -- when the hearing designation
13 order was issued, it was very clear as to what
14 was alleged, and why it was that the Bureau
15 didn't think that he should have his license
16 renewed.

17 All right. Then this question of
18 the assignment comes in. And that had to do -
19 - Mr. Floyd has not been charged with any
20 wrongdoing with respect to that assignment.
21 All you do, is you just have a series of
22 questions with respect to the circumstances of

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