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TRANSCRIPT OF PROCEEDINGS

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

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In the Matter of:

Eddie Floyd, et al.

MB Docket No. 10-157

ORIGINAL

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NEAL R. GROSS & CO., INC.
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

+ + + + +

PRE-HEARING CONFERENCE

+ + + + +

-----:
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
-----:

Friday
December 3, 2010

VOLUME 2

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

9:38 a.m.

ADMIN. JUDGE SIPPEL: This is our second prehearing conference in the matter of Eddie Floyd, et al., MM Docket No. 10-157.

I guess the first order of business, I'll just take appearances of Counsel for Mr. Floyd.

MR. SHAINIS: Aaron Shainis of the law firm Shainis and Beltzman.

ADMIN. JUDGE SIPPEL: Good morning.

And on behalf of Wilks License?

MR. HARRINGTON: Clifford Harrington and Paul Cicelski of Pillsbury Winthrop Shaw Pittman.

ADMIN. JUDGE SIPPEL: Good morning, sir.

MR. HARRINGTON: Good morning.

ADMIN. JUDGE SIPPEL: And on behalf of the Bureau?

MS. LEAVITT: Dana Leavitt.

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1 ADMIN. JUDGE SIPPEL: Okay. I
2 have for consideration today a joint
3 prehearing statement which seems to be very
4 clear and concise and perhaps can shorten
5 things a bit.

6 Why don't I start with Mr.
7 Shainis. Do you have anything preliminary you
8 want to say or you want to address any aspect
9 of the report?

10 MR. SHAINIS: Yes, Your Honor.
11 I'd be happy to. If you just give me a
12 second, I'll pull the report.

13 ADMIN. JUDGE SIPPEL: No problem.

14 MR. SHAINIS: I was unavailable to
15 view the final version of this before it was
16 filed. I have subsequently reviewed it and I
17 have no problems with it. Let me start off
18 with that.

19 The other thing which is -- you
20 had raised in your order about certain
21 questions which are contained in this which I
22 said I would be happy to answer. The first

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1 one was the nondisclosure of the Eddie Floyd
2 bankruptcy.

3 At the time -- and the bankruptcy
4 has been going on for several years, number
5 one. Number two, at the time of the
6 prehearing conference, no one asked Mr. Floyd
7 if he was in bankruptcy.

8 Secondly, he didn't know it had
9 any relevancy whatsoever. He was not
10 represented by counsel. So there was nothing
11 nefarious about not disclosing it at all. He
12 just didn't realize it had any more relevancy
13 than what he had for dinner the preceding
14 night.

15 ADMIN. JUDGE SIPPEL: Do you have
16 any trouble with that, Ms. Leavitt?

17 MS. LEAVITT: Actually, Your
18 Honor, perhaps the reason he didn't mention
19 the fact that he was in bankruptcy because he
20 didn't perceive it as relevant to the license,
21 since in his Schedule B Statement of Personal
22 Property, he never disclosed that he had the

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1 license.

2 On June 24, 2010, he and his wife
3 filed under penalty of perjury a statement as
4 required by the Bankruptcy Court listing all
5 of their personal property.

6 There is a Category 23 listing
7 patents, copyright -- sorry -- licenses,
8 franchises, and other general intangibles;
9 give particulars. The instructions advise the
10 debtor to answer and respond to everything.

11 There is a category none. He
12 checked none.

13 We know that he knew he had the
14 license because at the prehearing conference,
15 he knew he had the license. And in fact, he
16 was very concerned because Wilks was still
17 transmitting over his station.

18 ADMIN. JUDGE SIPPEL: I recall
19 that.

20 MS. LEAVITT: Yes. So that may
21 have been why he failed to disclose it or
22 didn't think it was relevant.

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1 ADMIN. JUDGE SIPPEL: That's an
2 interesting observation, but I think a bit
3 speculative at this point.

4 I wanted to ask you, the Bureau,
5 were you aware of the bankruptcy when we had
6 that conference?

7 MS. LEAVITT: I don't recall, Your
8 Honor. I don't recall.

9 ADMIN. JUDGE SIPPEL: What were
10 the circumstances under which the Bureau first
11 became informed of the bankruptcy; can you
12 recall that?

13 MS. LEAVITT: It was in a Wilks
14 pleading, I believe.

15 ADMIN. JUDGE SIPPEL: Wilks made a
16 complete disclosure of it --

17 MS. LEAVITT: Right.

18 ADMIN. JUDGE SIPPEL: -- the first
19 time I saw it in the papers that were filed.

20 MS. LEAVITT: Right.

21 ADMIN. JUDGE SIPPEL: But I'm
22 saying, had there been any other opportunity,

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1 circumstance or whatever that it became known
2 to the Bureau?

3 MR. SHAINIS: I may be able to
4 shed some light on this, Your Honor.

5 ADMIN. JUDGE SIPPEL: Thank you,
6 sir.

7 MR. SHAINIS: Prior to my entry of
8 appearance in this case, I placed phone calls
9 into Counsel for Wilks, Counsel for the
10 Bureau, including Mr. Schonman.

11 At that time I mentioned that I
12 had been advised, and I used the word advised,
13 that Mr. Floyd was in bankruptcy and was --
14 assuming -- implicit in that was, if I could
15 verify that, I would be filing on his behalf
16 a motion to take -- to avail himself of the
17 Second Thursday case.

18 Mr. Schonman at that point said to
19 me, I don't understand why. He was not told
20 by Mr. Floyd that he was in bankruptcy.

21 So the first time the Bureau was
22 alerted to it was my phone call. Then I filed

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1 a pleading the next day in which I also used
2 the word, I had been advised.

3 Mr. Harrington that afternoon
4 basically filed a pleading supporting what I
5 had filed and at that point put in the case
6 number.

7 To further close the loop on this,
8 on November 22, 2010, the bankruptcy showing
9 has been amended -- I will be happy to file
10 that in this proceeding -- to reflect that the
11 license and the associated assets are included
12 in the bankruptcy.

13 ADMIN. JUDGE SIPPEL: So in
14 effect, it was an amendment to correct that --

15 MR. SHAINIS: Yes. It was amended
16 on November 22, 2010.

17 ADMIN. JUDGE SIPPEL: All right.

18 MR. HARRINGTON: Your Honor?

19 ADMIN. JUDGE SIPPEL: Yes, sir?

20 MR. HARRINGTON: I just wanted to
21 confirm Mr. Shainis' statement. We learned of
22 the bankruptcy through Mr. Shainis' telephone

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1 call.

2 Then I had our librarian do some
3 research and found the case listed in, I
4 think, the PACER System, which allowed me to
5 get a copy of the docket sheet and also
6 obviously get the docket number for the Court.

7 That's what we -- the source of
8 the information which we filed with you later
9 in the day that Mr. Shainis filed.

10 ADMIN. JUDGE SIPPEL: I recall
11 that. It was in a footnote of your pleading.

12 MR. HARRINGTON: Yes, sir.

13 ADMIN. JUDGE SIPPEL: Well, it's
14 neither here nor there. I'm really interested
15 in terms of the Bureau.

16 You said you called Mr. Schonman?

17 MR. SHAINIS: I called Mr.
18 Schonman.

19 ADMIN. JUDGE SIPPEL: What day was
20 that, the day before your motion?

21 MR. SHAINIS: The day before my --
22 it was either a day or two days before the

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1 motion. I believe it was the day before. It
2 may have been two days but I believe it was
3 the day before.

4 I spoke to Mr. Schonman, spoke to
5 Ms. Leavitt, and I spoke to the other
6 Counsel --

7 MS. LEAVITT: Anita.

8 MR. SHAINIS: -- Anita Patankar-
9 Stoll on the phone. Each of them I spoke to
10 separately, basically to alert them as to what
11 I was planning to file.

12 The reason for the urgency of
13 filing was there were items that were going to
14 be coming due, so I needed to at least advise
15 them of what I was filing.

16 MR. HARRINGTON: Your Honor, I
17 believe the request for deferral of dates
18 where that was first disclosed by Mr. Shainis
19 that his understanding was he was in
20 bankruptcy was October 22, which I believe was
21 a Monday.

22 I think we talked to Mr. Shainis

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1 either on the afternoon of the previous
2 Thursday or Friday prior to that date.

3 ADMIN. JUDGE SIPPEL: Okay. So we
4 got a few days behind. But still in all, it
5 was a September conference.

6 What I'm hearing is that -- well,
7 because you hadn't even filed a notice at that
8 point of appearance? You were not in the
9 case, Mr. Shainis?

10 MR. SHAINIS: No. And I guess
11 what I should do at an appropriate time, and
12 I guess that will be the next question, or
13 it'll be somewhat coming up here.

14 The way Evans got involved in this
15 would be somewhat involved in my getting
16 involved, which at the appropriate time I'll
17 be happy to discuss this. That may shed some
18 light on the relationship or relationships
19 between the parties.

20 ADMIN. JUDGE SIPPEL: Do you think
21 it would be easier to submit a statement of
22 explanation or something?

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1 I can do it here on the record. I
2 don't care. It's whichever you would prefer.

3 MR. SHAINIS: No. I don't want to
4 submit it as a statement of explanation if I
5 can avoid it.

6 ADMIN. JUDGE SIPPEL: Okay. We
7 can do it here.

8 MR. SHAINIS: Okay.

9 ADMIN. JUDGE SIPPEL: Twenty-two
10 October? That's correct, 22 October was on a
11 Monday.

12 That was the date on which other
13 things were due also, like some responses to
14 requests for admission, and they came in
15 simultaneously. I remember all of that so I
16 don't need to spend any time with it.

17 But I'm just using that as a time
18 reference to figure out -- you did not know,
19 Ms. Leavitt, at the conference in September
20 that there was any bankruptcy at all?

21 MS. LEAVITT: I believe that's
22 correct, Your Honor. I would have to go

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1 through and check, but it wasn't on my radar
2 screen and I remember finding out via Wilks,
3 either a filing or perhaps it was through Mr.
4 Shainis' call. But it was well after the
5 conference that he was in bankruptcy.

6 In fact, I reviewed the transcript
7 from the prehearing conference and he himself
8 alluded to having financial difficulties and
9 alluding to, my financial situation and
10 financial difficulties, but he never mentioned
11 the word bankruptcy. It was always in the
12 context of his incarceration.

13 So he himself did not mention it
14 at the prehearing conference, despite the fact
15 that his financial straits were discussed.

16 ADMIN. JUDGE SIPPEL: I hear you.
17 But do you read anything as, the word Mr.
18 Shainis used, nefarious in terms of what Mr.
19 Floyd was doing at that conference in what he
20 was saying to us? Do you feel now that you
21 were misled or that there was an oversight?

22 MS. LEAVITT: Well, Your Honor, I

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1 suppose you could look at it one of two ways.

2 Either Eddie Floyd for some reason
3 -- and of course Mr. Shainis was not
4 representing him at the time of the prehearing
5 conference -- had checked the no box on the
6 Schedule B of his personal property, that he
7 did not have a license. I can't even
8 speculate as to what his reason might have
9 been, but perhaps when we had our prehearing
10 conference on, I think it was September 28, he
11 believed since he'd checked no, assuming --
12 and I'm not going into his motives or what
13 that might have represented in terms of
14 perjury or whatever -- but he may have thought
15 because he had stated no in that June 24, 2010
16 filing, he didn't -- it wasn't relevant to his
17 particular case.

18 In fact, he was interested and he
19 made comment at the prehearing conference
20 about having lined up somebody else to
21 purchase the station at that time. I think he
22 referenced John Schroeder.

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1 ADMIN. JUDGE SIPPEL: John
2 Schroeder's name came up but I never pursued
3 that.

4 MS. LEAVITT: I didn't either,
5 Your Honor.

6 ADMIN. JUDGE SIPPEL: What's Mr.
7 Schroeder's connection; is he with Evans?

8 Do you know, Mr. Shainis?

9 MR. SHAINIS: I know that he is
10 not with Mr. Evans.

11 I have been -- my understanding is
12 that Mr. Schroeder had lent money to Mr. Floyd
13 essentially, which got -- somehow was utilized
14 for the translator.

15 But that debt as it turns out is
16 an unsecured debt, so he had never filed a UCC
17 on it.

18 MS. LEAVITT: I believe he is a
19 creditor, however.

20 MR. SHAINIS: He's a creditor
21 but --

22 MS. LEAVITT: He's an unsecured

1 creditor?

2 MR. SHAINIS: -- he's an unsecured
3 creditor. Yes.

4 MR. HARRINGTON: Your Honor?

5 ADMIN. JUDGE SIPPEL: Yes?

6 MR. HARRINGTON: For the purposes
7 of maintaining a complete and accurate record,
8 I want to say that Mr. Schroeder is the person
9 who represented to our client that he was the
10 representative of Mr. Floyd and his wife in
11 negotiating with Wilks-Reno for the sale of
12 the translator.

13 The negotiations that we conducted
14 were conducted with him and with another
15 person who I believe was an employee of Mr.
16 Floyd's company.

17 This is something we've been
18 working with the Bureau on and hope to provide
19 them with satisfactory material to deal with
20 their concerns.

21 But we dealt primarily with Mr.
22 Schroeder and with this other person

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1 throughout the preparation of the asset
2 purchase agreement and the submission of the
3 applications. We did not deal with Mr. Floyd.

4 ADMIN. JUDGE SIPPEL: That's okay.
5 I don't need any more detail on that right now
6 anyway.

7 Things seem to be clarifying. I
8 recognize that it's always going to be a doubt
9 in terms of what was in the mind of Mr. Floyd
10 when he told us he was having financial
11 problems but failed to tell us it was a
12 bankruptcy.

13 I agree. I did not ask the
14 question. I didn't even think to ask the
15 question. But that's usually not on my first
16 round of questioning that I ask unless I have
17 a reason to suspect it or something.

18 The materiality of it at this
19 point, I'm not so sure either. I should say
20 the significance of it; materiality is a bad
21 word.

22 But unless the Bureau has

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1 something in terms of evidence or you have a
2 directive from somebody or you feel that you
3 have to pursue that, I'm going to consider it
4 to be just as Mr. Shainis represented.

5 MS. LEAVITT: Well, Your Honor --

6 ADMIN. JUDGE SIPPEL: I have no
7 reason to do otherwise.

8 MS. LEAVITT: The only other
9 concern that the Bureau has is in the 22
10 October deferral -- request for deferral of
11 dates that Floyd filed, they did say that --
12 they did represent that Floyd had currently
13 filed for bankruptcy.

14 I think technically that's not
15 quite accurate.

16 According to documents from the
17 Bankruptcy Court, Mr. Floyd was notified on 7
18 August or thereabouts that creditors had filed
19 a petition for Chapter 7 relief on August 7,
20 2009. So this is all well before the HDO was
21 ever released.

22 And as recently as June 24 and 25,

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1 Mr. Floyd was working with his wife in
2 drafting these motions -- signing these
3 schedules regarding his personal property,
4 liability and assets.

5 In fact, on 20 October, I believe
6 there was a hearing regarding dates in the
7 bankruptcy proceeding.

8 On October 22, the Bankruptcy
9 Court issued an order indicating that they had
10 granted the debtor's request for an extension
11 of time to file objections to the discharge of
12 the estate until December 30 of this year,
13 30th or 31st.

14 So the bankruptcy proceeding seems
15 like things are not going to really happen
16 before December 31, unless all the parties
17 agree and they no longer need that extension.

18 ADMIN. JUDGE SIPPEL: The last
19 thing, say that again, please.

20 MS. LEAVITT: December -- unless
21 all the parties in the bankruptcy, the debtor
22 and the creditors, agree to the discharge of

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1 the debts, Mr. Floyd's debts, they have until
2 the end of the year to object.

3 So in terms of how that might
4 affect the Bankruptcy Court's processing of
5 Mr. Floyd's requested sale of the station --
6 transfer of the station and sale of the
7 station's assets, I think we're looking at
8 something at the end of the -- probably not
9 something until the end of the year.

10 In fact, Mr. Shainis indicated
11 recently that he anticipated 45 days from
12 November 15 would be about the time that he
13 expected action by the Bankruptcy Court.
14 Which again, would put us at the end of the
15 year.

16 ADMIN. JUDGE SIPPEL: I'm
17 following you on that. Yes. We're not going
18 to get -- we can't expect a determination from
19 the Bankruptcy Court on the approval of the
20 Evans sale until that time frame that you just
21 said.

22 That goes back to my -- here's how

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1 I see it.

2 Do you want to add anything to
3 this, Mr. Harrington?

4 MR. HARRINGTON: No, Your Honor.
5 I'm doing fine.

6 ADMIN. JUDGE SIPPEL: I just want
7 to tell you where I'm at right now with this.

8 It seems to me that you do have
9 questions that you haven't satisfied, but I
10 don't see any reason why that should hold up
11 what we're trying to accomplish here.

12 Only two things can happen with
13 the bankruptcy. Either you get the sale or it
14 comes back to me, and I've had that happen.
15 So it might be a year before I see anybody
16 again, but that could happen.

17 The record is what the record is
18 right now. The Bureau is just going to have
19 to make its own internal decisions as to what
20 it wants to do, but it's not going to involve
21 me until this case comes back.

22 I just want to make sure you know

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1 that.

2 MS. LEAVITT: Right, Your Honor.
3 I think, based on the nature of the
4 representations that have been made up to this
5 point to the Court and to the Bureau, I think
6 it would be helpful if -- which I think Mr.
7 Shainis was anticipating doing, but he can
8 address this better than I -- filing regular
9 status reports as to what's going on with the
10 bankruptcy. Because it seems like we have not
11 been properly informed until recently.

12 So the Bureau would respectfully
13 request that Mr. Shainis, on behalf of Mr.
14 Floyd, file regular updates as to all actions
15 and activities that take place, so we can
16 better monitor and ensure that Second Thursday
17 really is applicable in this case.

18 ADMIN. JUDGE SIPPEL: I
19 understand. That was on one of my -- that was
20 something I was going to say two minutes from
21 now. But that's okay. That just tells me
22 we're all on target.

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1 Yes. Sure. There will be some
2 status reports filed as we go along.

3 MR. SHAINIS: Your Honor, could I
4 respond?

5 ADMIN. JUDGE SIPPEL: Yes, sir.

6 MR. SHAINIS: Okay. I'm sorry.

7 On behalf of Mr. Floyd, there is
8 no objection to filing status reports.

9 I would like to put this matter,
10 though, in the proper perspective because the
11 road Ms. Leavitt is suggesting is really
12 somewhat outrageous.

13 Number one, in the normal course,
14 if someone was going to take advantage of
15 Second Thursday, they would announce that at
16 a conference or some appropriate juncture. At
17 that point they would look for a buyer to take
18 advantage of the Second Thursday showing.
19 Typically a case would be continued and,
20 depending upon how difficult it is to sell the
21 station, you ask for 90 days to locate a
22 buyer.

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