

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**MM Docket No. 85-269**

In re Applications of

DOROTHY O. SCHULZE File No. BPCT-850320KG  
and DEBORAH BRIGHAM,  
A General Partnership

BLANCO File No. BPCT-850320LC  
COMMUNICATIONS LTD.

For Construction Permit for New  
Television Station, Channel 52,  
Blanco, Texas

**Appearances**

A. *Wray Fitch, III, Esq.*, on behalf of Blanco Communications, Ltd.; and *Donald E. Martin, Esq.*, on behalf of Dorothy O. Schulze and Deborah Brigham.

**DECISION**

**Adopted: June 2, 1992; Released: June 15, 1992**

By the Review Board: MARINO (Chairman),  
BLUMENTHAL, and ESBENSEN.  
Board Member ESBENSEN:

1. Before the Board is the *Supplemental Initial Decision*, 6 FCC Rcd 7419 (1991) (S.I.D.), of Administrative Law Judge Walter C. Miller (ALJ), as well as Exceptions of Blanco Communications, Ltd. (BCL) and Partial Exceptions of Schulze and Brigham (SB).

**BACKGROUND**

2. On October 26, 1986, the ALJ released his *Initial Decision*, 1 FCC Rcd 120 (1986) (I.D.), in this proceeding. There, he denied BCL's and SB's applications and granted the application of then-applicant Opal Chadwell. In so doing, the ALJ concluded that both BCL and SB lacked the requisite character qualifications to be Commission licensees. More specifically, he found that SB principal, Dorothy O. Schulze, had made misrepresentations to, and lacked candor with, the Commission. He further found that BCL's principal, Sidney Paul DuBose, had also made misrepresentations to, and lacked candor with, the Commission. Conversely, the ALJ concluded that Opal Chadwell had not misrepresented facts to the Commission about the availability of her proposed transmitter site that she had specified in her original application. Thus, as the only basically qualified applicant, her application was granted.

3. Following oral argument before the Board, we found Chadwell's financial proposal deficient, and, as a result, issued *Memorandum Opinion and Order*, 2 FCC Rcd 2981 (Rev. Bd. 1987), seeking additional information. The Board thereafter affirmed the I.D. *Decision*, 2 FCC Rcd 5502 (Rev. Bd. 1987).

4. Responding to subsequent applications for review, the Commission remained troubled with Chadwell's financial showing. Thus, by *Order*, FCC 881-045 (released May 5, 1988), the Commission ordered Chadwell to produce additional financial data, and by *Memorandum Opinion and Order*, 4 FCC Rcd 1215 (1989) (*First Remand Order*), remanded this proceeding to the ALJ on the following issue:

To determine whether Opal Chadwell has sufficient funds to meet her estimated costs of construction and operation.

In so doing, however, the Commission expressly declared that the denial of BCL's and SB's applications on character grounds was appropriate: "We see no basis on the present record developed under those issues to modify the conclusions of the ALJ and the Review Board . . . ." However, said the Commission, "we conclude that unresolved questions exist concerning Chadwell's financial qualifications." The Commission then went on to delineate several financial credibility questions that had been raised before it, and suggested that Chadwell may have falsely certified her financial qualifications, or that she may have lacked candor in her representations to the Commission. See S.I.D. at para. 4.

5. Pursuant to the Commission's remand, the ALJ issued a *Further Prehearing Order*, FCC 89M-422, released February 8, 1989. There, in addition to the financial issue, he specified a false financial certification issue and a misrepresentation/lack-of-candor issue against Chadwell "so that the Commission could get evidentiary answers to the questions raised by the remand order." S.I.D. at para. 5. The added issues were:

To determine whether, when Opal Chadwell filed her application on January 3, 1985, she falsely certified her financial qualifications.

To determine whether Opal Chadwell has submitted the sworn statements of T. F. Burger, Jr. and/or Georgia Dixon in bad faith or otherwise lacked candor in asserting the value of her assets.

6. In this *Order*, the ALJ also set out a procedural schedule for the remanded hearing. As part of that schedule, he directed that remanded discovery be initiated before March 10, 1989, and completed by May 10, 1989. However, in his S.I.D., the ALJ recounted the following events (*id.*, at paras. 8 - 17; footnotes omitted):

On the March 10, 1989 initiation deadline both [SB] and BCL launched timely discovery. Each served motions for production of documents on Chadwell, and each signified that they would depose Opal Chadwell along with five other non-party individuals the Commission had mentioned in their remand order. The depositions were scheduled for April 25-26, 1989.

Mrs. Chadwell stonewalled discovery. She neither opposed nor commented on the deposition notices, and she neither opposed or commented on [SB's] and BCL's motion to produce. So, on March 31, 1989, the Trial Judge granted the unopposed production requests. See FCC 89M-1032 and FCC 89M-1033. He ordered Chadwell to produce the pertinent financial documents on or before April 10, 1989. She didn't.

Mrs. Chadwell also failed to show up for her April 25, 1989 deposition. But, in addition, she also contacted the other five non-party individuals . . . and told them that they didn't need to appear for the depositions. They didn't even though all of them had been legally subpoenaed.

Meanwhile on April 21, 1989, [SB] moved to have Chadwell compelled to produce the documents, and on April 25, 1989, BCL followed suit. Again Chadwell stonewalled. She neither opposed nor even commented on the motions to compel. Those motions were granted. See FCC 89M-1403 released May 10, 1989, and FCC 89M-1416 released May 11, 1989. Chadwell was ordered to produce the pertinent financial qualification documents before May 22, 1989. She didn't.

[SB] moved to dismiss Opal Chadwell's application for failure to prosecute. Again Chadwell stonewalled. She neither commented on nor opposed [SB's] motion. So on June 2, 1989, the Trial Judge dismissed Chadwell's application for Channel 52, Blanco, Texas. See FCC 89M-1568. And since [SB] and BCL had already been denied, and those denials had withstood appeal [Chadwell filed an Appeal some 18 months subsequent to her dismissal, but was denied reinstatement. See 6 FCC Rcd 4218 (1991)] . . . he returned Channel 52 in Blanco, Texas to the TV Processing Line. In that way other applicants could apply for the channel. [SB] and BCL sought reconsideration, and BCL argued strenuously that since the Trial Judge had dismissed Chadwell's application for failing to prosecute, no findings of fact or conclusions of law had been made on Chadwell's credibility and the questions that the Commission had raised in FCC 89-7 back on January 31, 1989 . . . had never been resolved.

The Commission remanded again, but this time on an even more limited basis. See FCC 90-197, released May 24, 1990 [5 FCC Rcd 3227 (1990) (*Second Remand Order*)]. They were apparently concerned with [SB's] and BCL's arguments that then recent non-record happenings had undermined Chadwell's credibility vis-a-vis BCL principal, Sidney Paul DuBose . . . . The Commission concluded " . . . that the question of whether or not recent events undermine Chadwell's credibility vis-a-vis DuBose should be referred to the ALJ. The ALJ heard the witnesses and is therefore in the best position to determine in the first instance whether recent events altered their credibility. In this regard Chadwell's failure to prosecute also occurred directly before the ALJ."

So, said the Commission, BCL " . . . has justified pursuing the matter of Chadwell's credibility to a limited extent." They noted that BCL hadn't had a chance to cross-examine Chadwell about possible financial misrepresentations and her abuse of process,

and further noted that they did not " . . . think it fair to leave matters solely under Chadwell's control."

The Commission then specifically directed the Trial Judge: (1) to give BCL the opportunity to cross-examine Chadwell at hearing about her non-record financial showing and the reasons she failed to prosecute her application; (2) to let BCL depose Chadwell and other relevant witnesses; and (3) to let BCL subpoena relevant documents which could be introduced into evidence to impeach Chadwell's credibility.

Finally, the Commission specified that "[t]he ALJ should then issue a supplemental initial decision containing his findings and conclusions;" and that "[t]he supplemental initial decision will be subject to review by the Board, which, like the ALJ will have the advantage of its previous review of the record."

7. BCL notes in its Exceptions (at pps. 7-8) that it timely initiated discovery, and that both Opal and Earl Chadwell were subpoenaed to produce certain documents and attend depositions. However, BCL also observed that it "was forced to seek the aid of the Federal Court to enforce the subpoenas." The United States District Court, Western District of Texas, Austin Division issued a Show Cause Order; but on the eve of a hearing before that tribunal, the Chadwells agreed that Opal Chadwell would appear in Washington, D.C., on November 19, 1990, and that Earl Chadwell would agree to be deposed.

8. After hearing Chadwell's testimony, and setting forth extensive findings of fact concerning her financial qualifications (see S.I.D. at paras. 20-79), the ALJ ultimately concluded as follows (S.I.D. Conclusions at paras. 16-21):

So given the chance, BCL has been able to show that witness Opal Chadwell has made false and misleading financial misrepresentations to the Commission, and that she has abused the Commission's processes in an effort to cover up those misrepresentations.

It is time then to assess whether these more recent financial misrepresentations " . . . undermine Chadwell's credibility vis-a-vis [Sidney Paul] DuBose . . . ." It is concluded that they do not. It is a *non-sequitur* to assume that because Opal Chadwell misrepresented her *financial* qualifications to the Commission during the administrative appellate process in 1988, she must have also lied about the availability of her *transmitter site* at the original hearings in 1985-1986. Nor is there any discernible nexus between the Trial Judge's original adverse demeanor findings on Sidney Paul DuBose (See [I.D.], FCC 86D-59 *supra*, at Findings 7-26 and Conclusions 5-12), and the record we have developed on witness Opal Chadwell at this second remand.

In [the I.D.], FCC 86D-59, the Trial Judge found and concluded that BCL principal Sidney Paul DuBose had made misrepresentations to and lacked candor with the Commission. These misrepresentations related to the availability or lack thereof of Opal Chadwell's original transmitter site.

The Review Board affirmed those findings and conclusions. See 2 FCC Rcd 5502 (Rev. Bd. 1987).

The Commission then reviewed the DuBose findings and conclusions. They expressly stated that "We see no basis on the present record . . . to modify the conclusions of the ALJ and the Review Board . . ."

Nothing that has been developed at this remanded hearing impacts on the original DuBose findings and conclusions and the two affirmances of those findings and conclusions. The net result of this hearing is that (and assuming that Opal Chadwell were still an applicant) we now have three prevaricators instead of two. Stated another way, now *none* of the applicants and former applicants are fit to be a Commission licensee.

### EXCEPTIONS

9. In its Exceptions, BCL now argues that, because of the adverse credibility findings against Opal Chadwell, reversal of the previous adverse findings and conclusions against BCL principal Sidney Paul DuBose on the site availability issue is mandated. BCL claims that the primary evidence against DuBose (leading to BCL's initial disqualification) was Opal Chadwell's testimony; thus, now that "Chadwell's credibility has been destroyed" (BCL Exceptions at p. 9), none of her initial testimony adverse to DuBose can be credited and the ALJ's affirmance of BCL's disqualification in the S.I.D. "summarily and with little or no analysis" (*id.*, at p. i) requires reversal.

10. For its part, SB simply argues that "the ALJ exceeded his authority" in ordering that SB's application "remains denied" (S.I.D. at para. 21), because SB's initial denial "has been stayed by the Commission and further action on SB's application is being held in abeyance. *Remand Order*, para. 10." As a result, SB claims, the Board should "vacate the ALJ's S.I.D. insofar as it purportedly addresses S & B's application." (SB Exceptions at p. 2).

### DISCUSSION

11. *Adverse findings re: DuBose in Initial Decision*: It is appropriate to first recount the specific adverse findings concerning Sidney Paul DuBose made by the ALJ in his *Initial Decision* (I.D., at paras. 7-8, 10, 12-14, 16-20, 22-24; footnotes omitted):

[In a Petition to Enlarge Issues] BCL accused Chadwell of misrepresenting to the Commission that her original transmitter site was available to her when it wasn't. Chadwell replied that her original erroneous site specification was the combination of an innocent error and BCL principal Sidney Paul DuBose's duplicity. She claimed that DuBose had falsely led her to believe that he owned the land where she proposed her transmitter and that the land was available for her use.

DuBose denied that. He says he told Chadwell that he would make his land available to her if she included him as a partner in her application. Moreover, he says he never represented to her that he owned the land where she proposed to locate her original transmitter.

\* \* \*

Having observed the demeanor of Mrs. Chadwell and Mr. DuBose, the Presiding Officer has selected Opal Chadwell's version of the facts . . . . She has factually detailed the events underlying the conflict. Her testimony is basically consistent and corroborated by her husband's sworn testimony. There is no reason for not crediting her version of the past events. On the other hand, the Presiding Officer wasn't favorably impressed with Sidney Paul DuBose's testimony. His answers didn't fit together. He was weak on details, and his sense of recall was incredibly poor (*See Tr.* 796, 797, 798-799, 802, 807, 809, 811, 815, 816, 819-820, 821-822, 823, 824-825, 833 and 834). In fact, at the hearing, once additional details about the Chadwell/DuBose meetings were brought out, the Presiding Officer got the distinct impression that DuBose was stringing Mrs. Chadwell along; *i.e.*, he was pretending to be favorably considering letting Mrs. Chadwell use what she thought was his land for a transmitter so he'd have time to prepare and file a competing application. But he knew all along that she had specified coordinates that wasn't his land.

\* \* \*

Chadwell filed her Channel 52 application with the Commission on January 3, 1985. She specified a transmitter site at the coordinates she thought was owned by DuBose. After her application was filed she and Sidney DuBose continued to talk. But they were unable to agree on the terms of DuBose's participation. At this time DuBose knew that Chadwell's application specified transmitter land she believed he owned . . . .

\* \* \*

Several days later her counsel told her that DuBose, Benjamin Franklin Pittman, and Gracia Romero (Celestino Romero's wife) had formed a limited partnership and had filed a competing application for Channel 52. Chadwell immediately contacted DuBose. She asked him, if even though he had filed a competing application, would he still allow her to use his land for a transmitter site. DuBose said he didn't know, he would have to ask his partner, Mr. Pittman, and get back to her. Several days passed. Chadwell tried to contact DuBose, but couldn't reach him. She left word for him to return her call. He never did.

\* \* \*

After observing the demeanor of the testifying witnesses, and after hearing all the facts and circumstances surrounding the conflict, it is found that Opal Chadwell has been a truthful witness, while Sidney Paul DuBose has dissembled. Admittedly Mrs. Chadwell mistakenly specified an erroneous set of site coordinates; she specified coordinates for a

site she mistakenly thought was Mr. DuBose's land. DuBose knew early-on that Mrs. Chadwell had erred. But he let her believe she had specified his land, and he verbally assured her she could use that land. He deliberately led her on until he could get a competing applicant organized, and a competing application prepared and filed. Then, via a Motion to Enlarge, he tried to use Mrs. Chadwell's mistake against her.

So it is found that Sidney Paul DuBose lied when he swore that: ". . . I was not asked to provide a letter stating Ms. Chadwell could use my property. At no time did I indicate I would provide such letter, nor did I give oral assurance my property could be used . . . Ms. Chadwell did not point to a location on a map at her office and ask if a site was on my ranch and if she could use that site to construct a tower. I never, therefore affirmatively nodded that the site she allegedly pointed to on the map was located on my property or that Ms. Chadwell could use it . . ."

It is further found that Sidney Paul DuBose lied when he swore that "[m]ore significantly, I never gave verbal affirmation that Ms. Chadwell could use my ranch for her tower. Ms. Chadwell never asked for, nor did I ever agree, to provide a letter indicating she could use my ranch . . . At no time after Ms. Chadwell filed her application did I know that she had specified a site she thought was on my property . . ."

12. *Actions on appeal:* As heretofore noted, the Board affirmed the ALJ based upon "our review of the entire record." We also agreed with the ALJ that the actions of DuBose were designed to "sandbag" Chadwell, and we refused to disturb the specific demeanor and credibility findings "with respect to DuBose and BCL . . ." *Decision*, 2 FCC Rcd at 5504. Thereafter, considering pending applications for review and remanding this proceeding to the ALJ on the financial issue against Chadwell, the Commission noted (*First Remand Order*, 4 FCC Rcd at 1217):

Similarly, as Blanco points out, other issues in this proceeding, concerning Chadwell's transmitter site, involve questions of Chadwell's credibility. We see no basis on the present record developed under those issues to modify the conclusions of the ALJ and the Review Board. However, if the record on remand indicates that Chadwell has falsely certified her financial qualifications or has lacked candor, this may reflect on her credibility under other issues and the ALJ might reconsider his findings if appropriate. Again, however, we emphasize that we are not prejudging this matter, but merely indicating that the ALJ has the discretion to act if circumstances warrant. Consequently, we reserve final judgment on these issues pending any further relevant action by the ALJ.

And, in a further remand in response to petitions for partial reconsideration, the Commission declared (*Second Remand Order*, 5 FCC Rcd at 3229):

We believe that the question of whether or not recent events undermine Chadwell's credibility vis-a-vis DuBose should be referred to the ALJ. The ALJ

heard the witnesses and is therefore in the best position to determine in the first instance whether recent events alter their credibility.

13. *BCL's Exceptions:* In addition to arguing that the ALJ "summarily and with little or no analysis" affirmed his previous disqualification of BCL, it essentially claims, without directly so stating, that Chadwell's testimony must result in the wholesale application of the maxim: *Falsus in uno, falsus in omnibus* (i.e., he who speaks falsely on one point will speak falsely on all). However, the Commission has made clear that it would be error to disregard all of the testimony of a witness merely because of other questions of credibility. Rather, "such testimony should be evaluated and accorded the weight to which it is entitled in light of all the relevant facts and circumstances in the record, including the demeanor of the witness and any detracting evidence." *Star Stations of Indiana, Inc.*, 51 FCC 2d 95, 100 (1975); see *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1950); see also *Wigmore on Evidence*, Section 1008 at 982 (1970) (the maxim should be condemned as both worthless and pernicious).

14. Moreover, the ALJ here made demeanor and credibility findings in his I.D. concerning the specific testimony of DuBose (set forth in detail at para. 11, *supra*) (e.g., DuBose's "answers didn't fit together. He was weak on details, and his sense of recall was incredibly poor . . . In fact . . . once additional details . . . were brought out, the [ALJ] got the distinct impression that DuBose was stringing Mrs. Chadwell along . . ."). Additionally, in his S.I.D. (Conclusions at paras. 16-21; see para. 8, *supra*), the ALJ specifically addressed whether or not Chadwell's misrepresentations at the second hearing ". . . undermine Chadwell's credibility vis-a-vis DuBose." The ALJ, recognizing that because Chadwell's credibility had been demolished as to her financial qualifications, nevertheless concluded that this finding did not mandate a conclusion that Chadwell lied about her transmitter site; indeed, the ALJ determined that there was no "discernible nexus between [his] original adverse demeanor findings on Sidney Paul DuBose . . .", and specifically held that nothing in the second hearing was developed that "impacts on the original DuBose findings and conclusions . . ." *Id.*

15. DuBose's own *actions* here (e.g., he obviously knew of the availability of Channel 52 at Blanco and, at the last minute, formed his own group and applied for the frequency) alone buttress the ALJ's initial findings and conclusions. Coupled with the specific demeanor and credibility findings adverse to DuBose, based upon his own testimony, and our own review of the record (again), must result in our affirmance of the ALJ with respect to BCL. As iterated at length in our *Decision*, 2 FCC Rcd at 5504 (and cases cited therein) ". . . this Review Board is constrained to defer to the credibility findings of a presiding Commission [ALJ] in the absence of countervailing record evidence which would demonstrate reversible error in that ALJ's credibility determinations. See, e.g., *WEBB, Inc.*, v. FCC, 420 F.2d 158, 162 (D.C. Cir. 1969)."

16. *SB's Exceptions:* SB argues that any action on its application has been stayed by the Commission in its *Second Remand Order*, 5 FCC Rcd at 3227- 3228. There, the Commission declared:

Schulze-Brigham contends that a recent action in another proceeding undermines the basis on which Schulze-Brigham was disqualified because it calls into question the validity of the presiding judge's evaluation of the credibility of key witnesses.

The ALJ in this proceeding heard testimony regarding the question of whether Schulze-Brigham's principal, Dorothy O. Schulze, misrepresented her role in this and other broadcast applications . . . . *Opal Chadwell*, 1 FCC Rcd 120, 126 ¶ 76, 130-31 ¶¶ 13-14 (I.D. 1986). In reaching this conclusion, the ALJ rejected the testimony not only of Schulze but also of JoAnn Garcia, an applicant for a new television station in Conroe, Texas. Garcia testified that she and Schulze were bona fide applicants in their respective communities. The ALJ concluded that Garcia too had been a front for Ozan and that her attempt to corroborate Schulze's version of events was "sheer fabrication" and "a web of lies." *Id.* at 124 ¶ 55, 126 ¶ 69. The Review Board and the Commission upheld the initial decision. *Opal Chadwell*, 2 FCC Rcd 5502 (Rev. Bd. 1987), *rev. denied*, 4 FCC Rcd 1215 (1989).

Subsequently, a second ALJ ruled on a real-party-in-interest issue against Garcia's application in the Conroe, Texas proceeding. *DLBS, Inc.*, 3 FCC Rcd 6710 (I.D. 1988). This issue involved the same material facts as the issue in Blanco except that it was centered on Garcia's application (that of G-A Communications, Inc.) rather than Schulze-Brigham's Blanco application. The Conroe ALJ resolved this issue favorably to Garcia, finding that Ozan was not the real-party-in-interest. He also found that Garcia's testimony was "believable, essentially uncontradicted, and is credited here." *Id.* at 6721 ¶¶ 142-43.

Schulze-Brigham contends that the findings of the Conroe ALJ cast doubt on the reliability of the Blanco ALJ's credibility findings and urges the Commission to reconsider its reliance on these findings. Meanwhile, however, additional events have transpired, in that the Conroe proceeding was appealed to the Board. The Board considered the need to reconcile the disparate findings made in the Blanco and Conroe proceedings. It concluded that the most appropriate course of action would be to remand the Conroe proceeding so that the Conroe ALJ could explicitly consider the veracity of Garcia's testimony in the Blanco proceeding. *Imagists*, 4 FCC Rcd 3749, 3751-52 ¶¶ 9-13 (Rev. Bd. 1989). The Board indicated that it would give customary deference to the Conroe ALJ's credibility findings even if they differ from those of the Blanco ALJ. *Id.* at 3751 ¶ 12. Pursuant to the Board's directive, the Conroe ALJ has conducted hearings and will issue a supplemental initial decision in due course.

In view of Schulze-Brigham's contentions, it may become necessary for the Commission to examine the discrepancy between the findings made in the Blanco and Conroe cases. The Board's action, however, makes it premature for the Commission to address questions regarding Garcia's testimony at this time. In order to preserve the status quo if it should become necessary to reexamine this matter, we will, on our own motion, stay our previous memorandum opinion and order to the extent that it denies

Schulze-Brigham's application until such time as the Board issues a decision in the Conroe proceeding regarding Garcia's veracity. Additionally, we will hold Schulze-Brigham's petition in abeyance during that period. After the Board issues a decision in the Conroe proceeding, Schulze-Brigham may supplement its petition to bring its arguments up-to-date. We will then have the two proceedings before us simultaneously, and we can then take whatever action appears appropriate.

17. In our remand order in *Imagists*, 4 FCC Rcd 3749 (Rev. Bd. 1989), the Board specified the following issue:

[9]. To determine whether JoAnn Garcia lied to, misrepresented facts to, or lacked candor with the Commission in the Blanco, Texas comparative television (Channel 52) proceeding (MM Docket No. 85-269). *Opal Chadwell*, 1 FCC Rcd 120 (ALJ 1986) (*Initial Decision*), 2 FCC Rcd 5502 (Rev. Bd. 1987), (*Decision*), *on review*, 65 RR 2d (1498 (1989)); and, if so, the effect thereof on the basic qualifications of G-A Communications, Inc. to be a Commission licensee.

In his *Supplemental Initial Decision*, 6 FCC Rcd 2963 (1991), in the Conroe proceeding, the ALJ concluded that JoAnn Garcia misrepresented facts to the Commission and that G-A was unqualified to be a Commission licensee. Thereafter, in our *Decision*, 6 FCC Rcd 3440 (Rev. Bd. 1991), we affirmed the ALJ in this regard, and applications for review were filed with the Commission on January 17, 1992. These applications remain pending before the Commission; thus, we will withhold further action on SB's application in this proceeding in accordance with the directives set forth in the Commission's *Second Remand Order*, 5 FCC Rcd at 3228 ¶ 10.

18. ACCORDINGLY, IT IS ORDERED, That the application of Blanco Communications Ltd. (File No. BPCT-850320LC) IS DENIED.

#### FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen  
Member, Review Board