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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY)	MM DOCKET NO. 93-51 ✓
In re Applications of)	
MARTHA J. HUBER)	File No. BPH-911114ME
)	
RITA REYNA BRENT)	File No. BPH-911115MC
)	
MIDAMERICA ELECTRONICS SERVICE, INC.)	File No. BPH-911115ML
)	
STATON COMMUNICATIONS, INC.)	File No. BPH-911115MU
)	
For Construction Permit for a)	
New FM Station on Channel 234A)	
in New Albany, Indiana)	

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1993; Released: August 4, 1993

Background

1. This is a ruling on an Opposition To Notice Of Deposition that was filed on July 28, 1993, by Rita Reyna Brent ("Brent"). An Opposition was filed on August 2, 1993, by Martha J. Huber ("Huber").

2. The Presiding Judge decided that it would facilitate a ruling to hear argument and discussion via telephone conference call between the counsel for Brent and Huber. That conference call was held on August 2, 1993, at 2 p.m. Counsel were advised at the conclusion of the conference call of the denial of the motion to limit the depositions and of a requirement that Brent produce additional documents.

3. Huber had noticed the depositions of two non-party witnesses: Mr. J.L. Parrott, Sr. ("Parrott"), the Chief Executive Officer of PPB, Inc. ("PPB"); and Mr. Joseph H. Edwards ("Edwards"), an accountant who advised Robert W. Brent. Mr. Brent is a stockholder and officer of PPB. Mr. Parrott furnished Mr. Brent with a letter dated November 1, 1991, wherein he represents that shares of stock owned by Mr. Brent would be redeemed pursuant to a corporate stock purchase agreement. Mr. Parrott advised in the letter that Mr. Brent's stock was then valued at \$225,000. The letter also contained a promise to loan Mr. Brent up to \$200,000 on the stock's collateral. That letter was relied upon by Mrs. Brent when she certified to her financial ability.

Facts

4. Mr. Edwards provided Mr. Brent with a letter dated November 11, 1993, wherein Edwards valued PPB at \$5 million and disclosed that he had

"detailed calculations" of the method used to calculate the value. Counsel for Brent represents that the Edwards letter was used only as an underlying document to support a Personal Financial Statement of the Brents. Counsel asserts that the Edwards letter is not relevant to discovery because it was not directly relied on by Mrs. Brent.

5. The Presiding Judge ruled that Mr. Parrott will be required to appear for a deposition to explain the terms of his letter which was relied on by Mrs. Brent to certify to the reasonable assurance of her financing. For those purposes Brent and /or Mr. Parrott must produce the following documents:

- (1) A copy of PPB's stock ledger reflecting the shares of PPB stock that were issued to Robert Brent and copies of the corresponding stock certificates.¹
- (2) A copy of the Corporate Stock Redemption Agreement dated April 1, 1986.
- (3) A copy of a PPB balance sheet dated on or within 90 days of November 1, 1991.
- (4) A copy of a PPB balance sheet dated on or within 90 days of July 2, 1993.

The copies of the PPB balance sheets must be produced if they presently exist or if they can reasonably be retrieved from PPB's bookkeeping system. The balance sheets shall be limited to use by counsel for the parties in preparing for the depositions. They will not be placed on - the - record unless ordered by the Presiding Judge.

Mr. Edwards also shall appear for his deposition. He shall produce:

- (5) The documents referred to in his letter as the "detailed calculations" that are available on request.

Discussion

6. The Presiding Judge has considered the case of Southern B/cstg, 35 F.C.C. 2d 338 (Review Bd 1972) to which he was referred by counsel for Brent. That case involved an interlocutory appeal of a trial judge's ruling which denied interrogatories. There the Review Board acknowledged the authority of the presiding judge to control discovery. See also Discovery Procedures, 11 F.C.C. 2d 185 (Comm'n 1968). But the Review Board required the judge to render his ruling in writing and to give reasons for excluding the interrogatories.

¹ The parties can agree to stipulate to the authenticity of the copies of the certificates.

7. The Presiding Judge here is complying with Southern B/cstg. Mrs. Brent has disclosed in her application that she and her husband Robert Brent will provide the financing. The financial statement that she relied on in her certification reflects PPB as an asset with a net worth of \$454,550. PPB is not a publicly traded company. Therefore, the value of the asset or the PPB stock is not readily ascertainable from public documents. It is acknowledged that Mr. Brent is competent to testify to the company's worth. But to the extent that he has agreed to assist his wife in the financing of the station he would not be a disinterested witness. Mr. Parrott, on the other hand, wrote the letter relied on by Mrs. Brent and he would be a competent and disinterested witness with first hand knowledge of PPB and its net worth both at the time of Brent's application and at the present time. Therefore, Mr. Parrott has relevant information that relates to an added issue and that Huber is entitled to discover.

8. Mr. Edwards is an accountant relied on by Mr. and Mrs. Brent to recreate their financial statement. At the time that Mrs. Brent was relying on the value of her husband's PPB stock for certification purposes, and at the request of Mr. Brent, Mr. Edwards rendered a written conclusory opinion that the company was worth \$5 million. The letter also invited Mr. Brent to ask for his "calculations." That is all that the Presiding Judge is ordering to be produced by Edwards to Huber. This is relevant information that was either directly or indirectly relied on by Brent in making her financial certification and the production of the documents does not appear unduly burdensome. The basis for Mr. Edwards opinion is properly discoverable.

9. The Presiding Judge has been cautious in delineating the scope of discovery. See Order FCC 93M - 488, released July 26, 1993. Counsel for Huber was advised in the conference call to avoid argument with these witnesses. In the case of Mr. Edwards, questioning counsel must accept his answers on matters relating to accounting practices used by Edwards. Of course, Mr. Edwards can be shown principles of accounting and be asked whether he followed them in giving his opinion. But questioning counsel are bound by his answer and may not engage in argument. Similarly, counsel are advised to avoid argument with the witness in taking the Parrott deposition.

10. The Presiding Judge contemplated the production of the above described documents by 4 p.m. on August 10, 1993. If Brent has copies of any of the requested documents she must produce them to Huber's counsel on that date. Otherwise, Huber should submit subpoenas duces tecum for document discovery of the non-parties by August 4, 1993 at or before 2 p.m. See 47 C.F.R. §1.331 et seq. Copies of the subpoenas and the showings of good cause must be faxed to or hand-served on counsel for Brent at the same time. The Presiding Judge will not issue the subpoenas before August 5, 1993, unless counsel agree otherwise and so inform the undersigned.

Rulings

Accordingly, IT IS ORDERED that the Opposition To Notice Of Deposition filed by Rita Reyna Brent on July 28, 1993, IS DENIED and the deposition of Mr. J.L. Parrott, Sr. and Mr. Joseph R. Edwards SHALL BE TAKEN as scheduled.

IT IS FURTHER ORDERED that the documents described above SHALL BE PRODUCED by Brent, if she has possession of any, and/ or they SHALL BE SOUGHT by subpoena from the non-party witnesses on reasonable notice to allow preparation of counsel, the parties, and the witnesses for the depositions scheduled for August 24 -26, 1993.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge