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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In re Applications of	)	
	)	
RAINBOW BROADCASTING COMPANY	)	GC Docket No. ~~95-468~~ 95-172
	)	File No. BMPCT-910625KP
For an extension of time	)	File No. BMPCT-910125KE
to construct	)	File No. BTCCT-911129KT
	)	
and	)	
	)	
For an Assignment of its	)	
construction permit for	)	
Station WRBW(TV), Orlando, Florida	)	

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TO: The Honorable Joseph Chachkin
Administrative Law Judge

REQUEST FOR DETERMINATION
OF RELEVANCE OF EXAMINATION

1. Press Broadcasting Company, Inc. ("Press") hereby requests that the Presiding Judge issue a determination that the proposed examination of certain employees of the Commission "relates to matters that are relevant to the issues designated for hearing" in the instant proceeding. See Attachment A hereto.

2. The instant proceeding includes, among other issues, an issue relating to certain ex parte communications made to certain Commission staffpersons by or on behalf of Rainbow Broadcasting Company ("RBC") and/or Rainbow Broadcasting, Limited ("RBL"). The Commission's records demonstrate that the following staffpersons personally witnessed at least some of those ex parte communications:

Roy J. Stewart, Chief, Mass Media Bureau
Barbara A. Kreisman, Chief, Video Services Division
Clay Pendarvis, Chief, Television Branch
Robert H. Ratcliffe, Esquire
Paul Gordon, Esquire

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In addition, the Commission's records reflect that, in October, 1991, another Commission staffperson, Douglas A. Sandifer, Esquire, reviewed the then-pending proceeding and issued (on behalf of the Office of Managing Director) a letter determination that this proceeding was, as of that time, a "restricted proceeding" within the meaning of the ex parte rules.

3. Thus, the record already compiled in earlier stages of this proceeding clearly demonstrates that each of the staffpersons identified in the preceding paragraph has information which is relevant to the ex parte issue designated herein. The first five persons listed above -- Messrs. Stewart, Pendarvis, Ratcliffe and Gordon and Ms. Kreisman -- personally experienced ex parte communications by RBC/RBL and can testify about, inter alia, the nature and content of those communications. Similarly, Mr. Sandifer has personal knowledge of the status of the Commission proceeding vis-à-vis the ex parte rules and the Commission's notice to all parties concerning that status. In view of their knowledge relative to the ex parte issue herein, Press wishes to depose each of these individuals.

4. As the Presiding Judge is aware, Section 1.311(b)(2) of the Commission's Rules specifies that Commission personnel may not be deposed about matters relating to their employment absent specific authorization by the Commission. 47 C.F.R. §1.311(b)(2); Scripps Howard Broadcasting Company, 9 FCC Rcd 4880 (1994). Following the Prehearing Conference herein at which this matter was discussed, the Separated Trial Staff, acting after consultation with Press (and, presumably, all other parties),

filed with the Commission a request for such Commission authorization.

5. On February 9, 1996, the Deputy General Counsel issued an Order, FCC 96I-05, dismissing the Separated Trial Staff's Request. A copy of that Order is included as Attachment A hereto.

6. In dismissing the Separated Trial Staff's request, the Deputy General Counsel interpreted the Scripps Howard decision to mean that the Commission

> will not entertain requests to depose Commission personnel . . . in the absence of an affirmative finding by the presiding ALJ that the proposed examination relates to matters that are relevant to the issued designated for hearing in that proceeding.

Order, ¶2. Accordingly, Press hereby requests that the Presiding Judge issue such a finding (i.e., that the proposed examination of the persons named above relates to matters that are relevant to the designated issue) so that the parties may promptly proceed to re-submit to the Commission a request for Commission authorization to conduct the depositions.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

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Counsel for Press Broadcasting Company, Inc.

February 12, 1996

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of February, 1996, I have caused copies of the foregoing "Request for Determination of Relevance of Examination" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W. - Room 226
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(By Hand)

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/s/ Harry F. Cole
Harry F. Cole

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

FCC 96I-05

In re Applications of	)	GC Docket No. 95-468
	)	
RAINBOW BROADCASTING COMPANY	)	File No. BMPCT-910625KP
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	)	File No. BMPCT-911129KT
For an Extension of Time to Construct	)	
	)	
and	)	
	)	
For an Assignment of its Construction Permit for Station WRBW(TV), Orlando, Florida	)	

ORDER

Adopted: February 8, 1996 ; Released: February 9, 1996

By the Deputy General Counsel:

1. This order dismisses without prejudice the Request for Expedited Authorization to Take Oral Depositions of Specified Commission Personnel on Matters Relevant to Designated Issue No. 1 filed February 5, 1996 by the Separate Trial Staff.

2. The Request states that the parties to this proceeding have indicated their intention to request oral depositions of certain Commission employees who may have relevant information regarding Designated Issue No. 1 in this case, and it asks the Commission to issue an Order granting leave to take oral depositions of those employees. However, the Commission has stated in Scripps Howard Broadcasting Company, 9 FCC Rcd 4880 (1994), that it will not entertain requests to depose Commission personnel, concerning matters related to their employment at the Federal Communications Commission, in the absence of an affirmative finding by the presiding ALJ that the proposed examination relates to matters that are relevant to the issues designated for hearing in that proceeding. The instant Request provides no indication that such an affirmative finding has been made in this case. Under these circumstances, the Request will be dismissed subject to refiling if the presiding ALJ determines that the proposed examination of any Commission employee is relevant to Issue No. 1.

3. ACCORDINGLY, IT IS ORDERED, That, pursuant to 47 C.F.R. § 0.251(f)(9), the Request for Expedited Authorization to Take Oral Depositions of Specified Commission Personnel on Matters Relevant to Designated Issue No. 1 filed February 5, 1996 by the Separate Trial Staff IS DISMISSED with leave to refile.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon

David H. Solomon
Deputy General Counsel