

FCC MAIL SECTION
APR 4 3 03 PM '95
ORIGINAL

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

FCC 96M-57
61042

In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File No. BMPCT-910625KP
)	File No. BMPCT-910125KE
)	File No. BTCCT-911129KT
)	
For an Extension of Time to Construct)	
)	
and)	
)	
For an Assignment of its Construction)	
Permit for Station WRBW(TV),)	
Orlando, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: March 28, 1996 Released: April 2, 1996

1. Under consideration are Notice Of Depositions filed February 26, 1996 by Press Broadcasting Company, Inc., Opposition To Notices Of Deposition And Request For Protective Order filed March 4, 1996 by Roy Stewart, Chief of the Mass Media Bureau, Robert Ratcliffe, the Bureau's Senior Legal Advisor, Barbara Kreisman, Chief of the Video Services Division, and Clay Pendarvis, Chief of the Bureau's Television Branch (Employees), Comments Of The Separate Trial Staff On the "Notice Of Depositions" Of Certain FCC Employees filed March 4, 1996, Opposition Of Paul R. Gordon To Press Broadcasting Company, Inc.'s Notice Of Deposition filed March 12, 1996, and Response Of Press Broadcasting Company, Inc. To Oppositions To Notices Of Deposition filed March 21, 1996.

2. Press seeks to depose the following Commission employees: Roy J. Stewart, Barbara A. Kreisman, Clay Pendarvis, Paul Gordon, and Robert H. Ratcliffe.¹ Press urges that the proposed examination relates to matters that are relevant to Designated Issue 1:

To determine whether Rainbow intentionally violated Sections 1.1208 and 1.1210 of the Commission's ex parte rules by soliciting a third party to call the Commission on Rainbow's behalf, and by meeting with Commission staff to discuss the merits of Rainbow's application proceedings.

FCC 95-468, released November 22, 1995.

3. It is undisputed that all of these employees attended the July 1, 1993 meeting specifically referenced in Designated Issue No. 1. Also, it appears, based on Press' Attachments to its Notice, that each of the employees, with the possible exception of Ratcliffe, had individual ex parte contacts with representatives of Rainbow Broadcasting Company, Inc. (Rainbow). Thus as aptly noted by the Separate Trial Staff, the employees "can describe, from their own personal knowledge, what Rainbow's representatives were told about the ex parte nature of the contacts, and what Rainbow's representatives told the Commission's staff regarding whether Rainbow believed that such contacts were not prohibited by the ex parte rules." Comments, page 3. It is, therefore, clear that the Commission personnel which Press wishes to depose have particular knowledge relevant to the ex parte issue.

¹ Press also sought to depose Douglas A. Sandifer but has since withdrawn that request.

4. Counsel for the proposed deponents do not dispute that the named individuals have knowledge relevant to the designated issue. They argue, however, that the Commission employees should be questioned by written interrogatories, as provided for in Section 1.311(b)(2) and 1.323 of the Rules. This contention is rejected. The Presiding Judge agrees with the Separate Trial Staff that the taking of depositions is appropriate under the circumstances of this case. As discussed in the staff's Comments, the subject matter of the proposed depositions is not easily susceptible to written questions and answers and are most efficiently addressed in the give and take of oral testimony with follow up questions and answers.

5. The questioning of the named employees by depositions is subject to two caveats. First, Press must secure a special order of the Commission, as provided for in Section 1.311(b)(2) of the Rules, before it deposes any Commission employees. Second, Designated Issue No. 1 focuses exclusively on the actions of Rainbow and, more particularly, whether Rainbow intentionally violated the ex parte rules. Any questions regarding the propriety of the Mass Media Bureau's decision on the merits of the Rainbow application or other matters relating to the decision-making process at the Mass Media Bureau is not relevant to the issue. Consequently, the questioning of the Commission employees will be strictly limited to their communications and contacts with Rainbow and its representatives; questioning regarding internal communications between and among Commission employees will not be permitted.²

Accordingly, IT IS ORDERED, That the Oppositions To Notices Of Depositions ARE DENIED.

IT IS FURTHER ORDERED, That the depositions of the Commission employees named in the notice to take depositions filed on February 26, 1996 by Press Broadcasting Company, Inc. ARE AUTHORIZED TO BE TAKEN subject to the conditions set forth in paragraph 5.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge

² The scope of Issue No. 1 and the limitations on any depositions of Commission employees was fully considered and decided at the conference on March 7, 1996. See Tr. 158-172.