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

FCC 96M-96

DISPATCH

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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: May 2, 1996

Released: May 6, 1996

1. Under consideration are "Motion For Partial Summary Decision" filed April 11, 1996 by Rainbow Broadcasting Company (RBC), Opposition Of Press Broadcasting Company, Inc. To Motion For Partial Summary Decision filed April 25, 1996, and Separate Trail Staff's Opposition To Motion For Partial Summary Decision filed April 25, 1996.

2. RBC moves, pursuant to Section 1.251 of the Rules, for summary decision on the following specified issue:

To determine whether Rainbow made misrepresentations of fact or was lacking in candor with respect to its financial qualifications regarding its ability to construct and initially operate its station, in violation of Sections 1.17 and 73.1015 of the Commission's rules or otherwise.

3. Section 1.251 of the Commission's Rules provides for summary decision on an issue where there is no genuine issue as to any material fact for determination at hearing. The standards for granting summary decision are "stringent" and the Presiding Judge is required to "scrutinize carefully the papers filed by the moving party and to treat the pleadings of the opposing party with considerable indulgence." Midwest St. Louis, Inc., 79 FCC 2d 519 (1980); Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975).

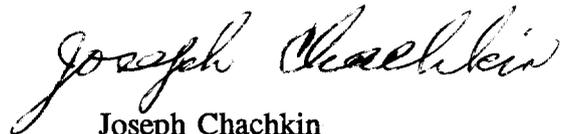
4. RBC argues that its motion satisfies these exacting standards. In this regard, it contends that its motion demonstrates that RBC had the required financing to construct and operate its television station during the relevant period of time contemplated by the issue.

Further, that the declaration of Joseph Rey, RBC's partner and Howard R. Conant, the individual upon whom RBC had relied for its funding (Attachments 1 and 2) demonstrate the bona fides of RBC's financial certification throughout the application period.

5. RBC's partial motion for summary decision will be denied. STS's and Press' Oppositions persuade that there are remaining factual questions on the financial misrepresentation issue. In this connection, they cite testimony given on January 11, 1991 by Joseph Rey which they assert disputes RBC's contention that it had the requisite "firm" commitment at all relevant times. The conflicting positions of the parties can not be resolved on the basis of the paper pleadings and must await a full and complete hearing. In addition, the fact that the issue in question concerns misrepresentations or lack of candor provides a separate ground for denying the relief sought. An essential element is "intent to deceive". STS and Press correctly argue that the credibility questions raised here is not appropriate for summary disposition. See Weyburn Broadcasting Ltd Partnership v. FCC., 984 F.2d 1220, 1229-1232 (D.C. Cir. 1993).

Accordingly, IT IS ORDERED, that the "Motion For Partial Summary Decision" filed April 11, 1996 by Rainbow Broadcasting Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge