

FCC MAIL SECTION

Before the
MAY 14 10 41 AM '96 FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96M-111

61314

DISP
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 8, 1996

Released: May 13, 1996

1. Under consideration is "Second Motion Of Press Broadcasting Company, Inc. To Compel Production Of Documents By Rainbow Broadcasting, Limited" filed May 3, 1996.
2. Press Broadcasting Company, Inc. (Press) seeks discovery of documents relating to the formation, funding and operation of Rainbow Broadcasting Limited (RBL). RBL is the successor to Rainbow Broadcasting Company (RBC) and the proposed assignee of the construction permit for TV station WRBW(TV) and current operator of the station. Each of Press' document requests is premised on Press' assertion that RBC relied on RBL for its financial qualification.
3. Press' motion to compel will be denied. The Presiding Judge ruled at the April 11, 1996 prehearing conference (Tr. 278-280) that Press was not entitled to discover against RBL unless it could demonstrate that RBC was relying upon RBL for its financing prior to the assignment to RBL. Press' motion to compel makes no such demonstration.
4. As is plain from a reading of the Commission ¹ and court pronouncements ², the financial misrepresentation issue focuses on RBC's claimed reliance on Howard R. Conant for its funding. RBC's substitution of equity financing by assigning the construction permit to RBL has no bearing on RBC's financial qualifications and is not relevant to the designated issue.

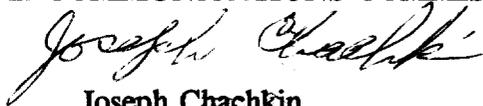
¹ 9 FCC Rcd 2839, 2848 (1994).

² Press Broadcasting Co. Inc. v. FCC, 59 F.3d 1365, 1371 (D.C., Cir. 1995).

Under the Commission's rules, discovery is limited to matters relevant to the designated issues. 47 CFR §1.311(b). Since Press has failed to demonstrate that any of the documents sought are relevant to the RBC financial misrepresentation issue, its motion to compel must be denied.³

Accordingly, IT IS ORDERED, That the "Second Motion Of Press Broadcasting Company, Inc. To Compel Production Of Documents By Rainbow Broadcasting, Limited" filed May 3, 1996 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge

³ Press' document Request 2(c) requests all documents relating to Conant or the relationship between Conant and RBL or any of RBL's principals, or representatives. The basis for Press' request is that Joseph Rey, RBC's partner testified in the Gannett litigation that Conant would become a shareholder in Rey's partnership as security for the funds Conant was to provide to RBC. RBL objected to this request on the ground that Conant is not a partner in nor a lender to RBL and that RBL, as a limited partnership has no shareholders. The Presiding Judge assumes by this response that there are no documents responsive to this request. If, in fact, such documents exist, they must be produced since Conant's relationship with RBC and/or RBL is relevant and may be explored under the designated issue.