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Federal Communications Commission
Office of Secretary

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

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

To: The Honorable Joseph Chachkin
Administrative Law Judge

**SEPARATE TRIAL STAFF'S COMMENTS ON STATEMENT OF PRESS BROADCASTING COMPANY, INC. FOR THE RECORD, INVITATION FOR RESPONSE FROM RAINBOW BROADCASTING COMPANY AND RAINBOW BROADCASTING LIMITED, OR, IN THE ALTERNATIVE, PETITION TO ENLARGE ISSUES**

1. The Separate Trial Staff respectfully submits its Comments on Statement of Press Broadcasting Company, Inc. ("Press") for the Record, Invitation for Response from Rainbow Broadcasting Company ("RBC") and Rainbow Broadcasting Limited ("RBL"), or, In the Alternative, Petition to Enlarge Issues, filed on July 12, 1996.

2. Press contends that RBC and RBL have failed to undertake good faith efforts to respond fully and completely in the discovery process in this case. In particular, Press argues that RBC and RBL appear to have -- at a minimum -- lacked candor in their responses to discovery by, *inter alia*, withholding relevant documents from Press, the Separate Trial Staff and the Commission. Press asserts that the applicants's misconduct should be considered in the ultimate evaluation of the applicants's qualifications. According to Press,

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such consideration does not require the addition of any issues because the misconduct has occurred before the Presiding Judge, RBC and RBL are aware of the standards expected of them, and both applicants have had many opportunities to explain their conduct. Press states that if either applicant believes that some further explanation might be helpful, either or both of them should respond to Press's pleading. Finally, Press contends that if the Presiding Judge believes that consideration of the applicants' discovery performance is not permissible absent a specific issue, such an issue or issues should be added.

3. The Separate Trial Staff agrees with Press that candor issues can arise during the conduct of the hearing and if they do, raise serious questions about an applicant's qualifications. *See Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386, 391-94 (D.C. Cir. 1994) (applicant which, *inter alia*, "deliberately withheld evidence" from the Commission was disqualified for lack of candor and abuse of process). Lack of candor demonstrated in the course of the hearing can be the subject of adverse findings even absent a separate hearing issue.[1]

4. The Separate Trial Staff takes the matters raised in Press's *Statement* very seriously. Therefore, the applicants should submit a detailed statement under oath

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[1] *See The Old Time Religion Hour, Inc.*, 95 FCC 2d 713, 719 (1983), *appeal dismissed sub nom. Alden Communications of Texas, Inc. v. FCC*, No. 85-1207 (D.C. Cir. 1987) ("[L]ack of candor need not be specially designated as a hearing issue because 'truth and candor are always in issue.'") (citations omitted); *William M. Rogers*, 92 FCC 2d 187, 189 (1982) ("The issue of candor need not be separately designated for hearing since the Commission has a right to expect candor from all of its licensees"); *Grenco, Inc.*, 39 FCC 2d 732, 736-37 (1973) ("Complete candor from Commission licensees as to matters under investigation may be demanded and is expected . . . . While issues are designated to place the licensee on notice of the charges which he will be required to meet at the hearing, notice to a[n] . . . applicant that he must testify truthfully and not conceal material information is superfluous. . . . [N]o one is allowed 'one bite' at the apple of deceit.")

responding to Press's specific allegations and queries. *See, e.g., Statement of Press*, pp. 12-13. In addition, RBL should explain the troubling discrepancy between its counsel's repeated representations to this tribunal that she did not "participate" in the Miami Tower Litigation in *Rey v. Guy Gannett Publishing Co.* (*see* Tr. 961) and Press's compelling documentary evidence to the contrary. Specifically, during this proceeding, counsel for RBL sought to create the impression that she was *not* an active participant in the Miami Tower Litigation. Now, we learn -- for the first time -- that this was not the case. *See Statement of Press*, pp. 7-10. If satisfactory explanations from the applicants are not forthcoming, the Presiding Judge should either (1) declare that these matters may be considered in the ultimate disposition of the case without the need for any additional issues (*see* n. 1, above), or (2) reopen the record and enlarge the hearing issues pursuant to Section 1.229 of the Commission's Rules to explore these matters at hearing.

## CONCLUSION

5. In conclusion, the Separate Trial Staff recommends that RBC and RBL submit detailed statements or declarations under oath responding to the matters raised in Press's pleading. Vague and generalized responses -- which is what we have had up until now -- just will not do. Nor will a general demurrer or blanket denial. Absent satisfactory explanations from the applicants, the Presiding Judge should either issue a ruling that the applicants's conduct, truthfulness and candor are at issue and may be considered in the

ultimate evaluation of the applicants's qualifications, or, in the alternative, reopen the record and enlarge the issues to explore these matters.

Respectfully, submitted,

David Silberman
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Separate Trial Staff
Federal Communications Commission
Washington, D.C. 20554

July 17, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Separate Trial Staff's Comments on Statement of Press Broadcasting Company, Inc. for the Record, Invitation for Response from Rainbow Broadcasting Company and Rainbow Broadcasting Limited, Or, In the Alternative, Petition to Enlarge Issues was sent first class mail, postage prepaid this 17th day of July 1996, to the following:

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