

FCC MAIL SECTION

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

FCC 96M-195
62007

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: August 20, 1996

Released: August 22, 1996

1. Under consideration are "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" filed July 12, 1996 by Press Broadcasting Company, Inc. (Press), 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 filed July 17, 1996, Rainbow Opposition To Press Statement For The Record filed July 25, 1996, and Reply Of Press Broadcasting Company, Inc. To "Rainbow Opposition To Statement For The Record" filed August 6, 1996.

2. Press contends that Rainbow Broadcasting Company (RBC) and Rainbow Broadcasting Limited (RBL) have failed to undertake good faith efforts to respond fully and completely in the discovery process in this case. Press asserts that RBC and RBL's alleged misconduct should be considered in the ultimate evaluation of RBC's qualifications or, in the alternative, an issue should be added to determine whether RBC and/or RBL engaged in conduct which was intentionally misleading or lacking in candor in connection with the discovery process. Neither request for relief is warranted and Press' pleading will be denied in its entirety.

3. Press urges that RBC and RBL have engaged in a pattern of misconduct justifying possible disqualification of the applicant. First, Press faults RBC for not asking its principal, Leticia Jaramillo, whether she had any of the documents sought by Press, a fact which Press learned at Jaramillo's May 16, 1996 deposition. Press also learned at the same May 16 deposition that Jaramillo had no documents because she maintained no files. It is difficult to fathom Press's inclusion of the Jaramillo matter as proof of a pattern of misconduct. Moreover, if Press believed there was a cognizable breach of some recognized duty by RBC and RBL, that breach became known on May 16. Press' waiting until after the close of the record to air this matter is unexplained.

4. Also, Press challenges RBC and RBL's compliance with discovery requests in that several documents were not found and exchanged until two weeks before hearing and further documents thereafter requested by the Special Staff were not found or, in one case, were discovered apparently by accident during the hearing. While RBC and RBL can be faulted for their lack of thoroughness in carrying out their discovery obligations, the record is devoid of evidence that RBC/RBL deliberately withheld or concealed evidence or misrepresented or lacked candor in their discovery efforts. There is, therefore, no basis for the issues sought by Press or for considering RBC/RBL's discovery efforts in the ultimate evaluation of their qualifications.¹

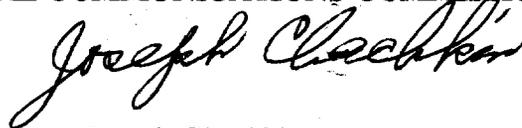
5. Finally, Press contends, that statements made by RBL's counsel concerning the extent of her involvement in the Florida litigation between RBC and the Gannett Tower Company provides further proof of the applicant's "pattern of misconduct." However, counsel's role in that lawsuit is wholly without relevance to any issue in this case and could not affect RBC's qualifications to be a Commission licensee. RBC and RBL correctly point out that Press' recourse is to proceed under Section 1.24 of the Rules if it believes that counsel's representations are the basis for a charge of professional misconduct.

6. As is evident from Press' pleading and made clear by the record, Press' complaints about RBC and RBL's discovery efforts are not new; they were previously raised by Press and the Separate Trial Staff at the hearing (see Tr. 360-363; 949-961). What is new is Press' changed attitude about the severity of the alleged misconduct. At the hearing, Press did not urge that any sanctions be imposed against RBC and RBL. In fact, it did not object to the admission of exhibits containing material which was not timely turned over. Now, after the close of the record, it seeks to recast these same matters as warranting possible disqualification of the applicant. Press' initial stance was correct. There is no warrant for any of the relief now sought by Press.

¹ Press' request for character issues premised on RBC/RBL's flawed discovery efforts is novel. Press cites no Commission precedent where such issues have been added in like circumstances and the Presiding Judge is aware of none.

Accordingly, IT IS ORDERED, That the "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" filed July 12, 1996 IS DENIED in its entirety.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Joseph Chachkin". The signature is written in a cursive style with a large, stylized initial 'J'.

Joseph Chachkin
Administrative Law Judge