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

In re Applications of )  
READING BROADCASTING, INC. )  
For Renewal of License of )  
Station WTVE (TV), Channel 51 )  
Reading, Pennsylvania )  
and )  
ADAMS COMMUNICATIONS CORPORATION )  
For Construction Permit for a New )  
Television Station to Operate on )  
Channel 51, Reading, Pennsylvania )

MM Docket No. 99-153

File No. BRCT-940630KG

File No. BPCT-940630KG

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JUL 29 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Magalie Roman Salas, Secretary  
for direction to  
The Honorable Richard L. Sippel  
Administrative Law Judge

RESPONSE OF ADAMS COMMUNICATIONS CORPORATION  
TO  
RBI'S PREHEARING BRIEF ON SCOPE OF ISSUES

1. Adams Communications Corporation ("Adams") responds to the Prehearing Brief on Scope of Issues filed by Reading Broadcasting, Inc. ("RBI").

2. Standard for decision by this Court (Brief at 2-3). RBI appears to argue, in effect, that the parties may submit evidence virtually of their choosing under the designated issue. That issue calls for a determination of which of the proposals "would better serve the public interest" without further interpretation. However, in the text of the hearing order, as well as in the antecedent policy decision cited and quoted by RBI, the Commission stated that the case should be decided "as nearly as

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possible according to the standards in effect prior to Bechtel II." The hearing order with this interpretation is the appropriate standard to be applied in ruling on the scope of the issues. This Court has considerably more discretion to arrive at initial rulings at this stage than RBI's pleading would indicate.

3. Relevance of diversification of media outlets (Brief at 3). Adams and RBI are in agreement that this is relevant.

4. Comparative coverage (Brief at 3). Adams and RBI are in agreement that this is relevant.

5. Local residence of owners and their local civic involvement (Brief at 3-6). RBI argues for the presentation of evidence in this area even though, for nearly three decades dating back to the Commission's policy statement in 1965, Comparative Broadcast Hearings, 5 RR2d 1901, the only relevance under the local ownership/civic factor was in relation to persons who would serve in management positions at the station under the now discredited "integration" policy. The motion filed by Adams, on the other hand, argues for exclusion of this evidence for lack of a mechanism to direct the proofs toward the ultimate objective, i.e., to determine the likelihood of effectuation of programs in the public interest.

6. To be sure, prior to the adoption of the policy statement in 1965, the Commission did give some consideration to the local ownership/civic factor under the agency's earlier common law. See, Comparative Broadcast Hearings, Dissenting Statement of Commissioner Hyde and Concurring Statement of

Commissioner Lee, 5 RR2d at 1914-20. Also, as RBI indicates, the opinion of the court in Bechtel v. FCC, 10 F.3d 875 (D.C.Cir. 1993) posited that familiarity with the community seems more likely (than correspondence with the public or visits by the public to a station's studios) to make one aware of community needs and interests to be met by the station's programs (Brief at 4-5). And, as RBI concedes (Brief at 6), local ownership and civic involvement of the local owners are "verifiable" factors, not factors that are merely predictive in nature.

7. Adams is persuaded by RBI's argument. The "integration" policy was a flawed mechanism by which to translate local ownership and involvement of local owners into a measure of the likelihood of effectuation of programs in the public interest. No such surrogate mechanism is needed here. During the relevant license term, RBI has made a record from which the actual impact of its local owners and their civic involvement -- on the likelihood of effectuation of programs in the public interest -- can, indeed, be verified.

8. If the evidence submitted by the parties and tested on cross examination and in rebuttal demonstrates that RBI's local ownership failed to see to it that the station provided substantial local programs, including a failure to provide substantial local news or substantial local public affairs programs, the record will establish that RBI's local ownership did not, in fact, effectuate programs in the public interest. Conversely, if the record demonstrates substantial performance by

the station during the license term, the record may very well reflect that RBI's local ownership contributed to that result. Either way, the impact of RBI's local ownership will be verified by the facts of actual practice, not predictive speculation.

9. Broadcast experience (Brief at 3-6). Prior to Bechtel II, supra, this factor also was relevant only with regard to persons qualifying under the "integration" policy. RBI, at 6, argues for allowing evidence of broadcast experience as a "verifiable" factor. We view this argument in the same way as that stated above. Like RBI's local ownership, the broadcast experience of RBI's principal, Mr. Parker, may be also verified with respect to its actual impact on the likelihood of effectuation of programs in the public interest.

10. Thus, if the record shows that under Mr. Parker's experienced broadcast leadership, RBI's station failed to provide substantial local programs, including local news or local public affairs programs, during the past license term -- or, for that matter, if the record reflects a pattern of Mr. Parker's broadcast experience in which his television broadcast station in California and his short-wave radio broadcast station in Texas similarly failed to provide substantial local programs -- then the impact of his broadcast experience on the likelihood of effectuation of programs in the public interest will be established as a negative one. Conversely, if none of this is proven, the impact of Mr. Parker's broadcast experience may well be a positive one. Again, either way, the Court will be able to

proceed on the basis of record facts regarding actual practice, not speculation.

11. Specialized programming (RBI brief at 6-7). Since RBI has filed a motion to enlarge issues in this area, we shall defer our full response to the pleading due with regard to that motion on Monday, August 2, 1999. Suffice it to state here that no consideration of RBI's "specialized programming" is warranted. The Spanish-language program proposal as a comparative factor did not surface until the instant Brief and the Motion to Enlarge Issues were filed on July 22, 1999, and the Spanish-language programming on the station did not commence until June 1, 1998<sup>1</sup>, five years and four years, respectively, after the close of the relevant license term.<sup>2</sup> The Commission has held that post-term programming is irrelevant to the disposition of comparative renewal proceedings. Video 44, 6 FCC Rcd 4948, 69 RR2d 975 (1991).

12. In Video 44, 5 FCC Rcd 6383, 68 RR2d 503 (1990), the Commission concluded that an incumbent renewal applicant's programming performance during the license term did not support award of a renewal expectancy. The incumbent sought reconsideration on the basis of a proffer of extensive evidence concerning Spanish-language programming which had commenced three years after the filing of the challenge application. The

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<sup>1</sup> See RBI Motion to Enlarge Issues at 3.

<sup>2</sup> See, e.g., RBI's Brief at 8 ("The license term in question for WTVE is August 1, 1989 to August 1, 1994.").

incumbent argued that it had thereby provided "highly meritorious service" to the local "Hispanic community". The Commission resoundingly rejected that argument. Video 44, 6 FCC Rcd 4948, 69 RR2d 975 (1991).

13. Citing two decades' worth of precedent, the Commission stated:

[The incumbent's] argument, however, is inconsistent with well established Commission policy. The Commission has long declined to give credit for a licensee's post-term upgrading. We have held that it would undermine licensee accountability to permit a licensee to evade the consequences of its deficient performance by upgrading after a challenge has been filed. [citations omitted] As we have explained:

. . . [T]he renewal applicant must run upon his past record in the last license term. If, after the competing application is filed, he upgrades his operation, no evidence of such upgrading will be accepted or may be relied upon. To give weight to such belated efforts to meet his obligation to provide substantial service would undermine the policy of the competitive spur which Congress wisely included in the Communications Act. A renewal applicant could simply supply minimal service from year to year, secure in the knowledge that even if a competing application were filed at the time of renewal, he could then upgrade to show substantial service. . . .

. . . [T]he [incumbent's] post-term record, the merit of which we do not question, is simply irrelevant. [footnote omitted] . . . [T]he policy underlying the granting of a renewal expectancy is that, for the renewal expectancy to function as an incentive, the licensee must comply with applicable standards during the time period under review. If the licensee could escape the consequences of its failure to earn a renewal expectancy by upgrading after its performance has been challenged, the renewal expectancy determination (and, indeed, the Congressionally-mandated comparative renewal process, as interpreted by the courts) would be rendered meaningless.

6 FCC Rcd at 4950, 69 RR2d at 978-79.

14. The Commission's holding in Video 44 conclusively

precludes any consideration of RBI's programming subsequent to June 30, 1994, the date on which Adams's application was filed. Since RBI initiated its Spanish-language programming four years after that date, and first asserted its claim of preference five years after that date, the programming is categorically irrelevant here.

15. Commencement of the license term. Adams' motion as supplemented has stated its argument that the commencement date of the license term should be August 1, 1989. Throughout the five-year term, there has been continuity of stock ownership by the local stockholders and the stock ownership interest of Mr. Parker, either as a contract right to acquire stock (and other economic benefits) or by the issuance of stock, with Mr. Parker serving as the corporate President throughout the entire term.

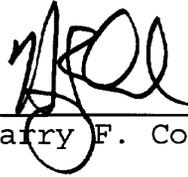
16. To the extent that the financial circumstances during the initial part of the term can be shown to account for a reduced level of performance from the level of performance after the bankruptcy proceeding ended, this can be taken into account based on the evidence developed on the record. It is premature to attempt to do so now.

Respectfully submitted,



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July 29, 1999

CERTIFICATE OF SERVICE

I certify that I have this 29th day of July 1999 caused copies of the foregoing RESPONSE OF ADAMS COMMUNICATIONS CORPORATION TO RBI'S PREHEARING BRIEF ON SCOPE OF ISSUES to be hand delivered to the offices of the following:

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