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

In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS CORPORATION	)	File No. BPCT-940630KG
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	

RECEIVED
SEP 13 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REQUEST FOR PERMISSION TO FILE APPEAL

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September 13, 1999

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1. Pursuant to Section 1.301 of the Commission's Rules, Adams Communications Corporation ("Adams") requests permission to appeal the ruling set forth in *Memorandum Opinion and Order*, FCC 99M-49, released September 3, 1999 ("*MO&O*"), in which the Presiding Judge denied Adams's motion seeking the addition of two qualifying issues relative to Reading Broadcasting, Inc. ("RBI") and its dominant principal, Micheal Parker.

2. Section 1.301 requires that the requesting party demonstrate that the ruling to be appealed is such that error would be likely to require remand should the appeal be deferred and raised as an exception. Adams sought the addition of two issues relating to the basic qualifications of RBI and Parker. If the Presiding Judge's denial of Adams's motion were to be successfully raised in exceptions, remand and further hearing -- concerning the added issues -- would clearly be necessary.

3. Section 1.301 also requires that the requesting party demonstrate that a new or novel question of law or policy is presented.

4. With respect to the first requested issue, the *MO&O* relied on unsupported speculation to justify an action which was inconsistent with a decision of the full Commission. In 1997, the full Commission specifically held that there are "serious questions" concerning the qualifications of Parker arising from disqualifying misconduct which had already been adjudicated. *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2254, 2257 (1997). Because of factors unrelated to Parker, the Commission determined in *Two If By Sea* that further consideration of those issues was premature in that proceeding at that time. In its motion, Adams argued that, since Parker is the dominant principal of RBI -- which is seeking renewal of its license -- the "serious questions" already identified by the full Commission must be considered here.

5. According to the *MO&O*, the absence from the *HDO* of any discussion concerning Parker's previously-adjudicated misconduct means that the Bureau (*i.e.*, the designating authority) "made a decision not to set" or "specifically decided not to set" that misconduct for adjudication. *MO&O* at ¶14. But there is nothing at all in the *HDO*, or in the Bureau's own Comments in response to Adams's Motion to Enlarge, to support that notion. [1/] Nor would the Bureau, a subordinate, have had the authority to overrule the full Commission's prior, explicit determination that "serious questions" exist concerning Parker's qualifications.

6. The *MO&O* also stated that the Bureau's Norwell letter supported the belief that the Bureau consciously decided not to add any issues herein. *MO&O* at ¶24 (citing *Straus Communications, Inc.*, 2 FCC Rcd 7469 (1987)). But the Norwell letter involved an effort by Parker to ***SELL*** a license, not renew one. The full Commission itself has expressly distinguished such situations from those where the disqualified applicant seeks to acquire (or, as here, retain) an authorization. *RKO General, Inc.*, 5 FCC Rcd 642 (1990). [2/] Thus, the Norwell letter does not support the *MO&O*.

[1/] If the Presiding Judge is inclined to read meaning into silence, certainly the Bureau's silence in its Comments on Adams's motion is far more meaningful than its silence in the *HDO*: we do not know what factors were specifically in the minds of the Bureau staff who drafted the *HDO* at the time that they drafted it; by contrast, the Bureau's Comments were directed exclusively to the Parker questions. If the Bureau had in fact already considered and rejected the addition of such issues at the time of the *HDO*, the Bureau would have said so in its Comments. It did not.

[2/] In *RKO*, the Commission distinguished *Straus* as follows:

> [*Straus*] turned to a significant extent on procedural and public interest factors . . . specifically relating to the transfer of a licensee's existing license. . .. ***Because the applicants here seek the right to acquire stations rather than divest themselves of stations, the specific rationale of Straus cannot be applied to the facts before us.***

5 FCC Rcd at 646, n. 5 (emphasis added).

7. The *MO&O* ignored the full Commission's own determination that "serious questions" exist and instead conjectured that the *HDO*'s silence could be interpreted as an indication that the Bureau had, *sub silentio*, similarly chosen to ignore that determination. *See, e.g.*, *MO&O* at ¶14. Such an approach presents a new or novel issue which the Commission should be permitted to address at the earliest possible time. [3/] The instant proceeding requires such consideration.

8. The *MO&O*'s rejection of an issue relating to Parker's previously-adjudicated misconduct was also based on "the passage of time", *MO&O* at ¶15, presumably a reference to the "ten year limitation" mentioned in *Character Qualifications*, 102 FCC2d 1179, 1229 (1986). But that limitation concerned allegations of misconduct first raised more than ten years after the misconduct. Here, the allegations of misconduct were in fact raised, and fully adjudicated, well within that ten-year period.

9. In *Character Qualifications* the Commission did ***not*** say that a timely-adjudicated determination of disqualification would be effective for only ten years and no more. Indeed, in 1997 both the Commission and the Bureau had noted the "serious questions" arising out of Parker's previously-adjudicated misconduct. That misconduct (which was the subject of decisions in 1988) had occurred prior to 1987. *See Mt. Baker Broadcasting Company*, 3 FCC Rcd 4777 (1988); *Religious Broadcasting Network*, 3 FCC

[3/] The *MO&O* also suggested that the "serious questions" noted by the full Commission in *Two If By Sea* should only be considered in connection with the stations where the misconduct occurred, and no others. *MO&O* at ¶14. That notion is inconsistent with the fact that both the full Commission (in *Two If By Sea*) and the Bureau (in the Norwell letter) recognized that those "serious questions" could in any event be considered in the context of at least the Hartford proceeding. However, the misconduct underlying those "serious questions" occurred ***NOT*** in connection with Hartford, but in connection with completely unrelated stations. The *MO&O*'s apparent belief that Parker's misconduct could not be considered outside of the particular circumstances in which that misconduct occurred is thus contradicted by both *Two If By Sea* and the Norwell letter.

Rcd 4085 (Rev. Bd. 1988). If the passage of ten years since the misconduct absolutely eliminated any adverse effect of previously-adjudicated misconduct, the Commission's expression of concern about the "serious questions" about Parker in *Two If By Sea*, and the Bureau's similar recognition in the Norwell letter, would have been unnecessary. By acknowledging the continued vitality of those questions in 1997, both the Commission and the Bureau demonstrated the "ten-year limitation" was not applicable here.

10. The *MO&O* also expressed concern about the possible unavailability of file materials concerning *Mt. Baker* and *Religious Broadcasting Network*. *MO&O* at ¶15. But there is no need for such file materials, as the matters in those proceedings were fully adjudicated, resulting in final, reported decisions which are readily available for purposes of this hearing. *Crystal Communications, Inc.*, 12 FCC Rcd 2149, 2150 (1997). [4/] Those decisions, reached after full participation by Parker, have long since become final. As the Commission held in *Crystal*, the underlying adverse findings need not -- indeed, ***CANNOT*** -- be relitigated here.

11. The *MO&O* appears also to be based on the notion that a final determination of an applicant's disqualification is at most a temporary condition which automatically vanishes after ten years. That is not the case. In *RKO General, Inc.*, *supra*, the full Commission considered whether the previous disqualification of two dismissing applicants

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[4/] In *Crystal* the full Commission expressly held that

> any decision, whether issued by an ALJ, Review Board or the Commission, that is not subject to further review because of a settlement would be entitled to protection against collateral attack, unless a request to vacate has been granted. [citation omitted] Thus, an applicant that has been disqualified in an Initial Decision could show rehabilitation or other post-decision mitigating circumstances, but it could not relitigate the underlying adverse findings.

should be deemed a bar to future broadcast acquisitions by those two applicants. The Commission concluded that the disqualifications would remain in effect, although it declared that, if the disqualified applicants sought to acquire additional licenses, they could tender an affirmative "showing of good character". 5 FCC Rcd at 644. The Commission recognized that the adjudicated misconduct had occurred as much as seven years earlier, but the Commission did not impose any time limit (for instance, a limit extending only ten years from the misconduct) on the necessity of making the "good character" showing. The full Commission's decision in *RKO General* demonstrates that, once they have been fully adjudicated, determinations of disqualifying misconduct remain with the wrong-doer and can be eliminated only with an affirmative showing of "good character". The *MO&O*'s unprecedented and unwarranted application of the "ten-year limitation" is inconsistent with this Commission precedent and presents a novel question which warrants the Commission's earliest attention to avoid any further delay in addressing the serious questions concerning Parker.

12. In rejecting Adams's proposed second issue concerning Parker's failure to be fully candid and forthcoming in his descriptions of his previous misconduct, the *MO&O* asserted that Parker had not been shown to have made any "affirmatively false" representations. *MO&O* at ¶18. But that ignores Parker's 1992 amendment to an application to acquire International Broadcast Station KCBI (now KAIJ), Dallas, where Parker stated unequivocally that:

> no character issues had been added or requested against those applicants [including the applicant in *Religious Broadcasting*] when those applications were dismissed.

That statement was plainly wrong: a basic qualifying issue ***had*** been requested against the

Parker applicant in *Religious Broadcasting*, ***had*** been added, and ***had*** been resolved adversely to that applicant. Thus, while Parker's disclosures in other applications may arguably have avoided blatant misrepresentations (although they seriously lacked candor), his amendment in the Dallas application did contain affirmatively false representations. The *MO&O* failure to refer to Parker's blatantly misrepresentative amendment is reversible error.

13. The *MO&O* suggested that the adverse findings and/or conclusions in *Religious Broadcasting* may have been vacated as a result of a settlement in that case. *MO&O* at ¶19. This novel proposition is inconsistent with Commission precedent. The authorities cited in the *MO&O* in support of that proposition [5/] merely provide that a settlement ***may*** justify vacation in some cases. In the cited cases, ordering clauses specifically granting those requests were included.

14. The Commission's general rule in this area is contrary to the *MO&O*'s holding. In the full Commission's 1997 decision in *Crystal Communications, Inc., supra*, the Commission stated:

> [A] decision of the Review Board or the Commission that becomes moot because of a settlement would be given precedential weight unless a request to vacate has been granted. More importantly, any decision, whether issued by an ALJ, Review Board or the Commission, that is not subject to further review because of a settlement would be entitled to protection against collateral attack, unless a request to vacate has been granted. [citation omitted] Thus, an applicant that has been disqualified in an Initial Decision could show rehabilitation or other post-decision mitigating circumstances, but it could not relitigate the underlying adverse findings.

12 FCC Rcd at 2150. The Commission further held that it "should generally deny requests to vacate unless the parties make a showing of some special circumstances beyond the mere

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[5/] *See A.S.D. Answer Service*, 1 FCC Rcd 763 (1986); *Vela Broadcasting Co.*, FCC 88I-087, released August 31, 1988.

fact that the case has been settled." 12 FCC Rcd at 2151.

15. No request for vacation (or other similar relief) was made in *Religious Broadcasting* and the order approving the settlement there did not purport to alter in any way the previous holdings in the case. *Religious Broadcasting Network*, 5 FCC Rcd 6362, 6363 (Rev. Bd. 1990). The same is true with respect to the Commission's finding of intentional deceit in *Mt. Baker*. The conclusions in those cases thus remain unchanged. To the extent that the *MO&O* is based on some contrary notion concerning some supposedly absolute and automatic cleansing effect from a settlement, the *MO&O* presents a novel question which warrants immediate review by the Commission. [6/]

16. The *MO&O* also discounted the effect of Parker's failure to include official citations to the *Mt. Baker* and *Religious Broadcasting* decisions. The *MO&O* characterized as "speculative" the notion that the Commission's processing staff would not bother to seek out the decisions absent an official citation and thus may not have been fully aware of the misconduct involved there. *MO&O* at ¶20. But the Bureau itself supported addition of this requested issue, indicating that the Bureau was ***not*** so aware. In its Comments on Adams's motion the Bureau stated that Parker's disclosures did "not fairly disclose all relevant facts"

[6/] Parker was aware of the importance of affirmatively securing favorable resolution of basic qualifying issues ***before*** an application subject to such questions is dismissed. In *Family Media, Inc.*, MM Docket No. 83-727 *et seq.*, Parker was the principal of a competing applicant, Pacific Rim Broadcasting Co. ("Pacific Rim"). Issues, including a disqualifying misrepresentation/lack of candor issue, were added against Pacific Rim. Pacific Rim then dismissed its application, but only on condition that "the qualifying issues raised against Pacific Rim . . . would be favorably resolved". *See Family Media, Inc.*, FCC 84M-1202, released March 12, 1984 (*see* Attachment A). This reflects Parker's awareness of the need to resolve issues favorably ***before*** dismissal. Similarly, in 1990, an applicant (Christine Shaw) for whom Parker served as a consultant took precisely the same approach, requesting dismissal of her application only on condition that pending disqualifying issues against her be resolved favorably before dismissal. *Coastal Broadcasting Partners*, FCC 90M-2663, released August 24, 1990 (*see* Attachment B).

and were "clearly insufficient". Bureau Comments at 5. The *MO&O*'s speculation that Parker had provided the Bureau with sufficient information in his applications was inconsistent with the Bureau's express statements that that was ***not*** the case. [7] The *MO&O*'s reliance on speculation in the face of conclusive, contrary statements from the Bureau raises a novel question of law warranting immediate Commission review.

17. In its Conclusion, the *MO&O* cited *Joseph Bahr*, 10 FCC Rcd 32 (Rev. Bd. 1994). That decision, however, is inapposite. In the cited *Bahr* decision, the Review Board merely declined to reverse an ALJ's conclusion that an applicant had not engaged in misrepresentation or lack of candor. The *MO&O* should instead have considered *Joseph Bahr*, 7 FCC Rcd 2147 (Rev. Bd. 1992), in which the Review Board added the misrepresentation/candor issue. There, over protestations of innocence by the alleged wrong-doer, the Board concluded that a substantial and material question existed as to whether that party had sought to deceive the Commission. The standard for adding an issue -- *i.e.*, a determination that a substantial and material question of fact exists -- is significantly lower than the standard for actually resolving that issue one way or the other. Thus, while the Board was satisfied in 1992 that serious questions existed, the Board was equally satisfied in 1994 that the ALJ's resolution of those questions was satisfactory. In the instant situation, the lower threshold standard of proof, not the higher one, applies.

18. This case presents an unusual, if not unique, situation: an applicant who has ***twice*** been found to have engaged in intentional deceit or fraud on the Commission, and

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[7] In its Conclusion, the *MO&O* stated that, "in view of . . . the Bureau's actual knowledge ***in 1997*** of prior adverse conclusions on Parker's character, there was no reasonable ability for Parker or [RBI] to deceive the Bureau." *MO&O* at ¶21 (emphasis added). But the deceptive disclosures appeared in applications filed by Parker, and acted on by the Bureau, in 1991 and 1992, years ***before*** 1997.

whose misconduct has been deemed to be disqualifying, now seeks a further authorization. The Commission has recently acknowledged that "serious questions" remain about the applicant, as has the Bureau. And yet, based on propositions which are clearly contrary to express Commission policies, the Presiding Judge would ignore the previous adjudications of misconduct, and the recent expressions of continuing concern about that misconduct. For the reasons stated, the refusal to add the issues requested by Adams presents novel and important issues which must be resolved by the Commission at the earliest possible time. Accordingly, Adams seeks leave to appeal the *MO&O* or, at a minimum, modification of the *MO&O* consistent with the foregoing. [8/] Such modification could include, for example, addition of the requested issues in recognition of the substantial authority cited above and in Adams's original motion.

Respectfully submitted,

/s/ Gene A. Bechtel
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/s/ Harry F. Cole
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Counsel for Adams Communications Corporation

September 13, 1999

[8/] Section 1.301 contemplates that, in lieu of permission to appeal, the Presiding Judge may modify his ruling in light of the Request for Permission to Appeal.

ATTACHMENT A

Family Media, Inc.,
FCC 84M-1202, released March 12, 1984,

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MAIL BRANCH
APR 13 1984
SIGNED BY ABOVE
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Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 84M-1202

3723

In re Applications of	)	
	)	
FAMILY MEDIA, INC.	)	MM DOCKET NOS. 83-727 to 83-728
Honolulu, Hawaii	)	83-730 to 83-736
	)	
et al.	)	83-734
	)	
For Construction Permit	)	

MEMORANDUM OPINION AND ORDER

Issued: March 8, 1984; Released: March 12, 1984

1. Under consideration are: (1) Motion for Summary Decision; (2) Petition for Leave to Amend and (3) Motion to Dismiss, filed February 24, 1984 by Pacific Rim Broadcasting Co. (Pacific Rim).

2. The motion for summary disposition addresses the following issues:

(a) To determine the facts concerning the ownership of Pacific Rim Broadcasting Co. as they existed on the application cut-off and B cut-off dates in this proceeding;

(b) To determine in light of the facts adduced pursuant to (a) above, whether Pacific Rim Broadcasting Co violated Sections 73.3514 and/or 1.65 of the rules, and if so, the effect thereof on its basic and/or comparative qualifications to be a Commission licensee; and

(c) To determine in light of the facts adduced above, whether Pacific Rim made misrepresentations to the Commission and/or lacked candor with regard to its ownership, and if so, the effect thereof on its basic and/or comparative qualifications to be a Commission licensee.

REPRODUCED AT THE NATIONAL ARCHIVES

3. These issues were added because of apparently inconsistent filings made with the Commission. Specifically, two questions arose as a result of Pacific Rim's filings: (1) Whether Helen Kinnear was an owner of Pacific Rim on February 23, 1983, and (2) Whether the stock held by the Rupps, Odas and Stableys was jointly owned on February 23, 1983.

4. Helen Kinnear. Pacific Rim states: that Ms. Kinnear agreed to purchase 1,500 shares of stock at $10 per share; that she made a down payment of $3,750.00 and promised to pay the balance due within 90 days; that the agreement also provided that stock would be issued only upon receipt of the full purchase price, that subsequently Ms. Kinnear defaulted on her obligation and as a result was not entitled to any shares and was never issued any stock. It appears that the inclusion of Ms. Kinnear's name in the modification application was a mistake. There was no point for Pacific Rim to intend to misrepresent Kinnear's ownership status.

5. Joint ownership interests. Pacific Rim avers that the Rupps, Odas and Stableys intended from the beginning that their stock be jointly owned and that Pacific Rim did not issue the stock in both names or list the stock as jointly held because of the misunderstanding of Washington law. Under Washington law property acquired after marriage by either spouse is community property (RCWA 26.16.010 et seq.) Pacific Rim states that it was not until this issue arose that it was realized that the state of residence, not the state of incorporation, governed the ownership interests of non-Washington owners. The Odas and Stableys are residents of Hawaii and Hawaiian law states that there is a rebuttable presumption that property acquired in the name of one spouse is the separate property of the spouse in whose name it has been acquired (Hawaii Statutes 510-1). The Odas and Stableys intended from the beginning that their stock be jointly owned. According to Pacific Rim the inconsistency between the application and the "B" cut-off amendment was not the result of a transfer between spouses but rather was occasioned by each of the married couples determination after the application was filed that the wives would vote the stock and work at the station.

6. Given the explanation as to the actual ownership of Pacific Rim on February 23, 1983, it is ruled that the ownership as set forth in Pacific Rim's April 29 amendment and subsequent filings was accurate. Furthermore, there is no evidence of any intent by Pacific Rim to deceive the Commission as to the ownership status of Kinnear, the Odas and the Stableys.

REPRODUCED AT THE NATIONAL ARCHIVES

7. Reporting Issue. Pacific Rim frankly admits to some reporting slips, but none are disqualifying in character there being no evidence of an intent to conceal pertinent information from the Commission. Pacific Rim has filed concurrently with the motion for summary disposition a motion to dismiss its application. In light of this development Pacific Rim seeks resolution only of the basic qualifying issues. It is ruled that Pacific Rim has established that it is qualified to be a Commission licensee.

8. Motion to Amend. The proposed amendment reflects a restructuring of Pacific Rim's ownership to ensure that no transfer of control is effected and to facilitate the dismissal of its modification application. Pacific Rim eschews all comparative advantage and submits that, in view of its concurrent request to dismiss its application, that acceptance of the amendment would not prejudice any party.

9. The amendment first withdraws the "B" cut-off amendment which was found to constitute a major change, and then reports the present ownership structure. The effect of this Amendment is to reduce below 50% the aggregate percentage ownership changes, thereby making the cumulative transfers a minor change. Good cause exists for the grant of Pacific Rim's Petition for Leave to Amend. No modification or addition of issues or parties would be necessitated by acceptance of this Amendment. Nor would acceptance of the proposed Amendment disrupt the orderly conduct of the hearing or necessitate additional hearing.

10. In sum, Pacific Rim has proffered a curative amendment diligently filed in response to a potentially disqualifying issue. It will be accepted.

11. Motion to Dismiss. Pacific Rim has determined that it's resources would best be devoted to the construction of Channel 14 so long as, prior to its dismissal, the qualifying issues raised against Pacific Rim in this proceeding could be favorably resolved. In light of the favorable ruling on the Petition for Summary Decision and Motion to Amend, the Motion to Dismiss is ripe for decision. Pacific Rim has neither received nor been promised any consideration from any party to this proceeding for its requested dismissal.

12. Accordingly, IT IS ORDERED that the Motion for Summary Decision, filed February 24, 1984 by Pacific Rim (MM Docket No. 83-734) IS GRANTED and the qualifying issues specified against Pacific Rim ARE RESOLVED in its favor, the Motion to Amend IS GRANTED and the amendment IS ACCEPTED, the Motion to Dismiss IS GRANTED and the application of Pacific Rim IS DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak

John M. Frysiak
Administrative Law Judge

REPRODUCED AT THE NATIONAL ARCHIVES

ATTACHMENT B

Coastal Broadcasting Partners,
FCC 90M-2663, released August 24, 1990

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

FCC 90M-2663

6148

In re Applications of	)	MM DOCKET NO. 86-173
COASTAL BROADCASTING PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP	)	File No. BPCT-851206KE
CATALINA 54 BROADCASTING, LTD. A CALIFORNIA LIMITED PARTNERSHIP	)	File No. BPCT-860207KJ
AVALON, CATALINA BROADCASTERS, INC.	)	File No. BPCT-860210KE
ES POSIBLE MINORITY MEDIA TELECOMMUNICATIONS, INC.	)	File No. BPCT-860210KH
CHRISTINE E. SHAW	)	File No. BPCT-860210KI
GOLDEN SHORES BROADCASTING, INC.	)	File No. BPCT-860210KJ
PATRICK D. SISNEROS d/b/a CATALINA BROADCASTERS	)	File No. BPCT-860210KK
ISLAND BROADCASTING LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP	)	File No. BPCT-860210KM
AVALON BROADCASTING	)	File No. BPCT-860210KN
DAVID H. WAGNER d/b/a DHW COMMUNICATIONS	)	File No. BPCT-860210KO
For Construction Permit Avalon, California	)	

MEMORANDUM OPINION AND ORDER

Issued: August 22,1990 Released: August 24,1990

1. Under consideration are 1) Contingent Motion to Dismiss, filed July 6, 1990 by Christine E. Shaw. 2) Supplement to Contingent Motion to Dismiss, filed July 9, 1990 by Shaw; [1]) Motion for Summary Decision, filed

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1 By this motion, Shaw requests that if Summary Decision is granted, leaving no issues pending that are adverse to her, Ms. Shaw's application be dismissed.

EXHIBIT G

5. In Christian Children's Network, Inc., 101 FCC 2d 612,614 (1985), the Commission determined that "without regard to the specific net worth ratio," it would accept non-liquid assets equal to liquid cash needs, provided relevant appraisals were supplied to verify the non-liquid value of the assets concerned. Here, the non-liquid assets represented over two times the net worth required for construction and operation and this valuation is supported by requiste appraisals. Finally, Ms. Shaw continues to rely on her non-liquid assets but has obtained an equipment lease letter based upon those assets providing her with additional reasonable assurance of the availability of the necessary financing.

6. It is concluded that Ms. Shaw truthfully certified that she had sufficient assets to construct and operate her station for three months. No evidence supports a finding that Shaw engaged in any effort to deceive the Commission. Shaw was financially qualified at the time she certified and remains qualified at the present time.

7. Shaw has demonstrated the absence of any genuine issue of material fact respecting the financial/misrepresentation issues specified against her, and also respecting the issues identified by the Review Board upon its remand of this case.

Shaw is qualified to be a Commission licensee, and IT IS ORDERED that the motion for Summary Decision IS GRANTED and the outstanding financial/misrepresentation issues ARE RESOLVED in favor of Shaw. IT IS ALSO ORDERED that the Contingent Motion to DISMISS is GRANTED, and the application of Christine E. Shaw IS DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Edward Luton
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of September, 1999, I caused copies of the foregoing "Request for Permission to File Appeal" to be hand delivered (as indicated below), addressed to the following:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
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