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

FCC 99M-54
90637

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)	

MEMORANDUM OPINION AND ORDER

Issued: September 22, 1999

Released: September 23, 1999

1. On September 3, 1999, Reading Broadcasting, Inc. ("Reading") filed a Motion As To Past Broadcast Experience Of Principals Of Reading Broadcasting, Inc. Adams Communications Corporation ("Adams") filed Comments on September 13, 1999. Reading filed a Reply on September 17, 1999. The Bureau filed no pleadings.

2. In its motion, Reading describes the past broadcast experiences of Michael L. Parker, Reading's president, director and shareholder; Jack A. Linton, director and shareholder of Reading; and Frank D. McCracken, Reading's executive vice-president, director and shareholder. Reading moves for leave to present evidence of their past broadcast experience.

3. Adams agrees that post-license term evidence of broadcast experience could be relevant. Adams contends that it is possible for an applicant to receive a comparative demerit after considering past broadcast experience that is poor, citing Policy on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 396 (1965) (broadcast experience may be examined qualitatively upon an offer of proof of particularly poor or good previous accomplishments). Adams asks that Reading's motion be dismissed as redundant.

4. The Presiding Judge has ruled that under the standard comparative issue there may be evidence received on past broadcast experience. Memorandum Opinion and Order FCC 99M-47, released August 9, 1999, at Paras. 8-9. There the parties were authorized to present evidence on broadcast experience. The parties also were informed of the scope of discovery. Id. at 6 and n.8.

Reading's motion, at least in part, led to Adams serving a Third Document Request which includes discovery documents concerning Reading's broadcast experience. The parties seem to disagree on whether there can be a demerit element to broadcast experience. All this pleading activity tends to indicate that Reading did not file a redundant motion.

5. Reading relies on selected non-determinative standard comparative cases that have addressed broadcast experience and argues that "it would be improper to assess a demerit for past broadcast experience." See Reply at 4. Reading has not offered convincing argument or authority requiring the adoption of such a broad proposition. Nor has Adams found unequivocal authority to the contrary. Cf. Sarasota - Charlotte, 5 F.C.C. Rcd 3837 (Review Bd. 1990).

6. In Ronald Sorenson, 5 F.C.C. Rcd 3144, 3146 (Review Bd. 1990), the Review Board concurred in a judge's award of an advantage for past broadcast experience, noting that "[t]he Commission does not discount or diminish non-current broadcast experience", and citing New Continental Broadcasting Co., 88 F.C.C. 2d 830, 847, 849 (Review Bd. 1981). Ronald Sorenson, supra at Para. 12.¹ But there is no holding in those decisions (or any of the other decisions cited) as to whether evidence of poor broadcast experience, if it were offered against a competing applicant, would or would not be admissible in a comparative hearing.

7. There is other instructive consideration by the Review Board of the broadcast experience factor in New Continental, supra. An applicant argued that since there was a gap in broadcast employment, the significance of the experience should be downgraded. Id. at 847. The Review Board held:

We also reject [the] view that no enhancement credit is warranted for previous broadcast experience unless that experience is demonstrated to be "particularly poor or good," quoting the Policy Statement, supra, 1 F.C.C. 2d at 396.—. [I]t has never been Commission practice to withhold all enhancement credit for previous broadcast absent a threshold showing of excellence.

Id. at 847, Para. 30.

8. There is nothing in the New Continental decision to suggest that evidence of poor past broadcast experience could not be offered for purposes of considering a demerit. The burden would be on the proponent of the evidence to show why the demerit is warranted. Id. In light of the Review Board not requiring a showing of "particularly" good experience in order to receive a merit, there is no

¹ Reading also cites to footnote references in Garrett Broadcasting Serv. v. F.C.C., 513 F.2d 1056 n.40 (D.C. Cir. 1975); and TV 9, Inc. v. F.C.C., 495 F.2d 941 n.2 (Supplemental Decision D.C. Cir. 1973). Both references are definitional: (1) a preference denotes a determination of superiority of one applicant over another; and (2) a merit is only a recognition by the Commission of certain positive qualities that may, but not necessarily must, lead to a comparative preference.

basis to require a corresponding showing of "particularly" poor experience in order to assess some demerit.² The preferred approach would be to limit evidence of "poor" broadcast performance to rebuttal of any evidence offered of "good" broadcast experience.

Conclusion

9. There appears to be no objection offered to Reading's Motion As To Past Broadcast Experience. The Motion relates to Reading's broad proffer of evidence of past broadcast experience attributable to Reading that is in accord with earlier rulings on relevant evidence (FCC 99M-47).

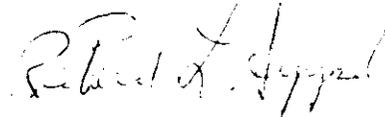
Order

IT IS ORDERED that the Motion As To Past Broadcast Experience filed on February 3, 1999, IS GRANTED.

IT IS FURTHER ORDERED that subject to the foregoing analysis, Reading Broadcasting, Inc. is granted leave to present evidence of the past broadcast experience of Michael L. Parker, Jack A. Linton and Frank D. McCracken.

IT IS FURTHER ORDERED that the parties shall cooperate to the fullest extent possible in producing documents that are requested which are responsive to past broadcast experience.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

² In New Continental the Review Board did not give a similar instruction on how evidence of poor broadcast experience should be treated. Therefore, the literal requirement of the Policy Statement would include the qualifying or threshold standard of "particularly" poor. Because any such evidence of poor broadcast experience is likely to be offered in rebuttal, if at all, there should be no threshold showing of broadcast experience that would need to be considered.