

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

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

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

CONSOLIDATED REPLY
OF ADAMS COMMUNICATIONS CORPORATION

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1. Adams Communications Corporation ("Adams") hereby submits its Consolidated Reply to (a) the Opposition of Reading Broadcasting, Inc. ("RBI") and (b) the Comments of the Mass Media Bureau ("Bureau"), both filed in response to Adams's Request for Permission to File Appeal.

2. As a preliminary matter, RBI misstates the standard applicable to Adams's Request. According to RBI, Adams was required to show that there "is an error in the [Presiding Judge's] ruling". RBI Opposition at 2. That is not the standard. Rather, a request for appeal must demonstrate that, if the decision-to-be-appealed were erroneous, then such error would require a remand. Section 1.301(b). Here, if the Presiding Judge's refusal to add the requested issues is ultimately deemed to have been erroneous -- as Adams firmly believes - - then reversal on that point will require the addition of the issues, which will logically necessitate a remand.

3. Both RBI and the Bureau argue that the "ten-year limitation" described in *Character Qualifications Policy*, 102 FCC2d 1179, 1229 (1986), disposes of any possible question concerning Adams's first proposed issue (concerning the effect on RBI of two final adjudications that RBI's dominant principal, Micheal Parker, engaged in fraud and intentional deceit before the Commission). RBI Opposition at 10-12; Bureau Comments at 3-4. In so arguing, RBI and the Bureau underscore the need for Commission review on this point.

4. According to the Bureau, the ten-year limitation applies to "consideration of *past conduct*", so that where the "conduct" in question occurred more than ten years ago, no further inquiry would be necessary. Bureau Comments at 4 (emphasis added). RBI similarly pegs the starting point for the ten-year limitation at the misconduct itself. RBI Opposition at 11. In discussing *RKO General, Inc.*, 5 FCC Rcd 642 (1990), RBI notes that "ten years

had not passed since the misconduct occurred". *Id.*

5. That position is flatly contradicted by the full Commission's own unequivocal conclusion, in *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2254, 2257 (1997), about the on-going effect of Parker's previously-adjudicated misconduct. That misconduct had occurred in 1983-1986. The misconduct in *Religious Broadcasting* involved Parker's fraudulent conduct in the preparation and prosecution of an application filed, and designated for hearing, in 1983. See *Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd. 1988). The misconduct in *Mt. Baker* involved deceit in December, 1986. See *Mt. Baker Broadcasting Company, Inc.*, 3 FCC Rcd 4777 (1988). Thus, if the "ten-year limitation" really did begin to run as of the date of the misconduct, then the Commission would not have mentioned that misconduct in *Two If By Sea Broadcasting*, which was released in 1997 -- more than ten years *after* the misconduct in both cases.

6. But the Commission both mentioned that misconduct in *Two If By Sea Broadcasting* and concluded that that misconduct raised substantial and material questions of fact mandating a hearing on the assignment application at issue. Thus, following the Commission's decision, the mere passage of ten years' time from the date of Parker's previously-adjudicated misconduct is here immaterial.

7. What *is* material here is the fact that, within ten years of Parker's misconduct, that misconduct *was* fully considered and adjudicated in *Religious Broadcasting* and *Mt. Baker*.^{1/} That being the case, the "ten-year limitation" on consideration of Parker's

^{1/} At page 13 of its Opposition RBI refers to *Mt. Baker* as having involved "unlitigated adverse conclusions". RBI still is in denial. The Commission's decision in *Mt. Baker* was reached after RBI was given full opportunity to advance factual and legal arguments in its own defense. Parker's permittee in *Mt. Baker* had availed itself of that opportunity, having filed both a petition for

(continued...)

misconduct was satisfied.^{2/} The Commission decision in *Two If By Sea Broadcasting*, issued more than ten years *after* Parker's misconduct but nevertheless finding that that misconduct raised substantial and material questions of fact requiring a hearing, demonstrates this.

8. This is consistent with the Commission's decision in *RKO*, *supra*, 5 FCC Rcd at 644. There the Commission concluded that once-disqualified applicants might acquire additional licenses upon a satisfactory affirmative "showing of good character". In so doing, the Commission did not impose any particular time period after which such a showing would no longer be necessary.^{3/}

9. Again, in announcing the "ten-year limitation", the Commission clearly indicated that the need for such a limitation arose in connection with the possible need for inquiries into matters about which the Commission had, or should have, known, but which remained, after ten years, only unadjudicated allegations. *Character Qualifications Policy*, *supra* at ¶105. By contrast, the instant case involves matters which were raised, considered,

^{1/}(...continued)

reconsideration of the initial action by the Bureau cancelling its permit, and then having filed an application for review of the Bureau's denial of that petition for reconsideration. The adverse conclusions in *Mt. Baker* were plainly, and fully, "litigated".

^{2/} As Adams has previously argued, in adopting the "ten-year limitation", the Commission was primarily concerned about the evidentiary problems and potential unfairness inherent in addressing out-dated allegations of misconduct. See *Character Qualifications Policy*, 102 FCC2d at 1229, 59 RR2d at 834, ¶105 (1986). Once the misconduct has been adjudicated within the ten years of the misconduct, no further basis for such concern exists because the final record of the adjudication is available to the Commission. See *Crystal Communications, Inc.*, 12 FCC Rcd 2149 (1997). While later-arising factors (*e.g.*, rehabilitation, see *Character Qualifications Policy*, *supra* at ¶105) may be advanced by the once-disqualified applicant in an effort to demonstrate that the previous adjudication is no longer germane, the burden is on the once-disqualified applicant to make that showing. *RKO General, Inc.*, *supra*. Here, RBI has offered no such showing.

^{3/} In *RKO*, the Bureau opposed the proposal that the once-disqualified applicants should be deemed qualified to acquire additional licenses. *RKO*, 5 FCC Rcd at 643, ¶15. Nothing in *RKO* suggests that the Bureau's opposition was in any way contingent on or limited by the passage of time.

and fully and finally adjudicated well within ten years of the underlying misconduct. The "ten-year limitation" thus clearly does not preclude the addition of the issue requested by Adams. At a bare minimum, the question of the continuing effect of previous Commission adjudications of misconduct presents a new or novel question which the Commission itself should resolve.

10. RBI also argues that the effect of *Two If By Sea Broadcasting* is limited to the Hartford proceeding at issue in that decision. RBI Opposition at 4. But RBI acknowledges that the Commission, in *Two If By Sea Broadcasting*, concluded that "substantial and material questions of fact" exist concerning Parker's applicant there. 12 FCC Rcd at 2257; RBI Opposition at 4. RBI would ignore that conclusion because, RBI says, it cannot "reasonably be inferred that applications in which Micheal Parker is a principal may not be granted until his previously adjudicated misconduct has been considered." RBI Opposition at 4-5.

11. RBI's claim is illogical and contrary to the facts. Parker's previously-adjudicated misconduct in *Mt. Baker* and *Religious Broadcasting* had nothing to do with the Hartford station at issue in *Two If By Sea Broadcasting*. Nevertheless, the Commission concluded in *Two If By Sea Broadcasting* that that misconduct must be considered before Parker would be permitted to acquire the Hartford license. Nothing in *Two If By Sea Broadcasting* suggests that the substantial and material questions of fact relating to Parker only concern his effort to acquire the Hartford station and no other. ^{4/}

^{4/} RBI quotes, with added emphasis, a sentence from *Two If By Sea Broadcasting*, as if that sentence were significant here. RBI Opposition at 4, ¶7. The background of *Two If By Sea Broadcasting* may be helpful in understanding the quoted sentence. Parker's company (Two If By Sea) had filed an application to acquire the Hartford license in 1993; that application remained pending in December, 1996. Parker's company then filed an emergency request for an immediate grant of the assignment application. An adverse party opposed that emergency request, pointing out,

(continued...)

12. RBI also renews its claims that silence in the Hearing Designation Order ("*HDO*") may properly be interpreted as affording an affirmative foundation for RBI's self-serving reading of the *HDO*. RBI Opposition at 5-6. RBI seems to believe that the *HDO* itself demonstrates that the Bureau considered and rejected questions about the impact of *Mt. Baker* and *Religious Broadcasting*. RBI can point to *nothing* in the *HDO* which supports that claim. Had the Bureau, in preparing the *HDO*, reached the fanciful conclusion advocated by RBI, then the Bureau would presumably have so advised the Presiding Judge in its response to Adams's Motion to Enlarge, *or* in its response to Adams's Request for Leave to Appeal. The Bureau has not said anything of the kind. Since the Bureau has not, despite two explicit opportunities, offered *any* support for the "inference" which RBI seeks to draw from the *HDO*'s silence, it should be concluded that that "inference" is without merit.

13. The Presiding Judge's unsupported reliance on silence in the Bureau's *HDO* as a basis for ignoring the full Commission's own language in *Two If By Sea Broadcasting* presents a new or novel issue warranting immediate review by the full Commission.

14. RBI also quarrels with Adams's criticism of the Presiding Judge's reliance on the Bureau's Norwell letter. The Presiding Judge had concluded that the Norwell letter supported the belief that the Bureau consciously decided not to add any issues herein. In so concluding, the Presiding Judge cited *Straus Communications, Inc.*, 64 RR2d 556 (1987). RBI

⁴/(...continued)

inter alia, the *Mt. Baker* and *Religious Broadcasting* matters. In *Two If By Sea Broadcasting*, the full Commission denied Parker's emergency request, holding, *inter alia*, that because of the substantial and material questions of fact concerning Parker, Parker's assignment application could not be granted without a hearing. That is the genesis of the language quoted by RBI. In this context, the Commission's reference to "in acting on this [Hartford] assignment" -- which RBI has chosen to emphasize -- is hardly noteworthy: Parker was seeking emergency grant of his assignment application without hearing, and the Commission merely found that such relief was not possible.

echoes that citation in its Opposition (at 7-8). But the full Commission has expressly distinguished *Straus* -- which involved the efforts of a disqualified licensee to sell a license -- from situations in which a disqualified licensee seeks to acquire or retain a license. According to the Commission,

[*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.***

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

15. In view of that important distinction, the Norwell letter -- in which the Bureau allowed Parker's company to sell a license -- clearly did *not* address the question presented here, *i.e.*, whether Parker's company should be permitted to retain a license. In its Opposition, RBI does not explain how the Presiding Judge's reliance on the Norwell letter (and on *Straus*) can be squared with the full Commission's decision in *RKO*. That reliance was a departure from the law which presents a new or novel question appropriate for immediate review.

16. The Bureau, in its Comments, has again supported the addition of Adams's second requested issue. If Parker's disclosures concerning the adverse rulings in *Mt. Baker* and *Religious Broadcasting* were truly sufficient to put the Bureau's processing staff on notice of the depth and breadth of those rulings, the Bureau presumably would have said so, and would have opposed the addition of the issue.

17. On the particular point of Parker's misrepresentative amendment to the assignment application for international broadcast station KCBI, Dallas, RBI argues that that amendment was correct in its description of the *Religious Broadcasting* situation because, "at

the point of final disposition, that [disqualifying ^{5/} Parker-related] issue had been dealt with and there were no unresolved character issues pending." RBI Opposition at 12.

18. It is not accurate to suggest that settlement of the *Religious Broadcasting* proceeding somehow made the adverse conclusions there concerning Parker simply disappear. According to the Commission,

[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.

Crystal Communications, supra, 12 FCC Rcd at 2150. Since the adverse findings and conclusions about Parker were not vacated, either at Parker's request or on the Commission's own motion, the fact that the *Religious Broadcasting* case settled did *not* wipe the slate clean as to Parker. Thus, RBI's attempted justification for Parker's less-than-forthcoming "disclosures" is without merit.

^{5/} RBI claims that Adams "appears to concede" that the issue in *Religious Broadcasting* "pertained to the applicant's comparative qualifications, not its basic qualifications." RBI Opposition at 13. Adams makes no such concession. To the contrary, *Religious Broadcasting* involved a basic qualifying issue resolved adversely to Parker's applicant there. See, e.g., *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4090, ¶15 (Rev. Bd. 1988). While RBI may like to think that the Review Board's decision somehow reversed the ALJ's disqualification of Parker's applicant in *Religious Broadcasting*, nothing in the Review Board's decision supports that notion. To the contrary, at Paragraph 1 of its decision the Review Board specifically stated that it was "adopt[ing] the ALJ's findings and conclusions, except as modified herein." When the Review Board determined that some modification was warranted, it explicitly said so. See *Religious Broadcasting*, ¶11 (Board disagrees with ALJ on a point unrelated to Parker's applicant and states "the *I.D.* is reversed in that respect.") With respect to Parker's applicant, the Review Board specifically acknowledged that that applicant had been disqualified (at ¶15), and the Board gave no indication of disagreement with that conclusion. To the contrary, the Review Board seconded the ALJ's findings in unusually strong language. And in its ordering clauses, the Review Board included no language at all indicating that it was reversing or modifying the ALJ's disqualification of Parker's applicant.

19. But even if that justification did have merit, RBI's problem is that, in the KCBI amendment, Parker did not merely claim that there were no unresolved character issues pending. No. Parker affirmatively stated that

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

That was completely wrong on at least two counts: character issues *had* been both requested *and* added in *Religious Broadcasting*. Whatever effect the settlement of that proceeding might have had on those issues, the settlement did not "un-request" or "un-add" those issues. Parker's explicit assertion that no issues had been requested or added was thus flatly misrepresentative.^{6/} The Presiding Judge's failure to address this point in the *MO&O* presents another new or novel issue appropriate for Commission review.

20. RBI also argues that no showing of any intent to deceive has been made. RBI Opposition at 14-16. That argument is in the nature of a substantive opposition to Adams's Motion to Enlarge, rather than an opposition to Adams's Request for Leave to Appeal. Nevertheless, Adams notes that intent may be inferred from all available facts and circumstances. *E.g., David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991). Here, the nature of Parker's less-than-full-and-forthright disclosures, coupled with the stunning nature of the misconduct which was *not* fully reported, gives rise to the reasonable inference that Parker did in fact intend to withhold damning information from the

^{6/} Rather than defend Parker's misrepresentation in the KCBI amendment, RBI claims that Parker's less-than-forthright disclosures of the *Religious Broadcasting* litigation in the KCBI application as originally filed establish Parker's bona fides. But if those original disclosures were sufficient, why did Parker have to file an amendment providing more detailed information? It is reasonable to infer that someone -- whether Parker or a Commission staffmember -- concluded that information over and above that which had originally been supplied was necessary. But if that were the case, RBI's reliance on the supposedly sufficient nature of Parker's original "disclosures" is obviously misplaced.

Commission's staff so as to obtain favorable staff action without further inquiry into Parker's previous adverse adjudications.

21. The success of Parker's gambit is easily measured. The staff routinely granted those applications in which Parker's less-than-forthright disclosures went unchallenged and unamplified. But once the less-than-complete nature of those disclosures was brought to the attention of the Commission and its staff, no routine grants have been issued. To the contrary, the full Commission found that Parker's history raised serious questions which precluded grant of his proposed Hartford acquisition without a hearing. Even Parker's application to sell the Norwell station was the subject of a non-routine explanatory letter in which the staff acknowledged the pending questions about Parker and indicated that the result in Norwell (*i.e.*, grant of Parker's application to assign the station) would be without prejudice to further proceedings relative to those matters. This history strongly suggests that, had Parker been fully forthcoming, his applications which were routinely granted would have, instead, been designated for hearing. A likely desire to avoid just such a fate plainly supports an inference of intent to deceive here.^{2/}

22. As RBI acknowledges, the purpose of the Commission's *Character Qualifications Policy* is "to assure that those granted a license will be truthful in their dealing with the Commission and reliable operators of their stations." 102 FCC2d at 1227, ¶103, cited in RBI Opposition at 9-10. In this case the Commission is presented with Parker, who

^{2/} Further supporting this observation is the fact that, in 1997, Parker's companies sought to divest themselves of Stations KVDM(TV) and KAIJ (formerly KCBI). Adams petitioned against those proposed transactions, calling the Commission's attention to Parker's history before the Commission. Shortly thereafter, the assignment applications were dismissed by the applicants, suggesting an unwillingness to force the issue to a decision.

has on two separate occasions ^{8/}, in connection with two separate stations, been found to have engaged in fraudulent and intentionally deceitful conduct *before the Commission*. The Commission therefore *already* knows, twice over, that this particular applicant has *not* been "truthful in [his] dealing with the Commission". Moreover, Parker's less-than-forthright disclosures since *Mt. Baker/Religious Broadcasting* strongly suggest that, far from having learned his lesson, he has instead continued to engage in a duplicitous course of conduct before the Commission. ^{9/}

23. These circumstances are novel, since it is rare, if not unprecedented, that an applicant twice found to have engaged in fraud before the Commission comes back for another bite at the apple. Appeal of the *MO&O* is especially warranted in light of those circumstances.

Respectfully submitted,

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^{8/} While the Review Board decision in *Religious Broadcasting* is approximately contemporaneous with the Commission's decision in *Mt. Baker*, the underlying misconduct in the former occurred several years before the latter. The disqualifying issue in *Religious Broadcasting* was added in 1984, more than two years *before* the intentionally deceitful submission in *Mt. Baker*.

^{9/} Any claim that the Commission may rely on Parker, notwithstanding his previous misconduct, is further suspect in light of the fact that, for several years, he has employed as a "special assistant" Thomas Root, whose history of vast fraud before, *inter alia*, the Commission is a matter of record.

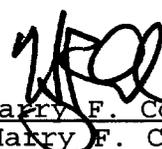
CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of October, 1999, I caused copies of the foregoing "Consolidated Reply of Adams Communications Corporation" to be hand delivered (as indicated below), addressed to the following:

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