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

FCC 99M-61

90706

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: October 14, 1999

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Released: October 15, 1999

Background

1. Adams Communications Corporation ("Adams") filed a Request for Permission to File an Appeal on September 13, 1999. Adams requests permission to appeal the rulings of the Presiding Judge in Memorandum Opinion and Order FCC 99M-49, released September 3, 1999 ("MO&O") which denied the addition of two qualifying issues. The Presiding Judge requested responsive pleadings and on September 27, 1999, the Mass Media Bureau ("Bureau") filed Comments and Reading Broadcasting, Inc. ("Reading") filed an Opposition. Order 99M-53, released September 20, 1999. See 47 C.F.R. §1.301(b)(reply pleadings may be requested). On October 4, 1999, Adams filed a Consolidated Reply to the Bureau's Comment and to Reading's Opposition.<sup>1</sup>

2. The Commission rules provide that certain interlocutory rulings of presiding Administrative Law Judges are appealable to the Commission if the appeal is allowed by the Presiding Judge. 47 C.F.R. §1.301(b). The rule requires that a request must contain:

a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.

Id.

<sup>1</sup>The rule on interlocutory appeal does not provide for a reply pleading.

3. In the contested ruling the Presiding Judge denied adding issues. The denied issues sought to determine (1) whether Reading is disqualified in light of adjudicated misconduct of Micheal L. Parker ("Parker"), Reading's president, a director and a shareholder; and (2) whether Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to fully advise the Commission of the actual nature and scope of the previously adjudicated conduct.

4. The Bureau has supported the addition of only the second issue.

#### **First Issue**

5. In 1997, the Commission found that there were "serious questions" concerning Parker arising out of adjudicated misconduct that had been informally adjudicated by the Bureau; and formerly adjudicated by the Review Board in affirming findings and conclusions of an Administrative Law Judge. See By Direction Letter, Two If By Sea, 12 F.C.C. Rcd 2254 (1997)("TIBS"). There the Commission held:

In this instance, we believe that the numerous allegations against the parties involved in this assignment raise substantial and material questions of fact which cannot be resolved in acting on the assignment without a hearing as requested by TIBS [Parker].

Id. at 2257. However, the Commission did not set the substantial questions for a hearing.<sup>2</sup>

6. The Bureau did not set the questions for hearing in this case either and the designation order states that "the applicants appear qualified." Hearing Designation Order, DA 99-865, released May 6, 1999 reported at 14 F.C.C. Rcd 7176 (1999). The absence from the designation order of the questions related to Parker that were raised in Two If By Sea is readily explained. The Commission has a policy not to adjudicate character issues that are based on events that are ten or more years old. Character Qualifications, 102 F.C.C. 2d 1179, 1229 (1986). The policy applies even to "flagrant" acts of misconduct. Id. There are no exceptions. Thus, there is no authority for permitting post-ten year adjudication of Parker's misconduct. By the time Adams' motion was filed, ten years had elapsed since the adjudicated misconduct and even longer from the time of the acts. The Bureau has consistently opposed the adding of the first issue on grounds that it is time barred and continues to assert that position in its Comment on the appeal request.

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<sup>2</sup> Parker was not the only party referred to in the By Direction Letter as to whom serious questions were raised. In other words, the "numerous allegations" were not all concerning Parker.

7. There are additional assignments of error<sup>3</sup> but none of them override the ten year time ban that has been set by the Commission in its 1986 Policy Statement. The Commission stated:

As to the time period relevant to character inquiries, we find that as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior to the current license term [footnote citations omitted] should not be considered, and that, even as to consideration of past conduct indicating "a flagrant disregard of the Commission's regulations and policies," a ten year limitation should apply.

102 F.C.C. 2d at 1229. In its Comment the Bureau argues that since "the Commission has determined that, with respect to character inquiries, a ten year limitation should apply to consideration of past conduct," and the conduct attributed to Parker occurred more than 10 years before Adams' motion to add issues was filed, "that conduct, however reprehensible, is no longer relevant in assessing RBI's [Reading's] character." See Bureau Comment at 3-4 (September 27, 1999). Adams does not present any authority directly on point for overriding the ten year policy.

8. In its appeal request, Adams cites a unique Commission decision which warrants consideration. In 1990, the Commission authorized settlement of a litigated renewal proceeding that was pending for many years: RKO General, Inc (Ft. Lauderdale), 5 F.C.C. Rcd 642 (1990). Challenges had been made to multiple renewals of multiple licenses held by RKO. In the Ft. Lauderdale proceeding, the parties arrived at a settlement that was conditioned on vindication of the character of two challenging parties, Gardner and Reardon, both of whom had been found by the presiding judge to be unqualified to hold a license. In order to bring that unusual case to a conclusion, the Commission permitted the settlement to go forward, vacated the Initial Decision as moot, and ordered that:

the allegations ---ARE DEEMED not to bear on their ability to acquire additional broadcast stations, provided that they submit, in conjunction with any application for a new station, an adequate showing of good character---

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<sup>3</sup> Adams argues that it is not justified to infer that the Bureau intended not to include the character issues against Parker in the designation order. But the facts do not support the argument. In 1997, the Commission and the Bureau noted with concern, in assignment applications for facilities in Hartford and Norwell, the adjudicated misconduct of Parker. That same year, Parker's misconduct was discussed in a hearing designation order wherein the Commission determined that it need not there address the allegations against Parker in the Two If By Sea letter. In re Applications of Martin W. Hoffman, Trustee, et al., 12 F.C.C. Rcd 5224 (1997). In view of the specific references in 1997, to Parker's past adjudications in those formal rulings, it is reasonable to find by inference that in 1999, the Bureau was still aware of Parker's prior adjudicated misconduct when this case was set for hearing and that the Bureau felt constrained then, as it does now, by the ten year ban. Since the ten year ban applied on May 6, 1999, the release date of the designation order, and since the Bureau has consistently argued that the ten year ban applies in this case, it is reasonable to conclude that the Bureau intended to not include time-barred character issues in the HDO. However, any suggestion in the MO&O that the Commission or the Bureau might not have viewed the adjudicated misconduct as egregious would be erroneous and should be disregarded.

Id. at 645. The Commission specifically referred to the "unique nature of this proceeding" and accepted the argument, over the Bureau's objection, that the agreement would not "undermine considerations of deterrence." Id. at 643.

9. Under terms set by the Commission, Gardner and Reardon were to be held accountable in futuro for showing good character if either thereafter sought to acquire a broadcast license. In contrast to RKO, the settlement in Religious Broadcasting did not provide for a showing of good character; nor was it vacated. Religious Broadcasting, 5 F.C.C. Rcd 6362 (Review Bd. 1990). Therefore, since there was no specific provision requiring Parker to show good character or rehabilitation, Parker's misconduct as found by the unvacated adjudications could disqualify if raised within the ten year limit. By contrast, Gardner and Reardon may not have been protected by the ten year limit because of the specific language of the Commission's order due to the unique nature of the RKO settlement. By further contrast, the 1988 adjudicated misconduct which could have been raised to contest Parker's right to a new, assigned, or renewal license within ten years after the adjudications cannot be raised here as character issues after the passage of ten years. The same regulatory bar applies whether the ten years are measured from the time Parker committed the acts that were adjudicated to be disqualifying, or from the later adjudications of disqualifying misconduct. And without a prescribed exception, the ten year policy should apply even to non-vacated decisions. Otherwise, there would be an unlimited shelf life for decisions that were litigated and settled any number of years in the past. And as illustrated by this case, there would be no safe harbour after the passage of a set period of time even where a person continues to openly control the operations of substantial broadcast facilities.<sup>4</sup>

10. The pleadings filed by Adams and by Reading show that Parker has been continuously engaged in the operation of broadcast stations and the assignment of broadcast licenses from before 1988 to the present. There has been no allegation of a citation by the Commission for post-1988 violations. There will be descriptive evidence of Parker's broadcast experience offered by Reading in accordance with its Motion As To Past Broadcast Experience of Principals of Reading Broadcasting, Inc., which motion was granted. See Memorandum Opinion and Order FCC 99M-54, released September 23, 1999. Thus, there will be a record made in this case of how Parker has conducted himself with the Commission since his 1988 adjudications of misconduct and that information will be helpful in assessing whether Parker represents a threat to repeat the misconduct.

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<sup>4</sup> Adams argues that the ten year policy was established out of a concern for the difficulties in locating evidence and in rebutting untimely allegations. That is certainly one valid concern that is addressed by the limitation. But Adams also asserts that the same concerns do not apply where the actions have been adjudicated. That distinction was not noted in the Policy Statement on Character Qualifications. The Commission noted, however, in adopting the ten year limit, that the time limit "is consistent with our recent handling of such matters," citing Central Texas Broadcasting Co., Ltd., 90 F.C. C. 2d 583, 593 (Review Bd. 1982). No character issue was set in that case because, even if it were clear that the law had been violated, it was unrelated to broadcasting and there was only an isolated incident of an alleged violation of state usury law which had occurred more than six years earlier. By citing Central Texas, the Commission showed a concern with the passage of time and the absence of multiple violations. There was no distinction made between actions and adjudications of actions in the Central Texas decision or in the Policy Statement on Character Qualifications. If Adams' interpretation was accepted, there could be character issues set where a dormant underlying adjudication occurred 20, 30 or 40 years before an application was made for a new license or a license renewal. That would be an unacceptable extension of Adams' argument.

## Second Issue

11. The more immediate concerns that continue to be raised by Adams, and joined in by the Bureau, are with regard to inadequate disclosures that Parker and Reading allegedly made (or failed to make) with respect to the Mt. Baker and Religious Broadcasting adjudications. The Bureau agrees with Adams that the disclosures of those adjudications in connection with transfers of control of stations WTVE(TV)(Reading), KCBI(Dallas), KVMD(TV)(Twentynine Palms) and WHRC(TV)(Norwell) "do not fairly disclose all relevant facts regarding Parker." See Bureau Comments at 5 (August 11, 1999). In commenting on the appeal request, the Bureau reaffirms that there is a substantial and material question of fact concerning Parker's candor in applications that post-dated the adjudications and that there should be an inquiry to determine "whether the descriptions as a whole fairly apprised the staff and any casual reader that they should read the referenced decisions and thereby gain a better appreciation of Parker's activities before making licensing decisions." The Bureau also believes that the omitted negative material was so negative that it can be inferred that Parker deliberately sought to conceal the worse segments of the adjudications from the Commission staff who were reviewing the assignment applications. The Bureau also argues that the question would be remanded if not resolved here before the case reaches the Commission. See Bureau Comments at 4-5 (September 27, 1999).

12. The focus here, which was not sufficiently made in the MO&O, is on the assignments that were granted by the Bureau in 1992, in which Parker was assignee of the licenses for Reading, Twentynine Palms, and Dallas. Later, in 1997, virtually the same disclosure language was used in Parker's successful assignment as the assignor of a station in Norwell, MA in which the 1992 assignments served as precedent. Each application made disclosures as follows:

### As to Mt. Baker:

Mr. Parker also was an officer, director and shareholder of Mt. Baker Broadcasting Co. Mt Baker Broadcasting Co.'s application for extension of time of its construction permit for KORC(TV), Anacortes, Washington (File No. PMPCT-860701KP) was denied. See Memorandum Opinion and Order FCC 88-234, released August 5, 1988.

Actually, when Parker failed to construct at Mt. Baker as promised, the Bureau cancelled the permit and ordered the station off the air. The Commission affirmed that action and ruled that "the facts clearly indicate an intent to deceive the Commission." The Commission also found that Parker's conduct had "substantial aggravating circumstances" and was "an effort to deceive the Commission" that involved "deception." Mt. Baker Broadcasting Co., Inc., 3 F.C.C. Rcd 4777 (1988).

### As to Religious Broadcasting:

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Mr. Parker's role as a paid independent consultant --- was such the general partner in SBB was held not to be the real party-in-interest to that applicant and that for purposes of the comparative analysis of SSB's integration and diversification credit, Mr. Parker was deemed such. Religious Broadcasting

Network, et al., FCC 88R-38, released July 5, 1988. This proceeding was settled in 1990 and Mr. Parker did not receive an interest of any kind in ---, the applicant awarded the construction permit. See Religious Broadcasting Network, et al., FCC 90R-101, released October 31, 1990.

Actually, Parker was found to be an undisclosed real party-in-interest, a form of intentional misrepresentation, and the Parker controlled application was deemed disqualified by a presiding judge whose initial decision was affirmed by the Review Board. Yet the case was only partially explained in Parker's assignment disclosure: the judge's findings were omitted from Parker's disclosures as were findings of the Review Board affirming the judge and finding that Parker was the real party-in-interest for an application that was a "travesty and a hoax" and a "transpicuous sham" and an "attempted fraud." Religious Broadcasting Network, et al., 2 F.C.C. Rcd 6561, 6566-67 (Admin. L.J. 1987), aff'd, 3 F.C.C. Rcd 4085, 4090 (Review Bd. 1988).

13. In 1992, Parker's assignment applications were granted by the Bureau for licenses related to Reading, Twentynine Palms and Dallas, apparently without any questions raised concerning the serious findings of Parker's misconduct in Mt. Baker or in Religious Broadcasting. In September 1993, Parker sought to obtain the license to WHCT-TV, Hartford, CT, by an assignment from a trustee in bankruptcy. The assignment was to be made to the Parker controlled entity, TIBS. Adams alleges that in 1997, Parker attempted to use the completed 1992 assignments as precedent to convince the Commission staff in connection with a reconsideration for the Hartford assignment to TIBS, that Parker had been found to be "fully qualified [by the Commission] with the same information before it." Adams argues that by virtue of the less than accurate and in complete disclosures. Parker intended to create an impression that there were no serious questions about his qualifications and thereby receive the Hartford assignment without fully disclosing his qualifications.<sup>5</sup>

14. Adams is particularly critical of the MO&O's analysis of an October 1992 amendment to an application to acquire International Broadcast Station KCBI (now KAIJ), Dallas, Texas. See Adams Motion (July 15, 1999) at Attachment F. There Parker represented:

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<sup>5</sup> In 1991, Parker also obtained through an assignment to an entity that he controlled called Massachusetts Redevelopment Limited Liability Company ("MRLLC") the license to Station WHRC(TV) in Norwell, MA. In that assignment to Parker, essentially the same disclosure was used as quoted above. Later, in 1997, MRLLC applied to assign the same license to Channel 46 of Boston. By then, the Commission had issued its By Direction letter dated January 30, 1997, denying an assignment of the Hartford license to TIBS. 12 FCC Rcd 2254 (1997). In connection with that assignment, the Bureau issued its letter on Norwell dated May 22, 1997, noting an awareness of substantial questions of material fact with respect to Parker's qualifications to receive the Hartford license. But since there were no allegations concerning the Norwell station which was the subject of the assignment, the misconduct alleged as to Hartford was determined to be not relevant to Norwell, citing Straus Communications, Inc., 64 Radio Reg 2d (P&F) 556 (1987)(allegations of misconduct did not bar licensee from transferring station uninvolved in the alleged misconduct). Cf. RKO General, Inc., supra at 646 n.5 (Straus holding not applied where acquisition of stations rather than divestment is the ultimate issue.)

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

Reading argues that in fact, at the time of the dismissal in Religious Broadcasting, (pursuant to settlement) "no unresolved character issues were pending." Opposition To Motion To Enlarge Issues (August 11, 1999) at 31. Reading concedes that the presiding judge in Religious Broadcasting had added a character issue but that at the time of the disposition of the case by the Review Board, the issue had been resolved, albeit against Parker. Reading's explanation is one way to parse the facts. But such explanation assumes that the reader has full knowledge of the misconduct underlying the resolved issues and that the issue of misconduct was resolved against Parker. There is a lingering inference that the issues were resolved favorably to Parker and there was no mention in the 1992 disclosure about Parker's misconduct in Mt. Baker.

15. It is recognized that the MO&O gave too much emphasis to the settlement of Religious Broadcasting. See MO&O at 9. In the settlement, the Review Board dismissed the Parker controlled application as a voluntary withdrawal of the application incident to a substantial pay-off. Religious Broadcasting Network, et al., 5 F.C.C. Rcd 6362 (Review Bd 1990). The effect of the settlement was to render moot the adjudicated misconduct for the purpose of that case. In its appeal request, Adams has cited Crystal Communications, Inc., 12 F.C.C. Rcd 2149, 2150 (1997), a Commission decision holding that a Review Board decision that has become moot through settlement still receives precedential weight unless it was vacated. The Religious Broadcasting findings of misconduct were never vacated and would be considered here along with evidence of rehabilitation, but for the ten year ban..

#### **Incomplete Citations**

16. In disclosures of the adjudications, Parker did not utilize official citations to the FCC Record. Rather, in referring to Religious Broadcasting Parker cited "FCC 88R-38, released July 5, 1988" and for Mt. Baker, Parker cited "Memorandum Opinion and Order FCC 88-234, released August 5, 1988." The Commission's applicable rule provides:

#### Citation of Commission Documents

The appropriate reference to the FCC Record shall be included as part of the citation to any document that has been printed in the Record. The citation should provide the volume, page number and year in that order (e.g. 1 FCCRcd 1(1986)). Older documents may continue to be cited to the FCC Reports --- .

See 47 C.F.R. §1.14. Without any justification, Parker disregarded the rule and cited in a manner that would require the Bureau to take the extra step of extrapolating Parker's cites to the FCC Record. Adams had argued that the staff was thereby discouraged from searching for the decisions that would disclose adjudicated misconduct and Parker inferred by the omission of official citations that the matters were not sufficiently important to warrant official citations. Parker's failures to comply with 47 C.F.R. §1.14 do not alone amount to substantial questions of misleading or lack of candor. But the disregard of official cites despite the rule, when taken in conjunction with the alleged misleading and

misrepresented disclosures made for the purpose of securing assignment relief would be relevant evidence under the same issue.

### Conclusion

17. The Commission requires an applicant to be "fully forthcoming as to all facts and information relevant" to its application. Swan Creek Communications v. F.C.C., 39 F.3d 1217, 1222 (D.C. Cir. 1994). A licensee's candor is critical given the Commission's many duties and applicants have "an affirmative duty to inform the Commission of facts it needs in order to fulfill its statutory mandate." Fox Television Stations, Inc., 10 F.C.C. Rcd 8452, 8478-79 (1995). Therefore, the Commission must be able to rely on the truth and candor of its licensees. Leflore Broadcasting Co., Inc. v. F.C.C., 636 F.2d 454(D.C.Cir. 1980).

18. On further reflection on the parties' briefs, it is concluded that the circumstances of Parker's incomplete disclosures on multiple occasions raise substantial questions that require further inquiry. Citizens for Jazz on WRVR, Inc. v. F.C.C., 775 F.2d 392, 395 (D.C. Cir. 1985)(totality of facts raise sufficient doubt to call for further inquiry); and Weyburn Broadcasting Ltd. P'ship v. F.C.C., 984 F.2d 1220 (D.C.Cir. 1993)(case remanded for failing to make reasoned decision as to all relevant facts). There are also substantial questions of Parker's intent in his disclosure to be resolved. See Leflore Broadcasting, supra 636 F.2d at 462(fact of misrepresentation coupled with proof that the party had knowledge of falsity is sufficient to show a fraudulent intent). Of significance in adding the issue is the Bureau's stated belief that it was misled by Parker's nondisclosures and that as a result, the Bureau granted the assignments. Therefore, as the party most immediately impacted by defective disclosures, the Bureau should be permitted to pursue the issue at this formal evidentiary hearing.

### Order

Accordingly, IT IS ORDERED that the following issue be added:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

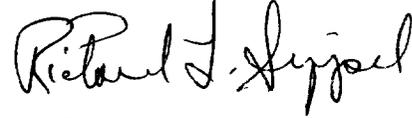
IT IS FURTHER ORDERED that the burden of proceeding and the burden of proof ARE ASSIGNED to Adams Communications, Inc..<sup>6</sup>

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<sup>6</sup> As found in the MO&O, there were disclosures by Parker of the proceedings in which his misconduct was adjudicated. All parties are well aware of the particulars of the adjudicated misconduct and hopefully that will limit the evidence. It is only the completeness and accuracy of Parker's disclosures of the adjudications that are challenged by Adams, joined in by the Bureau. Therefore, all the relevant information is not peculiarly within the knowledge of Reading. Under the circumstances, it is deemed appropriate to assign the burdens of proceeding and proof to Adams. See D&E Broadcasting Co., 5 Radio Reg 2d (P&F) 475, 482 (1965)(on issues added after designation it is fair to

IT IS FURTHER ORDERED that the Request For Petition To Appeal filed by Adams Communications, Inc. on September 13, 1999, IS DENIED.<sup>7</sup>

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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assign the burdens to the party making allegations). Cf. Western North Carolina Broadcasters, 10 Radio Reg 2d (P&F) 78, 79-80 (1967)( party seeking added issues has burden to proceed with evidence before accused party is required to respond). This assignment of the burdens is a procedural ruling and the Presiding Judge has full authority to regulate the procedural course of the hearing. 47 C.F.R. §243(f). The burdens of discovery and the presentation of evidence can be shared by Adams and the Bureau.

<sup>7</sup> In considering Adams' appeal request, the Presiding Judge "will either allow or disallow the appeal or modify the ruling." 47 C.F.R. §1.301(b). The Presiding Judge has denied the appeal and has modified a portion of his ruling in the MO&O.