

FCC MAIL SECTION

Before the
 OCT 27 11 46 AM 1999 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 99M-65
 90744

In re Application 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)

DISPATCHED BY
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MEMORANDUM OPINION AND ORDER

Issued: October 25, 1999

Released: October 26, 1999

Discovery Of Minutes

1. On September 13, 1999, Adams filed a Request seeking all minutes of meetings of Reading's shareholders and directors during the renewal period (August 1, 1989 to August 1, 1994). On September 17, 1999, Reading filed an Objection on grounds that the minutes were irrelevant to any issue designated in this proceeding. Reading agreed to produce only minutes that specifically referred to programming. The subject was discussed on-the-record at a Prehearing Conference held on October 1, 1999.

2. The Presiding Judge ordered Reading to make the minutes available for Adams' inspection at the offices of Reading's counsel and the parties were asked to negotiate. Order FCC 99M-57, released October 5, 1999. Adams reviewed the minutes on October 6 and 7, 1999. (Adams counsel was not permitted to take verbatim notes of the minutes but he was permitted to identify subject matter in his notes and the date, place and purpose of the meeting. See Order FCC 99M-59, released October 8, 1999.) Negotiations broke down and on October 12, 1999, Adams filed a Renewed Motion to Compel Production of Documents. Reading filed an Opposition on October 18, 1999, and simultaneously submitted the minutes to the Presiding Judge for in camera inspection.¹

¹ Reading advises that after completing a review of 467 pages of Reading's minutes, Adams requested 257 pages and Reading furnished 74 pages. There were multiple pages marked with both red and blue tags which were the disputed documents. There were also pages marked with only red tags and copies of those pages were to be made available to Adams. It was the tagged minutes that were reviewed in camera.

See 47 C.F.R. §1.325(a)(3) (in resolving disputes over documents the Presiding Judge may make in camera review). The Presiding Judge completed a review and the minutes were retrieved by Reading's counsel on October 21, 1999.

Motions To Compel

3. The Commission's rules limit the scope of discovery in comparative cases to "any matter, not privileged, which is relevant to the hearing issues." 47 C.F.R. §1.311(b). The issues now set for litigation in this proceeding include renewal expectancy, renewal comparative, and recently added issues on truth and candor in disclosures. Memorandum Opinion and Order FCC 99M-61, released October 15, 1999. There are also issues of local residence, civic involvement, and broadcast experience related to the standard comparative issue. Memorandum Opinion and Order FCC 99M-47, released August 9, 1999.

4. Adams' Third Set of Document Requests filed on September 13, 1999, sought:

Minutes and documents referred to in or attached to minutes of meetings of the Board of Directors, Executive Committee, Stockholders and/or any other governance meetings of RBI during the period August 1, 1989 to August 1, 1994 (the renewal "license term").

Adams objected to Reading's limiting the production of minutes to those relating to programming. On September 29, 1999, Adams Motion To Compel Production Of Documents was filed. Adams' argument for full disclosure of minutes centered on their relevance to local residence and an anticipated argument by Reading that criticism of its programming while in bankruptcy would be tempered by mitigating circumstance of having limited funds. Reading had opposed including the time that it was in bankruptcy in the renewal period. Reading has never represented that such mitigation would not be offered at the hearing.

5. Before an Opposition was due from Reading there was a Prehearing Conference held on October 1, 1999. Reading was prepared to discuss the scope of discovery even though it had not yet filed an Opposition. (Tr. 86.) Adams' arguments were repeated on-the-record. (Tr. 89.) Reading continued to object to producing corporate governance minutes as irrelevant to the issues. (Tr. 90.) Reading also made the argument:

The local ownership is relevant as to local residents of stockholders of the company, not the directors of the company.

(Tr. 91.) Reading seems to acknowledge that to make a consistent argument for a local residency comparative credit, the licensee's shareholders would have to be local. Therefore, the shareholders' meetings would be relevant and perhaps significant both by what was discussed as well as what was not discussed.

6. In Adams Renewed Motion To Compel, an array of relevancy arguments are made. But Adams' main arguments are as stated above. In Reading's Opposition filed on October 19, 1999, the opposition arguments of non-relevance continue to be made. Reading adds in its Opposition that decisions on "non-commercial local programming that meets the community's needs" is the province of the "party or parties responsible the day-to-day operations of the station" and not the directors. See Opposition at 6. That includes the station's general manager, Mr. Frank McCracken. It is not clear which other person(s) participated in selecting Reading's local programming.

Standard Comparative Discovery

7. The standard document production rule that provides for uncontested production of "all minutes relating to the application" does not apply here in its limitations since that rule applies only to "comparative broadcast proceedings involving applicants for only new facilities." 47 C.F.R. §1.325(c)(1)(ii). Reading cites that rule in Paragraph 9 of its Opposition. However, because WTVE(TV) is not a "new facility," Reading cannot rely on the rule's limitations. But at a minimum, those categories of uncontested documents should be produced (except for those relating to integration) since it is the Commission's policy to not litigate over those identifiable minimal basic documents. Under that standardized discovery rule, in addition to "all minutes of meetings relating to the [Reading] application", Reading should produce:

- all minutes that relate to rights or plans of persons or entities to purchase an interest in the applicant or of current owners to alienate their interests;
- all minutes relating to pledges, mortgages, security interests, or other encumbrances of any kind with respect to the applicant;
- all minutes relating to bank letters and other financial documents with the dollar amounts unexpurgated; and
- all minutes relating to the applicant's proposed transmitter site.

47 C.F.R. §1.325(c)(1)(ii), (iii), (iv), (v), (vi). That litany of documents would include minutes and other documents relating to Micheal Parker's (Partel's) acquisition of an equity interest in Reading, the alienation of the equity interest of Dr. Aurandt, the discussions about Meridian Bank, and other discussions concerning the Groff and Trout tower sites. Such matters are covered in the minutes. And as discussed above, the minutes of shareholders' meetings conducted during the license renewal period are relevant (at least for purposes of discovery) to the local residence element of the comparative issue.

8. Reading further argues that Adams would only be entitled to "representative documents", citing 47 C.F.R. §1.325(c)(1)(x). Under a narrow interpretation of the rule, Reading would produce only "representative documents as to local ownership" and no minutes because Reading's "corporate meeting minutes have no connection to local residence." Opposition at 7. Reading further contends that Adams is seeking this discovery of the minutes in an effort to seek out possible new issues, an abuse of discovery that will not to be permitted. See Metroplex Communications, Inc., 4 F.C.C. Rcd 8149 n.11 (Review Bd. 1989). It is noted that in that case, in balancing the interests, the Review Board noted the general prohibition against "fishing expeditions" but also cautioned that the threshold showing required for discovery of licensee misconduct "need not be high." Id.

Conclusions

9. Reading asks for narrow rulings on Adams' request for minutes and is generally concerned about discovery which is not strictly limited to the issues. These concerns are given careful consideration. But the Commission has acknowledged that in its experience under the discovery rules, "discovery is potentially useful in all hearing cases, including apparently routine cases which can easily develop into not-so-routine cases."² In re Amendment of Part I, Rules of Practice and Procedure to Provide for Certain Changes in the Commission's Discovery Procedures in Adjudicatory Hearings, 91 F.C.C. 2d 527, 534(1982). The Commission took note of the prohibition against using discovery to "ascertain whether grounds exist for the enlargement of the issues." Id. But the Commission also recognized that new issues must be sought within 15 days of the ascertainment of new facts and that "it is not improper for a party in the course of legitimate discovery to unearth information that is relevant to the public interest and then ask for issues based on that newly disclosed information." Id. at 535. While Adams is assertive in the discovery sought, there does not appear to be anything unusual about seeking minutes of a renewal applicant for the renewal period. The Bureau seems to consider such discovery to be within the norm. (Tr. 93.) There has been an effort made to accommodate Reading by making an in camera review. As a result of that review there will be certain limitations placed on the scope of the Reading minutes that will be required for production to Adams. But there is nothing in the request by Adams for Reading's minutes that raises a focused concern about an abuse of the Commission's discovery process.

10. At this time, Reading must produce copies of minutes that relate to the issues as presently set. There will be a further production of Reading minutes that relate to the acquisition by purchase or otherwise of the equity position of Micheal Parker directly or through Partel, Inc. There will also be a production of the minutes and related documents pertaining to the divestment of Dr. Aurandt minutes relating to financing by the Meridian Bank, and minutes relating to the Groff and Trout tower sites.

² This case has been on hold pending a review of recommendations for trying comparative renewal hearings in light of Bechtel II. See First Report and Order, 13 F.C.C. Rcd 15920, 16004-06 (1998). In the interim, Reading emerged from Chapter 11. The case apparently was not set for hearing under any preconceptions of it being "routine."

11. There will be a production of all minutes of all shareholders' meetings held during the renewal period.

12. There are no privileged documents under Adams' request for minutes.

Order

IT IS ORDERED that the following minutes of shareholders' meetings shall be furnished by Reading to Adams:

- A. Shareholders' Meeting held on October 30, 1991 (clearer copy should be furnished).
- B. Shareholders' Meeting held on February 4, 1992.
- C. Any other shareholders' meeting during the renewal period.

IT IS FURTHER ORDERED that the following minutes of board of directors' meetings shall be furnished by Reading to Adams:

- A. Special Board of Directors Meeting held on May 23, 1990.
- B. Board of Directors Meeting held on February 19, 1991 (in which Dr. Aurandt resigned as President/CEO and Partel, Inc. contract was amended, and Micheal Parker was made President/CEO).
- C. Board of Directors Meeting held on April 14, 1991 (in which Parker's voting control in return for a loan guarantee was discussed).
- D. Board of Directors Meetings which discuss the Meridian Bank, guarantees of Partel, Inc., and the Groff and Trout tower sites.

IT IS FURTHER ORDERED that the documents that are specified above SHALL BE HAND DELIVERED to counsel for Adams by close of business on October 26, 1999.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

³ Copies of this Memorandum Opinion and Order were faxed or e-mailed to all counsel on date of issuance.