

FCC-MAIL SECTION

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

FCC 99M-71
90755

Nov 3 10 43 AM '99

In re Applications of)	MM DOCKET NO. 99-153
DISPATCHED BY)	
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 29, 1999 ; Released: November 1, 1999

1. On October 21, 1999, Reading Broadcasting, Inc. ("Reading") filed a Motion to Compel Disclosure of Fee Arrangements. On October 26, 1999, Adams Communications Corporation ("Adams") filed and served a Response and a simultaneous letter addressed to the Presiding Judge.

Reading's Motion To Compel

2. Reading's motion was filed at the direction of the Presiding Judge at a prehearing conference where the issue was raised and a ruling was requested. See Order FCC 99M-63, released October 21, 1999. Reading seeks to discover through Howard N. Gilbert, a principal of Adams, the fee arrangements of Adams with Bechtel & Cole and the fee arrangement of Monroe Communications Corporation ("Monroe"), a license applicant in which Mr. Gilbert was a principal and the firm of Bechtel & Cole was counsel. Reading also asks for the production of the retainer letters between Bechtel & Cole and Monroe (1983) and between Bechtel & Cole and Adams (1999).

3. Mr. Gilbert was asked during his deposition to disclose the fee arrangements. On the advice of Bechtel & Cole, Mr. Gilbert declined to answer Reading's line of fee questions, asserting the attorney client and work product privileges. Reading's purpose for inquiring into the fee arrangements "is to determine what type of fee payment is to be made in the event the proceeding ends in settlement." Reading cites for authority Implementation of Section 309(j) of the Communications Act,

13 F.C.C. Rcd 15920 (1998) at Para. 214 (Commission will waive the limitation on payments in settlement in this case where the circumstances afford assurance that the competing applications were not filed for speculative or other improper purpose).

Request For Full Fee Disclosure

Reading's request for fee disclosure includes:

full and complete disclosure of the fee arrangements between Adams and its counsel in this proceeding in order that Reading may determine whether these arrangements provide an incentive for settlement in lieu of obtaining the permit in question, or any other arrangement that might evince a speculative purpose in Adams' application, regardless of whether the parties have characterized their agreement as a contingency fee, hourly rate, bonus or otherwise.

On October 26, 1999, Adams filed a Response (not styled an Objection). Adams also filed and submitted a letter addressed to the Presiding Judge of even date in which Adams argues that the fee arrangement is not relevant in light of the explanation as to how Bechtel & Cole happened to be retained by the Adams challenger and earlier by the challenger in Monroe. That case resulted in a substantial settlement sum paid to the Monroe/Gilbert challenger even though the Monroe/Gilbert application was declared the winner. See Harriscop of Chicago, Inc., et al., Order FCC 92I - 097, released December 24, 1992 (settlement approved by Commission; copy attached to Adams' Response).

4. Adams also submitted to the Presiding Judge under seal a Declaration of Mr. Gilbert and copies of the letter-fee arrangements in this case and in the Monroe case. Much of the narrative of the Gilbert Declaration is set forth in Adams' Response pleading. Adams represents that it has no objection to providing Reading with the materials if the Presiding Judge concludes that they should be disclosed.

Discussion

5. In a case cited by Reading having some facial similarities, the Commission ordered the production of documents which had been claimed to be privileged, where there was common counsel in a prior case for the same license that had settled. WWOR-TV, Inc., 5 F.C.C. Rcd 261 (1990) (Commission affirmed virtually all discovery rulings as to documents that related to abuse of process issue where privilege had been asserted). But in that case, before there was any discovery, the judge had added an abuse of process issue to determine whether the challenger had filed its application in order to obtain a settlement. Id. at n.2. In this case, different licenses in different markets were sought by the Gilbert challengers. And here, there has been no abuse of process issue added to which the

evidence of Adams' fee would relate. Nonetheless, at the suggestion of Adams, the Presiding Judge has perused the materials in camera that are sought by Reading in the motion to compel. It is determined that the materials are not relevant to any issue in this case. But they are responsive to Reading's motion to compel and they have been shown to the Presiding Judge. Therefore, it is appropriate that all counsel see the documents. But at this time, there is no reason for the documents to be placed on the public record.

Order

Accordingly, IT IS ORDERED that the Declaration of Howard N. Gilbert dated October 26, 1999; the letter from Mr. Gilbert to Mr. Bechtel dated January 19, 1983; the letter dated January 10, 1983 from Mr. Bechtel to Mr. Gilbert; and the letter from Mr. Cole to Mr. Gilbert dated June 30, 1999, SHALL BE DELIVERED as soon as possible but no later than close of business on **November 1, 1999**, to counsel for Reading Broadcasting, Inc.¹ and counsel for the Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION²



Richard L. Sippel
Administrative Law Judge

¹ At this time, copies of the documents should remain in the custody of Reading's counsel but they can be shown to and discussed with the Reading clients.

² Copies of this Order were faxed or e-mailed to all counsel on date of issuance.