

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| 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 |) | File No. BPCT-940630KG |
| CORPORATION |) | |
| |) | |
| For Construction Permit |) | |

To: Administrative Law Judge Richard L. Sippel

TRIAL BRIEF OF READING BROADCASTING, INC.

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December 20, 1999

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SUMMARY

In its *Trial Brief*, Reading sets forth its intention to present evidence, at the hearing scheduled for January 6, 2000, that will show that, under the standard comparative issue, it is the best comparative candidate in this proceeding based on its substantially greater proposed signal coverage, its comparative superiority for local residence and civic involvement, its superior past broadcast experience and its diversification of media outlets.

Further, because Reading will show that it has rendered meritorious service over and above what would be considered minimal, it is entitled to a renewal expectancy.

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To: Administrative Law Judge Richard L. Sippel

TRIAL BRIEF OF READING BROADCASTING, INC.

1. Pursuant to the Presiding Officer's *Order*, FCC 99M-82 (released December 15, 1999), Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its trial brief in connection with the hearing scheduled for January 6, 2000.

I. Preliminary Statement.

2. By *Hearing Designation Order* ("HDO"), DA 99-865, released May 6, 1999, the Chief, Video Services Division, designated for hearing the application of Reading for renewal of license of station WTVE(TV), Reading, Pennsylvania and the mutually exclusive application of Adams Communications Corporation ("Adams") for a construction permit for a new commercial television station to

operate on the channel now utilized by WTVE(TV). The *HDO* specified the following issues:

- (1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and
- (2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications would be granted.

3. Pursuant to his *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999, the Presiding Officer authorized the parties to present evidence on diversification of media ownership, efficient use of frequency, local residence, broadcast experience and civic involvement.

II. Reading's Proffer Of Proof.

4. Burden of Proof. Each party has the burden of proving its proposal by a preponderance of the evidence. *Cuban-American, Ltd.*, 5 FCC Rcd 3781, 3785 (1990); *Knoxville Broadcasting Corp.*, 103 FCC 2d 669, 687 (Rev. Bd. 1986); *see also Steadman v. SEC*, 450 U.S. 91 (1981). Additionally, Reading has the burden of proceeding and the burden of proof on its claim to a renewal expectancy, based on the record of WTVE's performance from August 1, 1989 through July 31, 1994. *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999.

A. Efficient Use Of Frequency.

5. The entire predicted Grade B service areas for the WTVE license, the WTVE construction permit and the Adams application are served by at least five authorized television stations. There are no unserved or underserved areas within the proposed Grade B coverage areas. Reading will show, through an engineering analysis performed by du Treil, Lundin & Rackley, Inc., that Reading's proposed

coverage under its construction permit, which was obtained prior to the “B” cutoff date, will serve approximately 3.1 million (+72.8%) more people than Adams’ proposed Grade B signal. Under Commission precedent, this difference in proposed signal coverage is substantial. *See Barton Broadcasting Co., Inc.*, 104 FCC 2d 785, 790-791 (Rev. Bd. 1986). Where there are substantial proposed coverage differences in well-served areas, the Commission has awarded a slight comparative preference. *See Barton Broadcasting Co., Inc.*, 104 FCC 2d 785, 790-91 (Rev. Bd. 1986); *Daytona Broadcasting Co.*, 97 FCC 2d 212, 231 (Rev. Bd. 1984) (subsequent history omitted); *Beach Broadcasting Limited Partnership*, 6 FCC Rcd 4485, 4485 (1991). Therefore, Reading should be awarded a slight comparative preference for its substantially greater proposed signal coverage.

B. Local Residence.

6. Historically, credit has been awarded for local residence because participation in station affairs by a local resident “indicates a likelihood of continuing knowledge of changing local interests and needs.” *Radio Jonesboro, Inc.*, 100 FCC 2d 941 at ¶8(1985). Under Commission policy, residence in the principal community to be served will be of primary importance, closely followed by residence outside the community, but within the proposed service area. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965) (“*Policy Statement*”). Reading will show that it is a corporation owned primarily by shareholders who presently reside (or have resided) within the city limits of Reading, Pennsylvania or within the predicted Grade B service contour of WTVE. Ten stockholders have resided within the city limits of Reading, Pennsylvania, at least since 1992.

Twenty-four of Reading's stockholders have resided and presently reside within the predicted Grade B contour of WTVE, but not within the city of license, at least since 1992. Micheal L. Parker, Reading's President, director and shareholder, was a part time resident of Mount Penn and Wyomissing, Pennsylvania from about 1989 through December 1996. In contrast, none of the Adams shareholders reside or have ever resided in Reading, Pennsylvania. Therefore, Reading is entitled to a comparative preference for local residence.

C. Civic Involvement.

7. Civic involvement presents benefits that are similar to but distinct from local ownership. *See Eugene Walton*, 7 FCC Rcd 3237, 3242 (1992); *Edward F. and Pamela J. Levine*, 8 FCC Rcd 2630, 2633 (Rev. Bd. 1993), *rev. denied*, 8 FCC Rcd(1993) (although the Commission treats applicants' local residence and civic activities as a unified comparative factor, it considers the weight to be given for civic participation separately). A local resident who is not active in civic affairs will not have the same level of awareness of the community as a local resident who is civically active. Reading will show that it is entitled to comparative credit for civic involvement because eleven of its shareholders have participated in civic activities in Reading, Pennsylvania or elsewhere within the WTVE Grade B contour.

D. Past Broadcast Experience.

8. Under well-established Commission precedent, a principal's past broadcast experience may be considered for comparative preference credit. *See Ronald Sorenson*, 5 FCC Rcd 3144 (Rev. Bd. 1990); *Policy Statement*, 1 FCC Rcd 393, 396. Reading will show that it is entitled to credit for the past broadcast

experience of three of its principals: Micheal L. Parker, Jack A. Linton, and Frank D. McCracken. For Messrs. Parker and McCracken, this past broadcast experience includes substantial management roles at WTVE. For Mr. Parker, his past broadcast experience includes work on taking WTVE and other stations out of bankruptcy, thereby advancing the public interest. *See, e.g., Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, 4 FCC Rcd 1741, 1745 (¶89)(1989) (dark or bankrupt stations actually disserve the goal of efficient use of the spectrum because those stations are holding valuable frequencies without providing service to the public); *Review of the Commission's Regulations Governing Television Broadcasting*, FCC 99-209 (released August 6, 1999), 1999 FCC LEXIS 3817 at ¶73 (station off the air or in involuntary bankruptcy or insolvency proceedings can contribute little, if anything, to any type of diversity to a local market).

E. Diversification Of Media Outlets.

9. To increase diversification of control and thus, presumably, “independence and individuality of approach,” credit is given to entities controlled by those with few or no interests in other mass media entities. *Policy Statement*, 1 FCC 2d at 394-395. In this proceeding, none of the Reading principals or shareholders have media holdings in Reading, Pennsylvania or in the WTVE service area. Reading will show that, except for Micheal L. Parker (an officer, director and record and beneficial owner of Reading stock), none of the officers, directors or shareholders of Reading has any interest in any broadcast or radio common carrier licenses or applications, or in any newspapers, magazines, other periodicals, cable

television systems or other media of mass communications.¹ Mr. Parker has the following interests in broadcast licenses:

- (a) Mr. Parker is president, sole director and sole shareholder of Two If By Sea Broadcasting Corporation, a Delaware corporation ("TIBS"). TIBS is licensee of International Broadcast Station KAIJ, Dallas, Texas, and is the proposed assignee of the licenses and assets of commercial television station WHCT, Hartford, Connecticut, from Martin W. Hoffman, Esq., trustee in bankruptcy (File No. BALCT-930922KE). On April 9, 1993, TIBS was granted a construction permit for a new FM translator station to operate on Channel 221, Upland, California (File No. BPFT-920603KG). TIBS is operating WHCT for the Trustee in Bankruptcy pursuant to a local marketing agreement which expires on or about June 1, 2000. TIBS has been operating WHCT pursuant to such an agreement since February 8, 1997.
- (b) Mr. Parker is president, sole director and sole shareholder of Desert 31 Television, Inc., licensee of commercial television station KVMD, Twentynine Palms, California.

10. However, those interests are only of slight significance because of their distance from Reading, Pennsylvania. *See Pillar of Fire*, 99 FCC 2d 1256 at ¶29 (Rev. Bd. 1984) ("[U]nder the diversification criterion, media holdings in the proposed community of license are normally of most significance, followed by holdings in the remainder of the proposed service area, and then on the regional and national level") (*citing Scott and Davis Enterprises, Inc.*, 88 FCC 2d 1090, 1094 (Rev. Bd. 1982) *citing Policy Statement*, 1 FCC 2d 393, 394-395). In addition, the TIBS time brokerage agreement for WHCT is non-attributable pursuant to Section 73.3555 of the Commission's Rules.

¹ This statement excludes any non-attributable interests of any officers, directors or stockholders of Reading in publicly-traded companies such as AT&T.

F. Renewal Expectancy.

11. It is the Commission's practice in comparative renewal proceedings to accord primary significance to a station's past performance, so that a licensee that has rendered meritorious service can be reasonably confident of renewal. The premise underlying the grant of a renewal expectancy is that an incumbent's proven record of performance provides a greater assurance of continued performance than do the untested promises of a challenger. The primary precedents as to the applicable legal standard for a renewal expectancy are *Cowles Broadcasting, Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom. Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982), *cert. denied*, 460 U.S. 1084 (1983); *Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc. v. FCC*, 722 F2d 756 (D.C. Cir. 1983); *Valley Broadcasting Co.*, 4 FCC Rcd 2611 (Rev. Bd. 1989), *rev. denied*, and *Fox Television Stations, Inc.*, 8 FCC Rcd 2361, *recon. denied*, 8 FCC Rcd 3583 (Rev. Bd.), *modified*, 9 FCC Rcd 62 (1993); *Broadcast Communications, Inc.*, 93 FCC 2d 1162, 1166 (1983), *modified*, 97 FCC 2d 61 (1984), *aff'd by judgment sub nom. Genesis Broadcasting, Inc. v. FCC*, No. 84-1154 (D.C. Cir. 1985).

12. Those cases establish a comparative preference for a license renewal applicant that has compiled a substantial, meritorious or superior public service record in the relevant renewal period. That record is analyzed with respect to five criteria:

- a. the licensee's efforts to ascertain the needs, problems and interests of its community;
- b. the licensee's programmatic response to those ascertained needs;
- c. the licensee's reputation in the community for serving the needs, problems and interest;

- d. the licensee's record of compliance with the Communications Act and FCC rules and polices; and
- e. the presence or absence of any special effort at community outreach or towards providing a forum for local self-expression.

13. A substantial performance can be demonstrated by any type of showing reasonably related to demonstrating service over and above what would be considered minimal. *Broadcast Communications, Inc.*, 93 FCC 2d at 1166. The Commission no longer emphasizes quantitative programming data when assessing the strength of a licensee's performance. *See Intercontinental Radio, Inc.*, 98 FCC 2d 608, 630-631 (Rev. Bd. 1981) ("the proper focus in reviewing an incumbent licensee's record in a 'comparative renewal' case is a qualitative and not quantitative one").

14. Reading will present evidence through direct written testimony of current and prior officers and employees with personal knowledge that, even though WTVE had a home shopping format during the renewal period, WTVE undertook exhaustive ascertainment efforts, engaged in extensive community involvement, and made time available throughout its broadcast day for the broadcast of a multitude of short-form public service programming of 2-4 minutes and public service announcements ("PSAs") of 30-90 seconds. The predominantly locally-produced PSAs afforded local and national community, charitable, civic and other organizations an opportunity to reach residents of WTVE's service area with messages of public interest.

15. The Commission has specifically held that home shopping formats may serve the public interest because, among other reasons, they provide "an important

service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner.” *See, e.g., Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 at ¶12 (Cable Services Bureau 1997), *citing Home Shopping Report and Order*, 8 FCC Rcd 5321, 5327 (1993). Moreover, Reading will show that there was a strong upward trend in WTVE’s responsiveness to community needs in the form of non-entertainment programming, particularly after Reading emerged from bankruptcy. The Commission has recognized that the latter part of a license term may be more probative of a licensee’s likely future performance. *See Monroe Communications Corp.*, 900 F.2d 351, 355 (D.C. Cir. 1990). The evidence will show that Reading provided a substantial level of public service to the local community easily surpassing a level of mediocre service which might just minimally warrant renewal. Reading therefore is entitled to a renewal expectancy. The deposition transcripts of Reading’s public witnesses will corroborate this evidence supporting Reading’s claim to a renewal expectancy.

III. Witnesses.

16. John Lundin, a professional engineer with du Treil, Lundin & Rackley, Inc., will sponsor evidence concerning a comparison between the predicted Grade B service areas for the WTVE license, the WTVE construction permit and Adams application.

17. Frank McCracken, Executive Vice President, director and shareholder, will sponsor evidence that relates to residence credit for shareholders who have lived in Reading, Pennsylvania or within WTVE(TV)’s Grade B contour. Mr. McCracken will also testify with regard to evidence that relates to shareholders who

have participated in civic activities in Reading or elsewhere within the WTVE(TV) Grade B contour.

18. Micheal L. Parker, President, director and shareholder, will testify with regard to evidence relating to Reading's financial condition during the renewal term and how the improved financial position that resulted from a successful bankruptcy reorganization affected Reading's ability to fulfill its public service obligations on station WTVE(TV). Mr. Parker will also sponsor evidence regarding the past broadcast experience of Reading principals and diversification of media outlets.

19. George Alan Mattmiller, Jr., Station Manager of WTVE(TV) from August 1989 through February 1992 and subsequently, on a periodic basis, as Assistant General Manager, will testify with regard to evidence that relates to Reading's ascertainment efforts during the renewal period.

20. David Case, Assistant Chief Engineer of WTVE from 1985-89, 1993-95 and 1997 to the present will testify with regard to WTVE's capability, during the renewal term, to air live programming either from inside or outside of the studio.

21. Kimberley G. Bradley, Production Manager at WTVE, will sponsor testimony regarding the station's programming efforts during the license term.

IV. Documents To Be Moved Into Evidence By Reading.

22. Exhibit A contains a listing of the relevant documents, with brief description, that Reading will move into evidence.

Respectfully submitted,

READING BROADCASTING, INC.

By: Thomas J. Hutton
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Its Attorneys

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December 20, 1999

Documents Which Reading Will Move Into Evidence

1. Reading Exhibit 1–Technical Statement. This document provides information concerning a comparison between the predicted Grade B service areas for the WTVE license, the WTVE construction permit and the Adams application. The document is relevant for Reading’s showing concerning efficient use of frequency.
2. Reading Exhibit 2–Local Residence & Civic Activities. This document provides information concerning those Reading shareholders who presently reside (or have resided) within the city limits of Reading, Pennsylvania or within the predicted Grade B service contour of WTVE, at least since 1992. The document also provides information concerning those Reading shareholders who have participated in civic activities in Reading, Pennsylvania or elsewhere within the WTVE Grade B contour. The document is relevant for Reading’s showing concerning local residence and civic activities.
3. Reading Exhibit 3–Past Broadcast Experience. This document provides information concerning the past broadcast experience of three of Reading’s principals. The document is relevant for Reading’s showing concerning past broadcast experience.
4. Reading Exhibit 4–Diversification of Media Outlets. This document provides evidence concerning the media holdings by Reading principals or shareholders. This document is relevant for Reading’s showing concerning diversification of media outlets.
5. Reading Exhibit 5–Testimony of Micheal L. Parker. This document provides evidence concerning Reading’s financial condition during the renewal term and how the improved financial position that resulted from a successful bankruptcy reorganization affected Reading’s ability to fulfill its public service obligations on station WTVE. The document is relevant for Reading’s showing concerning its entitlement to a renewal expectancy.
6. Reading Exhibit 6–Testimony of George Alan Mattmiller, Jr. This document presents evidence concerning Reading’s ascertainment efforts during the renewal period. The document is relevant for Reading’s showing concerning its entitlement to a renewal expectancy.
7. Reading Exhibit 7–Testimony of David Kase. This document presents evidence concerning WTVE’s capability, during the renewal term, to air live

programming either from inside or outside of the studio. The document is relevant for Reading's showing concerning its entitlement to a renewal expectancy.

8. Reading Exhibit 8—Testimony of Kimberley G. Bradley. This document, together with appendices A through X, provides information concerning WTVE's programming efforts during the license term. These documents are relevant for Reading's showing concerning its entitlement to a renewal expectancy. WTVE's quarterly issues and programming reports included as part of Ms. Bradley's testimony are admissible in this proceeding under the business records hearsay exception.²

- (a) Appendices to Testimony of Kimberley G. Bradley:
 - (1) Appendix A: Spreadsheets of compiled data from WTVE's quarterly issues/programs reports
 - (2) Appendix B: Spreadsheets with compiled data from composite week program logs
 - (3) Appendices C – W: Quarterly Issues/Program reports (2nd Quarter 1989 - 3rd Quarter 1994)
 - (4) Appendix X: Children's Issues and Program reports (4th Quarter 1991 – 4th Quarter '93)

² See FED. R. EVID. 803(6). A report, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was a regular practice of that business activity to make the report, is admissible under the hearsay exception. WTVE's Quarterly Issues & Program Reports meet the requirements for admissibility under the rule.

Documents For Which Reading Requests Official Notice

1. Reading Broadcasting, Inc. Renewal Application (File No. BRCT-940407KF), with amendments filed August 3, 1994, February 3, 1997, March 11, 1997, and September 18, 1997
2. Adams Communications Corporation Application for Construction Permit (File No. BPCT-940630KG) with amendment filed April 30, 1999
3. Reading Broadcasting, Inc. Annual Ownership Reports, 1988-1995, 1997-1999. These documents provide information concerning Reading's local ownership.
4. Documents related to construction permit to construct new tower and transmitter facility on Fancy Hill, Pennsylvania. These documents provide information concerning Reading's construction permit to move its site, install a directional antenna system, increase the visual ERP and increase antenna HAAT. The documents also establish the validity of the construction permit.
 - (a) Extension of Construction Permit (File No. BMPCT-980819KF)
 - (b) Letter to FCC from Reading, dated April 24, 1999, requesting 3-year extension of construction permit
 - (c) *In re 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, FCC 99-267 (released October 6, 1999)
5. Consolidated Pennsylvania Coverage Maps, 1989-1993, excerpts from CABLE & SATELLITE COVERAGE ATLAS. This document provides information concerning market coverage. The document is relevant to Reading's showing concerning its entitlement to a renewal expectancy.
6. BRENDA K. HELREGEL, NATIONAL ASS'N OF BROADCASTERS, IN THE PUBLIC INTEREST: A SURVEY OF BROADCASTERS' PUBLIC SERVICE ACTIVITIES (1991). This document provides comparative information concerning public affairs activities by broadcasters during the license term. The document is relevant to Reading's showing concerning its entitlement to a renewal expectancy. Although hearsay, this report is

admissible in this proceeding under the market reports hearsay exception.³

³ See FED. R. EVID. 803(17). A market report that is used and relied upon by persons in a particular occupation is admissible under an exception to the hearsay rule. The comparative data concerning public affairs programming activities in the NAB Survey is correctly characterized as a compilation of tabulations that has been provided in a publication prepared for and relied upon by broadcasters and is, therefore, admissible as an exception to the hearsay rule.

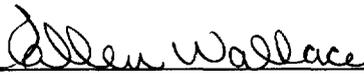
CERTIFICATE OF SERVICE

I, Ellen Wallace, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on December 20, 1999, a copy of the foregoing TRIAL BRIEF OF READING BROADCASTING, INC. was delivered by hand to the following:

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