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

FCC 99M-81

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DISPATCHED BY

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: December 10, 1999 ; Released: December 13, 1999

Background

1. This is a ruling on Motion To Enlarge Issues (False Statements and Misrepresentations by Michael Parker in Bankruptcy Proceeding) which was filed by Adams Communications Corporation ("Adams") on October 18, 1999. Oppositions were filed by Reading Broadcasting, Inc. ("Reading") and by the Enforcement Bureau ("Bureau") on October 28, 1999. A Reply was filed by Adams on November 4, 1999.

2. The Motion is based on allegations that Micheal Parker ("Parker"), a principal and a controlling shareholder of Reading, has made false statements and misrepresentations to the United States Bankruptcy Court for the Western District of Washington ("Bankruptcy Court" or "Court"). Adams alleges that in order to conceal assets from the Court and creditors, Mr. Parker concealed his ownership of Partel, Inc. ("Partel").

Facts

3. Reading claims comparative credit for past broadcast experience through Mr. Parker's activities in bringing three broadcast stations out of bankruptcy. See Memorandum Opinion and Order FCC 99M-54, released September 23, 1999 (authorizing evidence of past broadcast experience as a comparative factor). In discovery, Adams has learned of a personal bankruptcy of Mr. Parker's and now asserts that Parker hid from the Bankruptcy Court the identity and

assets of an entity controlled by Parker known as Partel, Inc. ("Partel"). Adams seeks an issue as to whether Reading has misrepresented or lacked candor through Parker before the Bankruptcy Court. In support of the issue, Adams has submitted a Motion accompanied by twenty five exhibits which include transcripts of Mr. Parker's deposition.

4. On March 27, 1989, Mr. Parker signed the bankruptcy petition under oath. (Motion at Exh. 7, pp. 14, 15.) The caption of the petition reflected the name M. L. Parker as the debtor. The petition was filed under Chapter 7 of the federal bankruptcy laws. (Motion at Exh. 8.) Adams has ascertained an indebtedness of Mr. Parker at the time of filing the petition in the amount of approximately \$1.4 million, with the only potentially significant disclosed asset being a "worthless claim against a failed television project in Alaska" having an estimated value of \$45,000. (Motion at Exhs. 7, 9.)

5. Also in March 1989, Mr. Parker was considering a management contract with Reading. Negotiations during April 1989, eventually resulted in reaching agreement to a Management Services Agreement between Reading and Partel to commence on June 1, 1989, and to conclude on December 31, 1991. (Motion at Exh. 2.) Adams asserts that the only disclosure of Partel to the Bankruptcy Court was the reporting of Partel as a creditor of Mr. Parker's and his indebtedness to Partel in the amount of \$117,000, plus interest. (Motion Exh. 7 at 7, 48.) The Motion also makes documented references to various occasions throughout 1989, when Mr. Parker could, and Adams argues should, have disclosed to the Court the embryonic business connection between Partel and Reading. It appears from the papers presented by Adams that Mr. Parker may never have disclosed the Management Services Agreement to the Bankruptcy Court or to the creditors.

6. On November 1, 1989, the Court accepted a trustee's determination that there were no available assets to meet creditors' claims and closed the proceeding. (Motion at Exhs. 10, 11.) The theory advanced by Adams for an issue is tied to Reading "opening the door" by claiming broadcast experience credit for Mr. Parker having allegedly rescued broadcasting businesses from bankruptcy and remaking them as viable broadcasting outlets. Adams also refers to comments that were critical of Mr. Parker reflected in Reading's minutes and refers to the Mt. Baker and Religious Broadcasting proceedings which contain adverse findings against Mr. Parker.¹ (Motion at 10-11.) (Neither the criticisms nor those Commission decisions relate to representations about assets made to the Bankruptcy Court.) Adams identifies certain creditors who filed claims in the bankruptcy proceeding that arose out of services performed for Parker at the Anacortes, San Bernardino, Anchorage and Honolulu sites. (Motion at Exhs. 7, 14.) (Motion at 12.) Adams refers to those projects as relating negatively to past broadcast experience. But

¹ Mt. Baker Broadcasting Co., Inc., 3 F.C.C. Rcd 4777 (1988) and Religious Broadcasting Network, et al., 3 F.C.C. Rcd 4085 (Review Bd. 1988).

there is no connection drawn between Parker's management of those broadcasting properties, the claims of creditors in the bankruptcy proceeding, or Mr. Parker allegedly having withheld assets from a Bankruptcy Court.²

7. Other exhibits in support of the Motion are more or less repeats of earlier references to Mr. Thomas Root and Dr. Eugene Scott. In one segment of a deposition, Mr. Parker relates to his employment of Mr. Root for certain segments of Reading's business. Adams also asserts Mr. Parker's responsibility for certain programming of Dr. Scott. But there is no connection shown between Parker's personal bankruptcy or his disclosures to the Bankruptcy Court which tie in or relate to Mr. Root or to Dr. Scott and their connections to Reading.

8. Adams argues that there is a "nexus between Mr. Parker's personal bankruptcy and broadcasting matters directly regulated by the Commission" which Adams contends is evident from concealing assets from the Bankruptcy Court at a time that Mr. Parker and his agents were entrenching themselves in Reading's management (Motion at 15-16.) Adams makes a concluding argument in which Dr. Scott and Mr. Root are seemingly made a part of a scheme through questions asked of Mr. Parker about those persons at his deposition. (Motion at 18-21.) Adams' arguments regarding connections of Dr. Scott and Mr. Root with Mr. Parker also have a familiar ring. See Memorandum Opinion and Order FCC 99M-60, fn.2 supra.

Late Filing

9. The Commission's rules provide that in comparative renewal cases a motion to enlarge issues must be filed within 30 days of publication of the designation order in the Federal Register. 47 C.F.R. §1.229(b)(2). In this case, the controlling publication date is June 15, 1999 (64 Fed. Reg. 32046). Motions based on new facts must be filed within 15 days of discovery of the new facts. 47 C.F.R. §1.229(b)(3). It must be new evidence that could not reasonably have been discovered earlier. Great lakes Broadcasting, Inc., 6 F.C.C. Rcd 4331, 4333 (1991). It was in pleadings filed on September 3 and September 13, 1999, that Reading first indicated its intention to rely on Mr. Parker's past broadcast experience based partially on his taking broadcast properties out of bankruptcy. Adams did not file within 15 days of September 13. And Reading points out in its Opposition that on September 17, 1999, a box (or boxes) of documents were delivered to Adams which contained the record of Mr. Parker's personal bankruptcy. (Opposition at 4.) But Adams' Motion was not filed until one month later on October 18, 1999. Adams explains that there were delays in obtaining minutes from Reading and that Mr. Parker cancelled his deposition (justifiably) that had been set for September 7, 1999 due to a condition of bronchitis. The deposition was rescheduled and taken on October 6-7, 1999. Expedited delivery of the transcript was ordered by Adams. (Motion at 2 - 6.)

² It is noted that in another but similar context, Adams' earlier threshold showing of exceptionally poor broadcast record was denied wherein these arguments were aired. See Memorandum Opinion and Order, FCC 99M-60, released October 15, 1999.

10. There is not a sufficient explanation provided by Adams as to why the Motion could not have been filed within 15 days of September 17, 1999, the date that the bankruptcy record was produced in discovery. Nor is that point covered in Adams Reply brief. Adams argues that the deposition of Mr. Parker was necessary in order to learn before filing "this unusual, if not unique, angle on 'broadcast experience' as a comparative factor." (Reply at 5.) Adams submitted 7 excerpts of Mr. Parker's deposition as supporting exhibits which are as follows:

- Deposition re Partel, Inc. (Exh. 5.)
- Deposition re Avalon FCC proceeding and Partel, Inc. (Exh. 6.)
- Deposition testimony re proxy. (Exh. 17.)
- Deposition testimony re acquiring short wave radio; client Shaw; Scott programming. (Exh. 18.)
- Deposition testimony re Twenty Nine Palms; Shackelford; Shaw; Scott. (Exh. 20.)
- Deposition testimony re Parker/Scott relationship. (Exh. 21.)
- Deposition testimony re Parker/Root relationship. (Exh. 23.)

Amidst such deposition testimony that was cited in support of the Motion, there are no questions and answers that relate to Mr. Parker's personal bankruptcy and the alleged failures to include/disclose his ownership of Partel, Inc. as a possible asset. Nor is there a segment of Mr. Parker's deposition testimony included that examined Mr. Parker on the significance of the Partel-Reading Management Services Agreement vis a vis the disclosures and non-disclosures to the Bankruptcy Court.

11. It is concluded that Adams uncovered evidence of Mr. Parker's personal bankruptcy on September 17, 1999, which should have provided sufficient information to file a Motion before October 18, 1999. As it developed, according to the excerpts of the Parker deposition and the Reading minutes selected by Adams to support the Motion, the most relevant evidence offered was the record of the Parker personal bankruptcy proceeding which was made available on September 17, 1999. Therefore, the filing of the Motion thirty days later on October 18, 1999, was inexcusably untimely under the Commission's rules. By any reasonable calculation of fifteen days from September 17 (the date of the production to Adams of the bankruptcy records), Adams could have filed its Motion by October 4, 1999, if not earlier. And Adams has not met its burden of providing an acceptable excuse for its delay of thirty days in filing the Motion.

Policy Against Litigating Non-FCC Violations

12. The issue sought by Adams could not be resolved by summary decision and would require substantial litigation. There has been no resolution by the Bankruptcy Court that Parker had misrepresented or lacked candor with respect to disclosing assets in connection with his personal bankruptcy. Therefore, collateral estoppel would not apply and such evidence would have to be considered for the first time in this proceeding. More discovery would need to be authorized. In order for the matter to be tried and decided, it would require considerations of bankruptcy practice, bankruptcy procedures, and bankruptcy standards for misrepresentations. One fact issue would be whether the record of assets was false and misleading to creditors, some or all of whom could have had some knowledge of Partel independently of the Court records relied on by Adams. Also, there are related important fact issues to be determined such as whether Partel was wholly owned by Mr. Parker in 1989³ (Opposition at 8); whether in attesting to his petition, Mr. Parker actually/knowingly attested to information regarding Partel (Opposition at 8-9); and whether there is a one year statute of limitations affecting bankruptcy proceedings that would apply (Opposition at 9).

13. Undertaking such complex and burdensome litigation would be counter to the Commission's stated policy:

We will not take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations --- unless it is adjudicated. In this regard, there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.

Character Policy Statement 102 FCC 2d 1179, 1205 (1986). This point was urged in the Opposition of the Enforcement Bureau. It would be in direct contravention of that policy to add the issue regarding Parker's truth and candor before the Bankruptcy Court. It makes no difference that the activity occurred less than ten years ago or that it occurred during Reading's renewal period. As a matter of controlling Commission policy, the issue may not be added.

³ The question of 1989 ownership of Partel is not ascertainable from Adams' pleadings and supporting papers. In the Reply brief, Adams cites and refers to a segment of testimony in the Avalon proceeding (Dkt. No. 86-193) wherein Mr. Parker testified on January 7, 1988. (Motion at Exh. 6.) Adams cites a portion of Parker's cross-examination to support the proposition in the Reply brief: "Partel, Inc. is referred to in this regard [as a Parker consulting vehicle ?] in 1988 ---." (Reply at 7, Para. 13(c)). A review of the Avalon transcript that was provided by Adams in Exh. 6 discloses only one reference to Partel which occurs in a Parker answer at Tr. 3351. The question was objected to as irrelevant before Parker gave an answer. And when at the direction of Judge Luton the question is rephrased by counsel, the reference to Partel is omitted and Partel is never inquired of again.

Order

Accordingly, for the reasons stated above, IT IS ORDERED that the Motion to Enlarge Issues (False Statements and Misrepresentations by Micheal Parker in Bankruptcy Proceeding) filed by Adams Communications Corporation on October 18, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Administrative Law Judge

⁴ Courtesy copies of this Memorandum Opinion and Order were e-mailed to counsel on the date of issuance.