

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

FCC 00M-07
90909

In re Applications of)	MM Docket No. 99-153
)	
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)	

DISPOSITION BY
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 FCC MAIL SECTION

MEMORANDUM OPINION AND ORDER

Issued: January 19, 2000 Released: January 20, 2000

Preliminary Statement

1. This is a ruling on Motion To Dismiss Adams' Application, Or Alternatively, To Enlarge Issues (Abuse of Process) that was filed by Reading Broadcasting, Inc. ("Reading") on November 2, 1999. An Opposition was filed by Adams Communications Corporation ("Adams") on November 22, 1999.¹ On that same date, Comments on the Motion were filed by the Enforcement Bureau ("Bureau"). Bureau Comments on Adams' Opposition were filed on December 1, 1999. A Consolidated Reply of Reading Broadcasting, Inc. also was filed on December 1, 1999.

2. Reading contends that the Adams application is a speculative venture, was filed for improper purposes, and does not merit comparative consideration. Alternatively, Reading asserts that the Adams application is intended to achieve a settlement and therefore constitutes an abuse of the Commission's hearing process. In addition, Reading alleges that Adams has filed false and baseless claims seeking issues against Reading, also has violated the Commission's *ex parte* rule, and deliberately delayed discovery production of relevant evidence, all of which are alleged as additional abuses of the Commission's processes.

¹ An extension of time was granted to file an Opposition by November 22, 1999. See Order FCC 99M-75, released November 12, 1999.

3. The Bureau had initial doubts about Adams' bona fides but believed that Adams' Opposition had made a sufficient showing that its application was filed in good faith. Before the hearing, the Bureau therefore opposed Reading's Motion and the addition of an abuse of process issue.

Facts

Adams' Adoptive Public Interest

4. A factual premise of the requested issue is whether Adams acted through its principals with a good faith belief that WTVE (TV) was not meeting community needs because its programming was dominated by a home shopping program format or whether the application was filed for speculative purposes. Adams asserted that it relied on its own review of programming from which it concluded that Reading's format is insufficient in providing public affairs programming responsive to local needs. But Adams has concluded that independent of a review of Reading's programming, the home shopping format does not serve the public interest. An Adams principal confirmed under oath that Adams sole interest in prosecuting its application is to remove home shopping from all of broadcasting because in Adams' view it is economically impossible to provide public service broadcasting on a house shopping channel.

Adams' Programming Review

5. Before filing its application in June, 1994, Adams hired individuals, who have been recently identified as college students, to tape the programming of Station WTVE (TV) for each day of two weeks on a twenty four hour per day basis. Howard A. Gilbert ("Gilbert"), vice president, secretary and director of Adams, arranged for the taping. He was briefed intermittently by the students on program content from which Gilbert formed an opinion that the station was not serving the public interest. (Opposition at Exh. A, p. 5.) Gilbert also reviewed the tapes or a portion of the tapes. Evidently, there was a mix-up. Gilbert was furnished with tapes of a non-affiliated home shopping cable channel which may have been from outside of the Reading signal, a fact which came to Gilbert's attention in September 1999. But according to Gilbert, the programming was substantially the same² and upon a review of the station's programming records, the preordained conclusion that the station's programming did not serve the public has not changed. (Opposition at 12, n.11.) Adams contends that notwithstanding the mix-up, Adams made a good faith effort to review programming before filing its application. But it can be inferred from Mr. Gilbert's testimony that Adams placed little or no reliance

² There is no evidence that a thorough comparison was made of the students' tapes and the actual programming that appeared on Channel 51. Mr. Gilbert could not even recall the name of the student(s) responsible for the taping. Reading is entitled to make such a comparison through discovery.

on its questionable ascertainment efforts because Adams had concluded that no matter what was on the tapes, there is an intrinsic conflict in providing both home shopping broadcasting and public service programming.

Adams' Intentions

6. There is a substantial question of fact as to whether Adams has any intention of owning and operating a broadcast facility in the Reading community. Adams has no business plan. All of the principals of Adams are from Chicago and have no connections with Reading, Pa. In 1993, the Adams' principals were recipients of a substantial settlement buyout in the Harriscope renewal proceeding.³ The final payment of a cash settlement for \$17 million was made to the Monroe principals in June 1993. Adams was formed by these same principals in November 1993, and the application was filed in this case in June 1994. Reading asserts that the closeness of the filing to settlement shows that there was a greater concern for the potential rewards than there was a concern about WTVE's programming. (Motion at 16.) Mr. Gilbert testified in a deposition that after the Harriscope settlement, the Adams principals were conducting a nationwide search of license expiration dates when it found the Reading opportunity. (Motion at 16, Exh. B, Tr. 25.) Another Adams principal, Mr. A. R. Umans, had virtually no knowledge of the Reading market and only a passing interest in a Spanish programming format without any reference to Reading demographics that might show a need. (Motion at 17 Exh. D, Tr. 9-11.) Mr. Umans simply "went along with the view." (Id. at Tr. 11.) There apparently was no group deliberations about programming or a business plan on the part of the Adams syndicate. Reading learned in discovery that there was no meeting of Adams' principals to discuss management of the station or to develop an operating plan. (Motion at 19.) Mr. Haag, Adams' president, testified that he viewed the Reading challenge as a "business opportunity" as did Messrs. Steinfeld and Podolsky. (Reply at 18 - 19.) The Adams group had in common the group undertaking of the Monroe profit-making venture.

Adams' Hearing Testimony

7. While this Motion was under consideration, the comparative proceeding commenced on January 4, 2000, and on January 12, the testimony of Mr. Gilbert was heard. Certain portions of his testimony are directly relevant to the abuse of process

³ Harriscope of Chicago, Inc., et. al., ORDER FCC 92I-097, released December 24, 1992 settlement approved by Commission). Essentially the same shareholders of Adams were the shareholders of Monroe Communications Corporation ("Monroe"). Monroe was awarded the permit but opted to settle. (Reading Exh. 22).

issue.⁴ Mr. Gilbert testified to the effect that the Adams group was in the nature of a public interest venture that sought to remove or substantially reduce home shopping as a broadcasting format nationwide. The perceived public interest goal of replacing home shopping was discussed among the group in 1992-93, as they were settling the Harriscopes case for \$17 million. At that time, substantially the same principals were engaged in the Monroe venture. Mr. Gilbert testified to the effect that in the prior challenge, the group had as its primary goal eliminating pay TV from broadcasting. That goal later expanded to eliminating pornographic broadcasting from the Video 44 station as well as nationwide. With respect to the Adams application, Mr. Gilbert admitted that the Adams group was not concerned with local public service broadcasting for Reading. The Reading channel had been targeted solely because it was the next home shopping channel coming up for renewal. The Adams group would have challenged any renewal station in the Nation that was broadcasting home shopping. It appears that a renewal challenge was sought in order to use the comparative renewal hearing process as a vehicle for removing home shopping programming from national broadcasting.⁵

8. Mr. Gilbert also testified that he was contacted about settlement over one year ago by Micheal Parker ("Parker"), president of Reading. Mr. Gilbert said that Adams was offered a money settlement by Parker. Mr. Gilbert said that he flatly refused the offer. Mr. Gilbert said that he was later contacted for settlement by another person but that he could not recall that person's name. There was only one conversation in which Mr. Gilbert said that he was not interested. But sometime after the Parker offer, Adams agreed to share the expenses with Parker and Telemundo for an appraisal of the value of Station WTVE (TV). Mr. Gilbert attached no settlement significance to that mutual undertaking in which he and Parker were involved. He saw it merely as an inexpensive way to sate a curiosity of the Adams group about the station's value. Mr. Gilbert said that he was offered the shared appraisal opportunity by a member of Dow, Lohnes & Albertson, a well-known communications law firm. Under the circumstance of a three way appraisal, it would be reasonable to inquire whether that firm may have (or had) a client that was (is) interested in negotiating with Reading (through Parker) and with

⁴ These are preliminary findings related only to Reading's Motion that are based on the parties pleadings, depositions and the Presiding Judge's trial notes and recollection. The transcripts of Mr. Gilbert's testimony control and ultimate findings will await further hearing and submission of the parties' proposed findings and conclusions.

⁵ Note: Section 4 (g) of the Cable Act of 1992 required the Commission to determine whether home shopping broadcast stations are serving the public interest. On January 14, 1993, a Notice of Proposed Rulemaking was adopted to address that question. Yet neither Monroe, Adams, or any member of the Adams group participated or commented in the proceeding. The Commission concluded that such programming serves the public interest and home shopping stations qualify for mandatory cable carriage. In the Matter of Implementation of Section 4(g) of the Cable TV Consumer Protection and Competition Act of 1992 Home Shopping Station Issue, 8 F.C.C. Rcd 5321, released July 19, 1993.

Adams (through Gilbert) for the purchase of Station WTVE (TV). Since Adams (through Gilbert) was an active participant in the station's appraisal venture, it also is reasonable to inquire whether there were and/or are movements towards or designs on a settlement.

Motivational Fee Arrangements

9. Discovery was ordered of the fee arrangements that Adams had with Bechtel & Cole for the prosecution of its application. Reading was permitted to make specific reference to both the fee agreement in this case and the fee agreement with the Monroe principals in the Harriscope case. See Order FCC 99M-79, released November 24, 1999. (Reply at Exh. A.) The respective letters dated January 10, 1983, and June 30, 1999, have incentive provisions for settlements that are economically favorable. In the Harriscope case, the Monroe principals increased fees to Bechtel & Cole's then current hourly rate from a discounted rate. In this case, the Adams principals will pay double the normal hourly rate of Bechtel & Cole. Both fee schemes provide incentives to achieve cash settlements. And there is a significant improvement for Bechtel & Cole in this case: the doubling of the hourly rate is significantly higher than in Harriscope and the law firm would receive a fee-doubling increments even if the settlement is limited to expenses. The agreement for a payment of incentive fees in the event of a settlement that nets only legitimate and prudent expenses implies a pro-rated value on such a settlement that is proportionately comparable to the value placed on an award of Station WTVE's license after fully litigating the case to a final decision. That incentive for settlement allows flexibility to get out of the case for expenses. One question raised is whether the current fee structure, formalized in 1999, has placed a premium incentive on settlement as the desired or the favored outcome for Adams.

Alleged Abuses of Process

10. Reading also seeks to litigate issues of whether Adams has engaged in abuses of process that include harassment and character assassination: by asserting meritless claims of attorney conflict of interest in order to delay discovery; by filing a motion to enlarge issues to inquire of unusually poor broadcast record and to include misconduct of Mr. Parker that exceeded the ten-year cut-off; and by willfully violating the Commission's ex parte rule. As explained below, these allegations are deemed to be insufficient to raise substantial questions of fact.

Conflict

11. An allegation by Adams of a conflict of interest in the representation of Reading by the Holland & Knight law firm proved to be erroneous. Adams counsel had reason to believe at the deposition of Mr. Gilbert that there was a representation by Holland & Knight of Mr. Podolsky, an Adams principal, that appeared to raise a question of conflict. The immediate remedy in that situation when it was brought to the attention of the Presiding Judge via telephone was to terminate the deposition and resolve the

question. Adams' counsel reacted swiftly to defuse the issue upon learning of the de minimis effect of a remote conflict and withdrew its objection as soon as practicable. While there was some resulting delay in Reading's completion of deposition discovery, the witnesses were required to appear in Washington, D.C. to complete their interrupted depositions. There is nothing untoward indicated by Adams' actions or motives to disclose a seeming conflict and the proceeding was not substantially disrupted or delayed.

Threshold Showing

12. Careful consideration also is given to the motions to enlarge issues which Adams has asked against Reading but were not added. There was nothing in those rulings that indicated an abusive motive that was apparent in the pleadings of Adams or of any party. The Presiding Judge was not surprised to see Adams attempt to make a threshold showing of unusually poor broadcast record. See Memorandum Opinion and Order, FCC 99M-47, released August 9, 1999. The factual allegations were carefully considered and there was no issue added. See Memorandum Opinion and Order FCC 99M-60, released October 15, 1999 (denial of threshold showing). Adams presented facts on which it based allegations of misrepresentations made by Mr. Parker to a United States Bankruptcy Court. The motion sought issues of misrepresentation and lack of candor which were not added because the Commission's policy prevents the litigation of unresolved issues of wrongs committed before other governmental bodies. See Memorandum Opinion and Order, FCC 99M- 81, released December 13, 1999. Adams believed that the subject of Parker's representations to the Bankruptcy Court were proper subjects of such a motion because Reading was relying on Parker's ability to take broadcast companies out of bankruptcy.⁶ There were no baseless issues added as a result of Adams' pleadings.

Ex Parte

13. Reading further alleges that Adams initiated an unauthorized ex parte communication when Adams counsel submitted to the Presiding Judge an unsolicited Declaration of Mr. Gilbert dated October 26, 1999, in connection with Adams' Opposition pleading to Reading's Motion to Compel Disclosure of Fee Arrangement. The Presiding judge ordered the disclosure of the Gilbert Declaration and also ordered the production of the fee arrangements that Reading was seeking in discovery. See Order FCC 99M-71, released November 1, 1999. There was no significant period of ex parte communication since the substance of the Declaration was incorporated in the Adams Opposition and in the Order so that all parties were made aware simultaneously of the information that Adams was asking the Presiding Judge to consider. The parties were at

⁶ Some of the matters sought to be litigated in the rejected motion were permitted to be used for cross-examination of Mr. Parker who testified in his direct testimony about his experience with bankruptcy courts.

all times apprised of the substance of the Declaration and its purpose. While the procedure used by Adams was not approved, there has been no prejudicial ex parte communication that would warrant adding an issue.

Privilege Claim

14. Finally, Reading asserts that under an unauthorized assertion of privilege, Adams withheld discovery that was requested by Reading as to which there was no privilege available and which was significant evidence that related to a misrepresentation/candor issue that the Presiding Judge added against Reading. See Memorandum Opinion and Order, FCC 99M-73, released November 9, 1999 (denying Reading's appeal of ruling adding issue). According to documents filed with Reading's Reply pleading at Exh. E, on November 12, 1999, Adams counsel advised Reading's counsel by letter that two documents were being furnished that previously had been identified and withheld as privileged because they had been sent to the Bureau in 1993, on a one way confidential basis. Adams also asserts that the documents do not contain substantive information concerning Parker that was not previously disclosed. The letters addressed to the Chief of the Enforcement Division and the Chief of the Hearing Branch requested an investigation into Parker's disclosures in connection with assignments of licenses that were the subject of the disclosure issue added against Reading. The information in those letters would further establish that before this proceeding was designated for hearing, the Commission and the interested Bureau were aware of allegations of Parker's allegedly misrepresented disclosures. The two letters which were written in 1993, would have been given consideration as relevant evidence that related to whether and when the Commission knew or should have known of the questioned Parker disclosures. The letters also would have provided added weight to the arguments advanced by Reading in opposing the added issues. However, the Presiding Judge does not agree with Reading that the letters would have resulted in a rejection of the added issues.⁷ And the facts and circumstances indicate that the delay in their production was due to a litigation decision of counsel and not to a decision by the Adams principals.

Discussion

Rejected Issues

15. Short of a clear default in prosecuting an application, summary dismissal would be an "extraordinary remedy" which should be utilized only if the parties are in agreement regarding material factual inferences that may be properly drawn from the record. See Summary Decision Procedures, 34 F.C.C. 2d 485, 487-88 (1972). At a minimum, there are substantial fact questions raised by the Adams Opposition in which

⁷ The Presiding Judge considered twice the question of whether Adams would need to show that the Bureau was actually misled by Parker's limited disclosures and it was concluded that no such showing was needed. The disclosures have to be sufficient on their own so as to be candid and not misrepresentative or misleading. Id.

Adams denies that its application is speculative (e.g. the question of whether there were reasonable steps taken by Adams to assess Reading's public interest broadcasting before filing the application). Genuine issues of material fact that are decisionally significant and that are disputed must be litigated or a remand is inevitable. See Weyburn Broadcasting, Ltd. Partnership v. F.C.C., 984 F. 2d 1220, 1227 (D.C. Cir. 1993). Summary dismissal of Adams' application would be draconian and would likely lead to a remand.

16. Nor will an issue be added that Adams has engaged in abuse of process with respect to allegedly meritless claims, harassment or character assassination (mistaken attorney conflict), violation of the Commission's ex parte rule, or withholding relevant discovery until after a pleading cycle has expired. As set forth above, there have been definitive interlocutory rulings by the Presiding Judge on the assertions by Adams of unusual broadcast record and misrepresentations to a bankruptcy court. The circumstances of an accompanying explanatory letter that was copied to counsel and a substantially complete description of the communication in a pleading that was culminated by an order to deliver forthwith to counsel for Reading a copy of the "ex parte" Gilbert Declaration, render de minimis and moot any literal violation of the Commission's ex parte rule [47 C.F.R. §1.1208].

17. The withholding of relevant discovery until after completion of a pleading cycle must be carefully considered because such a tactic under the guise of a claim of privilege could prejudice another party's case. However, upon a review of the rulings in which issues were added against Reading,⁸ the two letters that were sent to Bureau enforcement officials would not have caused the Presiding Judge to reject the issues which were directed towards materially incomplete disclosures made to the Commission in connection with license transfers. Secondly, the withholding of the letters appears to have been a tactical decision of Adams trial counsel and any wrongdoing in that situation would not be attributable to the client for purposes of adding a disqualifying issue. See Opal Chadwell, 2 F.C.C. Rcd 1197, 1198 (Review Bd 1987, aff'd, 2 F.C.C. Rcd 3458 (Comm'n 1987) (conduct or misconduct of applicant is primary focus of hearing and counsels' conduct is merely tangential). Therefore, there has not been sufficient grounds stated by Reading for adding issues against Adams for abuse of process based on allegations of meritless motions, or based on an ex parte communication, or based on a delayed document production.

⁸ Memorandum Opinion and Order, FCC 99M-61, released October 15, 1999 (adding issue) and Memorandum Opinion and Order, FCC 99M-73, released November 9, 1999 (denying interlocutory appeal).

Added Issues

18. There has been a sufficient showing to add an issue on abuse of the comparative renewal process,⁹ and specifically as to whether Adams filed its application in this proceeding for speculative or other improper purposes where those purposes may have been to attempt to bring about change of the Commission's home shopping policy while obtaining a financial payoff through settlement. After hearing the testimony of Mr. Gilbert, Reading's showing is sufficiently convincing to require examining the circumstances of Adams' application in this proceeding.

19. Concern about the motive for the Adams application was acknowledged earlier by the Bureau before the Gilbert hearing testimony. The Bureau observed in its first Comments submitted on November 22, 1999:

[E]vidence adduced to date indicates that the decision to challenge the WTVE(TV) renewal arose shortly after the Adams' principals, in their capacity as principals of Monroe, had received settlement proceeds from the Chicago challenge. Absent a detailed and documented explanation from Adams regarding the circumstances surrounding its decision to challenge the WTVE(TV) renewal application, which explanation evidences a bona fide desire to operate channel 51, in Reading, addition of an abuse of process issue would appear appropriate.

See Bureau Comments at 5. But Mr. Gilbert testified that attempting to change Commission policy on home shopping broadcasting is the sole reason for the challenge. The Adams group appears to have little or no interest in the Reading community's public service programming or in owning a station. Thus, there now is a substantial question of a bona fide desire on the part of Adams to operate Channel 51 in Reading, Pennsylvania.

20. The Bureau also acknowledged in a note the fact that at the time the Adams application was filed in June 1994, the Commission's rules precluded a settlement whereby a challenger received money in excess of legitimate and prudent expenses. The Bureau further noted that after adopting that limitation, the Commission approved settlements without regard to amounts paid to settling applicants, citing as an example, EZ Communications, Inc. 12 F.C.C. Rcd 3307 (1997). Adams never availed itself of that window of opportunity. But such an opportunity could arise in the future, which it did. See Reexamination of the Policy Statement on Comparative Broadcast Hearings, First Report and Order, 13 F.C.C. Rcd 15920, 16006 (1998) (where circumstances provide assurances that challenging application was not filed for speculative or other improper purpose, Commission will waive limits on settlement payments.) (Emphasis added.)

⁹ The term "abuse of process" includes "use of a Commission process to achieve a result that the process was not intended to achieve or to use that process to subvert the purposes the process was intended to achieve." See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 3 F.C.C. Rcd 5179, 5199 n.2 (1988).

Comparison of Adams to WWOR-TV

21. Authority for an abuse of process issue is contained in the decision, WWOR-TV, Inc., 7 F.C.C. Rcd 636 (1992), aff'd sub nom. Garden State Broadcasting Limited Partnership v. F.C.C., 996 F. 2d 386 (D.C. Cir. 1993). In that case, the same principals had successively challenged the same license. They succeeded in settling under the first challenge but were rejected the second time due to findings that the second application was filed for the purpose of obtaining a settlement. The Commission placed significant importance on the short lapse of time that could have been taken to review the incumbent's programming before filing an application. The Commission and the Court of Appeals found the necessary intent from the fact that the same principals had realized a significant monetary settlement and therefore had become aware of the potential for gain through settlement without even discussing the subject. Here virtually the same persons are the ones that profited by a settlement in Harriscope. Soon after reaping a substantial monetary reward in Harriscope, the Adams principals canvassed all challengeable renewals of home shopping stations, wherever located, and found Reading.¹⁰ Then Mr. Gilbert hired college students to record Reading's programming and report findings to him. There was no supervision of the students and they erroneously taped the cable programming of an unrelated channel in an unknown locale. There apparently was a two week taping of home shopping programming by the students. But unwittingly, it was the programming of an unaffiliated cable outlet that was reviewed and not the programming as broadcasted by the renewal licensee. While Mr. Gilbert asserts that the programming monitored was substantially the same as Reading's, the accuracy, completeness, seriousness and utility of the review are subject to question.¹¹

Relevance of Fee Agreement

22. In light of Mr. Gilbert's testimony, the fee agreement between the Adams principals and Bechtel & Cole may be probative of a settlement disposition. If Adams is successful on the merits, the firm will be paid double its hourly rate. But the firm also is assured that it will be paid its hourly rate regardless of the outcome. The question raised is with respect to an incentive to double the firm's hourly rate even in the event of a settlement under the Commission limitations of legitimate and prudent expenses. Under that arrangement, if Adams attained its policy objective the Reading license becomes irrelevant to Adams and a limited money settlement that is acceptable would be rewarded under the fee agreement. Compare the settlement in Harriscope as described in fn. 13, infra.

¹⁰ Actually, Boston, Massachusetts was Adams' first choice. But problems arose with site availability that caused a Boston challenge to be abandoned in favor of Reading, the next TV station up for renewal that broadcast home shopping.

¹¹ It was deemed important that the record reflect evidence of Adams' motivation for the enterprise in accepting the bona fides of the application. Cross-examination was permitted on intentions of settlement and ascertainment. Compare the bench ruling that ordered Mr. Parker to be examined on the indicia of transfer of control.

23. When Adams filed in June 1994, the Commission limited settlements to legitimate and prudent expenses. The EZ case referred to above was decided in 1997, three years after Adams had filed its application. In 1995, there was a short window of opportunity to settle but Adams never pursued the opportunity. And when Reading offered to settle, Adams refused the offer. But failure to take the front end of an offer is not a definitive rejection. It is significant that Adams later participated with Parker in a three-way appraisal at the request of a communications law firm having no other connection with this case. And according to Mr. Gilbert, the opportunity to effect a change of policy vis a vis home shopping programming was of paramount concern to the Adams principals which might make the amount of a settlement secondary. It is concluded from all the circumstances that there is a substantial question raised as to whether there is a nexus between settlement and the filing of an application in 1994.¹²

24. The operative standard for adding an issue is whether all the circumstances raise a substantial question of fact. 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). The totality of the facts in this case show that the Adams principals are businessmen who, based on their record in Harriscope, knew from experience that with patience a settlement would be possible. There is a substantial question of whether the Adams principals were motivated to file by the possibility of settlement since the Adams principals believed that there was a possibility that Adams could achieve its adoptive public interest goal through this challenge whereby Reading would drop, change or modify its home shopping format and offer a reasonable cash settlement which could be limited to expenses, depending on the extant Commission policy (or amenability to waiver) on the settlement date.¹³

Order

IT IS ORDERED that the Motion To Dismiss Adams' Application, Or Alternatively, To Enlarge Issues (Abuse Of Process) that was filed by Reading Broadcasting, Inc. on November 2, 1999, IS DENIED in part and IS GRANTED in part.

¹² This is not a speculative inquiry. If the parties sought to suspend the hearing before an initial decision in order to consider a settlement, there would be a hearing conducted on the settlement and testimony would be taken to determine the circumstances under which the parties had agreed to settle. See WWOR-TV, Inc. supra. Any further consideration of a settlement also would take into account evidence of the bona fides of the Adams application to the extent such evidence is developed in this case.

¹³ Cf. Harriscope, Order FCC 92I-097, released December 24, 1992 (incumbent's application renewed, Monroe application dismissed for \$17,676,424, and public interest deemed served by continuation of station's Spanish language programming).

IT IS FURTHER ORDERED that the following issues are added:

To determine whether Adams Communications Corporation has abused the Commission's comparative renewal processes by the filing of a broadcast application for speculative and/or other improper purposes.

To determine whether such allegations of an abuse of process, if true, disqualify Adams Communications Corporation from receiving a Commission license.

IT IS FURTHER ORDERED that the burden of proceeding and the burden of proof ARE ASSIGNED to Reading Broadcasting, Inc.¹⁴

FEDERAL COMMUNICATIONS COMMISSION¹⁵



Richard L. Sippel
Administrative Law Judge

¹⁴ See burdens similarly assigned to Adams in added issues against Reading. Memorandum Opinion and Order, 99M-61 at 8 n.6, released October 15, 1999. Although the Enforcement Bureau has not joined in the Motion, it may participate in discovery and in the prosecution of the issue.

¹⁵ Due to time constraints, courtesy copies of this document were e-mailed to all counsel on issuance. Any request for appeal must be filed by **January 27, 2000** and responsive pleadings filed by **February 3, 2000**. It can be assumed that responsive pleadings are desired by the Presiding Judge. 47 C.F.R. §1.301(b).