

FEB 23 55 PM '00 Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 00M-10  
90920

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 )

**MEMORANDUM OPINION AND ORDER**

Issued: January 28, 2000 Released: January 31, 2000

1. This is a ruling on Request for Permission to File Appeal (“Request”) that was filed by Adams Communications Corporation (“Adams”) on December 29, 1999. Adams seeks an interlocutory appeal from a denial of its request for an added character/qualification issue on transfer of control. Memorandum Opinion and Order, FCC 99M-85, released December 21, 1999. Further pleadings and consideration of the Request were deferred during the hearing of Phase I from January 4 – 13, 2000. After the hearing, in accordance with §1.301(b), a request was made for a responsive pleading from Reading Broadcasting, Inc. (“Reading”). See Order FCC 00M-06, released January 18, 2000.<sup>1</sup> On January 21, 2000, Reading filed its Reply to Adams’ Appeal Request.

2. Adams sought the following issues:

To determine whether an unauthorized transfer of control of Reading Broadcasting, Inc. (“Reading”) was effectuated and, if so, the effect of such unauthorized transfer on Reading’s basic qualifications to remain a licensee;

<sup>1</sup> The Enforcement Bureau (“Bureau”) was asked to advise the Presiding Judge if it changed its position on rejecting the issue sought by Adams after reading Adams’ Request and hearing the testimony of Micheal Parker. The Bureau responded on-the-record at a Prehearing Conference held on January 19, 2000, that it still opposes adding a qualifying issue on control.

To determine whether Reading engaged in misrepresentation and/or lack of candor in the information it has reported to the Commission concerning Reading's owners, officers and directors and, if so, the effect of such misconduct on Reading's basic qualifications to remain a licensee.

3. An interlocutory appeal requires a determination by the Presiding Judge that the Request raises a new or novel question of law or policy and that the ruling is such that error would be likely to require a remand should the appeal be deferred and raised as an exception. 47 C.F.R. §1.301(b).

4. Adams argues that the decision to reject an issue of transfer of control was made without a sufficient understanding of the facts and that the Presiding Judge was erroneously relying on the Bureau's opposition to the issue before it had an opportunity to review all relevant documentary materials. Adams ascribes the inability to be timely informed on a piecemeal disclosure of the relevant facts by Reading. But there still has been no nexus established between the FCC 99M-85 ruling and §1.301(b).

5. However, the questions raised by Adams are not being ignored. After the ruling that denied the issues, the Bureau requested that Reading's president, Micheal Parker ("Parker"), be questioned on cross-examination on the facts and circumstances of the alleged unauthorized transfer of control. The Bureau's request was granted and extensive questioning, with documents, in which the Bureau participated, was conducted during the comparative phase of the hearing. Adams' counsel was given a full weekend to prepare for examining Parker on the question. The record is now virtually complete for treatment of the question of transfer of control in proposed findings and conclusions.<sup>2</sup>

6. Subsequently, at a prehearing conference that was held on January 19, 2000, Bureau counsel advised on-the-record that after considering the cross-examination of Mr. Parker, the Bureau was satisfied that the record was sufficiently complete to make findings on a transfer of control. But the Bureau took the position that the addition of a related misrepresentation and/or lack of candor issue could not be supported. The Bureau would continue to treat the question of transfer of control under the comparative renewal expectancy issue. See Character Qualifications, 102 F.C.C. 2d 1179, 1232 n.125 (violations of Communications Act or a Commission rule or policy may militate against finding a meritorious record). See also Central Florida Enterprises, Inc. v. F.C.C., 683 F.2d 503, 509 (D.C. Cir. 1982) (licensee misconduct may provide a more meaningful basis for preferring an untested challenge over a proven incumbent). See also Second Further Notice of Inquiry, 3 F.C.C. Rcd 5179, 5192 and n.137 (1988) (in determining availability of renewal expectancy, consideration is given to whether a broadcaster has committed violations of the Act or rules or policies) citing Cowles II, 86 F.C.C. 2d 993, 1017 (1981).

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<sup>2</sup> If minutes for Reading shareholder/director meetings of September/October 1991 are found, they must be produced by Reading forthwith.

7. In the renewal case of Fox Television Stations, Inc. et al., 9 F.C.C. Rcd 62 (1993), the presiding administrative law judge, the Review Board and the Commission addressed the question of whether the renewal applicant had failed to comply with the Commission's reporting rules in failing to identify and report an attributable interest. The presiding judge refused to add cross-interest and reporting issues, the Review Board disagreed and ordered the adding of the issues, and the Commission reversed the Review Board. Id. The Commission faulted the renewal applicant for being late in reporting but there was no need to add qualifying issues and remand the case for further litigation. Similarly, in this case, if Reading is found to have failed to comply with Commission rules or regulations in reporting transfer of control, its renewal preference could be in jeopardy and/or it may receive none or a lesser renewal credit.

8. Adams has diligently presented its detailed and comprehensive accounting of various steps taken by Mr. Parker in issuing or causing the issuance of Reading stock in connection with a reorganization in bankruptcy and related transfer applications filed with the Commission on Forms 315 and 316. Adams argues that Parker's true motive was to seize corporate control. But returning to basics, the Parker-led reorganization was approved by a Bankruptcy Court. A dispute among Reading principals regarding stock ownership and the mistaken exercise by Parker of STV's voting power that arose in the course of structuring the reorganization ultimately was resolved by settlement. There also was an intervening law suit and a garnishment of stock that was thrown into the mix. The Commission ultimately was informed of all significant changes in stock ownership, but the timing and intermittent completeness of some of Reading's filings at the Commission may have constituted violations of Commission rules. See 47 C.F.R. §§73.3613, 73.3615. Thus, there remains to be decided the still open question as to whether or not there were unauthorized exercises of control by Mr. Parker based on a considerable amount of evidence in the record, including the testimony of Mr. Parker. If, as alleged by Adams, Parker had in fact succeeded in wresting control from an unwilling or unwitting board of directors and stockholders, the licensee should not be required to defend Parker's allegedly overreaching conduct in the context of an added qualifying issue against Reading. That would seem tantamount to citing a kidnapped truck driver for speeding. But by virtue of the Commission's application of respondent superior, Reading would be held accountable for violations of the Act or Commission rules or policies in seeking a renewal expectancy preference.

9. In addition, the questions of control before during and after the bankruptcy reorganization are complex, time-consuming and subject to differing interpretations as evidenced by the pleadings. Such complexity is exacerbated by Adams' charges of deliberate piecemeal production of records by Reading and Reading's charges of seriatim motions that revisit the same territory by Adams. Whether or not these respective charges are true or not, in whole or in part,<sup>3</sup> the episodic presentations of operative facts

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<sup>3</sup> To the extent such practices may have occurred, the decisional onus is on the attorneys and not the parties. See Opal Chadwell, 2 F.C.C. Rcd 1197, 1198 (Review Bd 1987), aff'd 2 F.C.C. Rcd 3458 (1987) and Memorandum Opinion and Order FCC 00M-07 at Para. 17.

by the parties which are subject to differing interpretations require an interlocutory conclusion that the question of Parker's control of Reading should not be the subject of further discovery and litigation in this forum.<sup>4</sup> The charges do not raise a novel question of law or policy.

10. As indicated above, the question of Parker's control and Reading's related filings and disclosures remain in the case through findings and conclusions with a grant or denial of a renewal expectancy in the balance. To again plow through the details of Adams' Request for Permission to File Appeal and to analytically compare those details with Reading's detailed Reply would be tantamount to a top to bottom reconsideration. However, a review of the opposing views and interpretations of these complex facts was undertaken and it is determined that there is no expectation of remand in denying Adams' Request which appears not to raise any novel question of law or policy.

### Order

IT IS ORDERED that the Request for Permission to File Appeal filed by Adams Communications Corporation on December 29, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION<sup>5</sup>



Richard L. Sippel  
Administrative Law Judge

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<sup>4</sup> There may be remedies under state statutory law for derivative shareholders lawsuits which provide for relief that is unavailable here.

<sup>5</sup> Copies of this ruling were e-mailed to counsel on date of issuance.