

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of: ) MM DOCKET No.: 99-153  
)  
READING BROADCASTING, INC. ) File No.: BRCT-940407KI  
)  
For Renewal of License of )  
Station WTVE (TV), Channel 51 )  
at Reading, Pennsylvania )  
)  
and )  
)  
ADAMS COMMUNICATIONS ) File No.: BPCT-94063KG  
CORPORATION )  
For Construction Permit for )  
a New Television Station to )  
Operate on Channel 51, )  
Reading, Pennsylvania )

FEB 1 4 44 PM '00  
FCC-0ALJ RCD

Volume: 13  
Pages: 1253 through 1291  
Place: Washington, D.C.  
Date: January 19, 2000

## HERITAGE REPORTING CORPORATION

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

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Courtroom TWA, Room 363  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

Wednesday,  
January 19, 2000

The parties met, pursuant to the notice of the  
Judge at 10:00 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of Name of Reading Broadcasting, Inc.:

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On Behalf of the Federal Communications  
Commission:

JAMES SHOOK, Esquire  
Federal Communications Commission  
Enforcement Bureau  
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Washington, D.C. 20554  
(202) 418-1448

P R O C E E D I N G S

(10:00 a.m.)

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THE COURT: This is a prehearing conference called on my order, and I'm going to ask counsel to please just note their appearances for the record, starting with Reading, Mr. Hutton.

MR. HUTTON: Thank you. Thomas Hutton for Reading Broadcasting, Inc.

THE COURT: On behalf of Adams?

MR. COLE: Harry Cole for Adams Communications.

THE COURT: And the Enforcement Bureau?

MR. SHOOK: James Shook for the Chief, Enforcement Bureau.

THE COURT: Mr. Shook, feel all right this morning?

MR. SHOOK: Better.

THE COURT: I detect a touch of cold or flu or some combination thereof.

MR. SHOOK: I'm working on my radio voice.

THE COURT: Okay. I'll try to not prolong this any more than is necessary. I've got two -- does anybody have any preliminary matters that they want to talk about? You were all focused on the order of business. But let me just make two observations or make two comments.

First of all, as far as my scheduling is

1 concerned, I'm going to be out of the country. I've got  
2 prepaid tickets to Europe, so I'm going to be gone February  
3 17 to February 28. I'll be back in my office on February  
4 29. And I've alerted Judge Steinberg, and to the extent  
5 that possible he will be available, but I'm giving you these  
6 dates now because I'm hoping that if there are any sticky  
7 wickets between now and then that I can perhaps resolve them  
8 before I leave. I certainly will do the best to make myself  
9 available for that purpose if it becomes necessary.

10 My history with the previous discovery in this  
11 case is that with a couple of unforeseen glitches counsel  
12 have acted in a commendable way, so this should not pose any  
13 problem to either of the counsel or to myself or to Judge  
14 Steinberg.

15 Item Number 2: I hoped to have it for you this  
16 morning, but I don't have it. I'm adding an  
17 abuse-of-process issue against Adams. You will have that.  
18 I don't want to promise, because my legal technical is  
19 engaged in a conference for her daughter this morning, but  
20 all things being equal, I hope to have it on the e-mail for  
21 you by close of business this afternoon and certainly by  
22 tomorrow.

23 I thought it was important to raise that with you  
24 now, or at least to bring that to your attention now because  
25 we are talking about dates, we're talking about scope of

1 discovery. I say it's only abuse of process with respect to  
2 allegations of filing for settlement purposes. All the  
3 other allegations in the motion about abuse of process have  
4 been rejected, so it's focused. It's going to be a very  
5 focused issue.

6 Now, that being said, why don't we start with  
7 discussing discovery dates in general, as specific as you  
8 can get them, of course, with the issue that was added  
9 against Reading? What I have is I have courtesy copies of  
10 the Bureau's request for documents -- these are directed  
11 now, of course, to Reading -- and the Bureau's  
12 interrogatories directed to Reading, and those I put in  
13 abeyance pending the completion of the Phase I hearing.

14 I also have from Mr. Cole notices to depose Paula  
15 Friedman and Eric Kravetz, both of whom being attorneys, and  
16 a first document request. And I guess the first question I  
17 have in terms of a first wave of discovery, does that  
18 account for it all, and will there be more coming? I'm sure  
19 Mr. Parker's deposition will be coming.

20 MR. COLE: Your Honor, I believe I noticed Mr.  
21 Parker's deposition. If I didn't file that before discovery  
22 was suspended, I certainly intended to but that was on the  
23 list. And the only other new deponent that has kind of  
24 surfaced will be Mr. Clark Wadlow, who is a partner, I  
25 believe at Sydney & Austin.

1           During Mr. Parker's testimony last week he  
2 mentioned at one point, I believe, that he had worked with  
3 both Ms. Friedman and Mr. Wadlow during the fall of 1991,  
4 which would be the time when the November 1991 transfer  
5 application was filed. And that was the first that I saw  
6 his name surfacing in connection with that time frame, and  
7 because of that I proposed to put a notice of deposition on  
8 file sooner rather than later on him, but he is the only  
9 other new one that I can think of off the top of my head.

10           THE COURT: Would that be a duces tecum type? Is  
11 he going to be asked to bring documents?

12           MR. COLE: Well, we have also -- Your Honor did  
13 not mention that we had obtained back in November subpoenas  
14 for documents from the law firms of Sydney & Austin and  
15 Brown, Fenn & Nietert, just for documents, not for  
16 deposition, just for documents. Those subpoenas were not  
17 served because discovery was suspended before we actually  
18 got them out the door, so they are sitting in our files  
19 right now.

20           I suspect we may want to have you reissue them  
21 just to get them fresh with current dates on them, but,  
22 again, our game plan for discovery is to get as many  
23 documents assembled as possible and then commence the  
24 depositions upon review of the documents.

25           THE COURT: Well, okay. You can do -- I'll leave

1 it up to you. I certainly will be amenable to issuing fresh  
2 subpoenas for that purpose, but maybe you want to try to  
3 approach the law firms informally. You tell them you've got  
4 the subpoenas signed and start the negotiation process going  
5 that way.

6 MR. COLE: Sure.

7 THE COURT: And if they object on the basis of the  
8 freshness of the subpoena, I'll issue another one.

9 MR. COLE: I can do that this afternoon. I have  
10 not spoken with the firms because since discovery was  
11 suspended I didn't want to do anything which might be viewed  
12 as kind of informal discovery along the way.

13 THE COURT: No. That's fine -- that's why we're  
14 meeting today -- and serve copies on counsel.

15 MR. COLE: Yes.

16 THE COURT: Okay. How about from the Bureau's  
17 standpoint? At least in this phase of the discovery, do you  
18 have ready to go what you need based on what you gave to me,  
19 that is the document requests and the interrogatories?

20 MR. SHOOK: At this stage we plan to limit what  
21 we're doing to those two matters.

22 THE COURT: And then you would participate, of  
23 course, with the depositions.

24 MR. SHOOK: Depending on where the depositions  
25 were held.

1           THE COURT: Well, the ones that would be with the  
2 attorneys, if they show up, would be here in Washington.  
3 Mr. Parker's would be -- I think Mr. Parker should be made  
4 available in Washington.

5           MR. SHOOK: That's what we've done in the past.

6           THE COURT: Okay. Good. Then I don't have to get  
7 into that.

8           MR. SHOOK: Well, I'll have to check with him,  
9 but --

10          THE COURT: Well, tell him that that's what I want  
11 to see.

12          MR. SHOOK: Yeah.

13          THE COURT: So it makes all the sense because the  
14 lawyers are all here. If you have to look for documents  
15 some place, the chance are they are going to show up in your  
16 office, and from the Bureau's standpoint, the efficiency of  
17 the agency would certainly be served if he is here rather  
18 than doing it in Reading.

19                 All right. Is there anything more, then, to  
20 discuss about that?

21          MR. HUTTON: Just one thing, sir. Do you want to  
22 set a date for us to file any opposition to the  
23 document-production notices?

24          THE COURT: Well, I certainly should do that,  
25 unless you've had a chance is to look them over and talk to

1 counsel about them. Are there items that you are opposing?

2 MR. HUTTON: To be honest with you, I haven't  
3 looked at them since --

4 THE COURT: Fair enough.

5 MR. HUTTON: -- they were filed, so I don't know.

6 THE COURT: You get an "A" for honesty. Okay.  
7 Well, let's do that, then. And I don't think you're going  
8 to need too much time. Let's see, today being the 19th,  
9 I'll give you five -- how about until the 25th to serve any  
10 oppositions, on the 25th, which is a Tuesday, Jan 25th?

11 MR. HUTTON: Okay.

12 THE COURT: And that would be both with respect to  
13 what you have from the Bureau and from Adams. That would go  
14 as to documents and as to interrogatories. I just want to  
15 make a note here is. I'm going to ask you to really take a  
16 look at those requests in a broad and cooperative way  
17 because, you know, unless there is a clear overreaching -- I  
18 mean, we're going to get into privilege.

19 I know that, but aside from that, putting that  
20 aside, I mean things like relevance and scope of discovery  
21 and all, I'm going to be pretty liberal on it, so try and  
22 work it out. But if you have to come back with an  
23 opposition, of course, you are entitled to do that. Okay.

24 MR. HUTTON: And the related issue is, what date  
25 is deemed the operative date for starting the period for a

1 response to interrogatories or a response to the documents  
2 production motion? In other words, even if we don't have  
3 any objections, when would we have to respond to the  
4 interrogatories, or when would we have to produce documents?

5 THE COURT: Well, how much time do you want?

6 MR. HUTTON: We've got a set of pleading cycles  
7 going on that are going to take some time.

8 MR. HUTTON: I guess I would propose February  
9 11th.

10 THE COURT: That would be for answering the  
11 interrogatories and providing the documents?

12 MR. HUTTON: Yes.

13 THE COURT: Does anybody have an objection to  
14 that? That's a pretty good chunk of time, but you've got a  
15 good point. There is a lot going here. Any objection to  
16 that?

17 MR. COLE: I have no objection to that date,  
18 although, just let me understand, Mr. Hutton is going to  
19 oppose --

20 THE COURT: If he is going to oppose.

21 MR. COLE: If he is going to oppose, the  
22 opposition would be due January 25.

23 THE COURT: Right.

24 MR. COLE: And would you then anticipate ruling on  
25 his oppositions prior to the production on February 11th?

1 My problem is, before I would start depositions I want to  
2 have --

3 THE COURT: I understand.

4 MR. COLE: -- all documents available, and so I  
5 anticipate that the date of whatever date we set for final  
6 production is going to be the start date, the trigger date  
7 for when the depositions get scheduled. And I want to make  
8 sure that whatever date that is is the date by which I will,  
9 in fact, have all of the documents that are going to be made  
10 available. And if February 11 is it, that's fine. I have  
11 no objection if he wants to take another couple of days just  
12 to make sure he's got it all, but February 11 is fine with  
13 me.

14 THE COURT: Well, what I would intend to do,  
15 assuming that there are oppositions, the oppositions, I  
16 would suspect, would be few and focused. I would act on  
17 them as promptly as I could, in 24, 48 hours, hopefully. So  
18 if you do come in with oppositions on the 25th please fax me  
19 a copy. And so I'm going to keep everything on the 11th.

20 Now, if it turns out that it gets a little more  
21 intense than I'm anticipating here, I may have to make some  
22 adjustment from the 11th for certain of the documents, but  
23 for whatever is not, certainly whatever is not opposed.  
24 Whatever I can rule on promptly, and by that I mean 24 or 48  
25 hours, is going to come in -- you're going to get them on

1 the 11th. All right? So I would schedule -- do you have  
2 any problem with that, Mr. Shook?

3 MR. SHOOK: The 11th is fine.

4 MR. COLE: One other scheduling constraint on  
5 documents, Your Honor. Assuming we do work with Brown, Fenn  
6 & Nietert and Sidley & Austin to get their documents, I  
7 would obviously like to have those, whatever documents may  
8 be generated through that effort at the same time as Mr.  
9 Hutton's, but those two entities are not before the Court,  
10 so it's a little bit constraining.

11 THE COURT: That's why -- but you've got --

12 MR. COLE: We have the subpoenas, and we're  
13 working to get those responded to as quickly as possible.

14 THE COURT: Do they have any inkling at all that  
15 Harry Cole is around with subpoenas?

16 MR. COLE: I don't believe -- obviously I've  
17 spoken with Ms. Friedman and Mr. Kravetz, but neither of  
18 them is currently affiliated with the firm. Now, it may be  
19 they've contacted, they've gone back and mentioned to the  
20 firm. I have not spoken to either Brown, Fenn & Nietert or  
21 to Sidley & Austin.

22 THE COURT: Okay. We'll see what happens. You  
23 have now authorization and a game plan to get that started  
24 this afternoon, and we'll see what happens. That's why I  
25 would like to get as much of this cleaned up as I can before

1 the 27th of February. There are going to be -- there is no  
2 question in my mind that there is going to be assertions of  
3 privilege as to some or all of what's being asked of the  
4 attorneys and the law firms, and I'm certainly not going to  
5 try and avoid the privilege. If the privilege applies, the  
6 privilege applies.

7 I'm just going to look very closely as to whether  
8 or not there has been a waiver or whether this is some  
9 development or something unique that would prompt the  
10 privilege not to be applied or at least to put the privilege  
11 in question, but I just am going to ask you to please keep  
12 that in mind. We'll see. These are all ad hoc questions.

13 All right. Well, what do you want to do about  
14 that? You're going to be -- you've got a subpoena, and you  
15 can send them the subpoena, and assuming you work something  
16 out informally with them, say, look, here is the subpoena,  
17 but the real dates that we're concerned about are February  
18 11th. What can you do for me in or around February 11th?

19 MR. COLE: Well, I can call Mr. Wadlow and, I  
20 guess, Ms. Nietert, and Brown, Fenn & Nietert and just try  
21 to establish contact with them this afternoon, let them know  
22 what's going on. I suspect that they will want to confer  
23 with Mr. Hutton and or Mr. Parker and --

24 THE COURT: Sure, sure.

25 MR. COLE: -- obviously I have no objection to

1 that, but I will tell them that what we would like to do  
2 would be to work out some arrangement by which whatever  
3 documents they are going to produce will be produced by  
4 February 11, and if they have any objections or if they are  
5 going to interpose or assert any privilege claims, et  
6 cetera, they should do so obviously prior to February 11,  
7 but I guess it would be nice if they raised those or advised  
8 Mr. Hutton and he included those in his January 25  
9 opposition, but I don't know --

10 MR. HUTTON: I don't know that that's possible.

11 THE COURT: I wouldn't ask that. You've got too  
12 many players in this one, with the attorneys. What we're  
13 going to have to do is use February 11 as the target date.  
14 You can tell them certainly that myself as the Judge has set  
15 February 11th as date that I'm looking to get the evidence  
16 exchanged to the extent that I can. If they are going to  
17 file something on February 11 that's going to raise  
18 privileges, there is nothing that really we can do about it.

19 MR. COLE: That's fine, Your Honor.

20 THE COURT: But I can't give them a shorter time  
21 frame than I'm giving Mr. Hutton.

22 MR. COLE: Sure.

23 THE COURT: It just wouldn't be fair to them. So  
24 February 11th is a Friday. If I see by the 14th, if I see  
25 what the status of all of this, hopefully I can do something

1 between the 14th -- no, I'm sorry, the 17th. Yeah, the 17th  
2 is my cutoff date. Well, I'll do the best I can. But that  
3 should give me enough time between the 14th and the 17th to  
4 at least address the first wave of problems.

5 MR. COLE: Sure.

6 THE COURT: I'm hoping that -- what I'm, of  
7 course, suggesting or asking is that Judge Steinberg not be  
8 deluged with problems that he hasn't been intimately  
9 involved with as I have. If you're taking depositions and  
10 you run into a snafu or if you need a subpoena, he is there.  
11 But I know you will use your judgment on that.

12 All right. I'll set those -- those are the dates,  
13 with some -- there's going to be -- and let's see what the  
14 law firms come in with on the 11th.

15 MR. COLE: Fine.

16 THE COURT: And if that's going to be a problem,  
17 if you anticipate problems at any point in time point in  
18 time when you're negotiating with them, then let us know and  
19 file something.

20 MR. COLE: At this point I have no reason to  
21 believe there will be any problems, but obviously I have not  
22 spoken with the firms directly.

23 THE COURT: All right. So the operative dates are  
24 January 25 and February 11th. Is there any other dates that  
25 we can -- any other discovery dates that can be focused on?

1           MR. COLE: I guess once the documents are produced  
2 then we shift to the deposition phase, but my own preference  
3 would be to tie -- not to set a specific date for  
4 depositions today because we don't know what the document  
5 situation is going to look like on February 11.

6           THE COURT: Well, assuming, best case scenario,  
7 assuming you get -- you're not going to get everything on  
8 the 11th, but you get most everything on the 11th, that you  
9 need to get started, what would you be thinking of in terms  
10 of the deposition schedule?

11           MR. COLE: Well, I'd be prepared to move forward  
12 as quickly as possible once we have a pretty solid universe  
13 of documents. I would like at least a week to 10 days to  
14 review them and get organized so I know what I'm going to be  
15 asking questions about, so I would expect, assuming that all  
16 documents were to arrive on the 11th, we could probably be  
17 ready to start taking depositions on what, the 21st, the  
18 week of the 21st?

19           THE COURT: That's a holiday.

20           MR. COLE: That's a holiday, the 22nd. Somewhere  
21 along in that neck of the woods. But, again, that assumes  
22 that all document problems are resolved, and I do want is to  
23 reserve that caveat.

24           THE COURT: Okay. Would you have any problem with  
25 that, Mr. Shook or Mr. Hutton?

1 MR. SHOOK: Reiterating what Mr. Cole said, I  
2 wouldn't want to go forward with participating in a  
3 deposition unless I was reasonably comfortable that we had  
4 most, if not all, of the documents that we were supposed to  
5 get.

6 THE COURT: Well, you know what we're going to  
7 have to do? What we're going to have to do is I'm going to  
8 set a prehearing conference for the 16th, February 16th, and  
9 let's see where we are. And if I'm in a position to  
10 schedule, or if you're in a position to give me some  
11 assurance that you can go forward, and in any event I can  
12 use that as an opportunity as a status call to go over  
13 everything with you before I leave town, that makes sense to  
14 me. Is 10 a.m. convenient?

15 MR. SHOOK: Yes.

16 MR. HUTTON: Yes.

17 THE COURT: Is that okay?

18 MR. COLE: Yeah.

19 THE COURT: 10 a.m. on the 16th conference. But  
20 if, as I say, the documents come in and, you know, certainly  
21 before the 16th, if you want to start working up a schedule  
22 and start noticing people for depositions before the 16th,  
23 that's fine with me. I just want to know on the 16th  
24 basically what's -- I'll have a good idea, but I just want  
25 to be brought totally up to date to see if there is anything

1 that I can clean up between the 16th and the 17th if I can  
2 be of help.

3 Okay. I think that this is a lot between now and  
4 then, and keeping in mind everything that Mr. Hutton has  
5 mentioned about the pleading cycles hanging around out  
6 there.

7 MR. COLE: And, Your Honor, if I could also  
8 interject, on that score, Mr. Hutton and I have chatted this  
9 morning about scheduling the Adams public witnesses for  
10 depositions. My office has been in touch with all five of  
11 them, and we're waiting to hear back from them on their  
12 availability next week and the following week, and Mr.  
13 Hutton has, I think quite properly, suggested that whatever  
14 we do, we don't schedule the depositions for a day of  
15 pleadings due. We're working within those limitations, and  
16 I hope to be back to him this afternoon or tomorrow with  
17 more information on what the witnesses' availability is.

18 THE COURT: Well, there's no sense in trying to --  
19 I really think that depositions on the added issue are way  
20 premature, then, in light of all that. This is so much to  
21 do. There is so much to do, and, again, you've said it  
22 clearly yourself. It just doesn't make sense to launch off  
23 on those depositions until you've got all the documents that  
24 you need to get it done without going back a second time.

25 All right. I feel pretty good about the status in

1 that context. Does anybody have anything more to say, then,  
2 about that issue, about Reading issue, discovery on Reading?  
3 No? Okay. Those are the three dates, the 25th of January,  
4 February 11th, and February 16th, and I'll get that in an  
5 order.

6 Now, I have one question on rebuttal, an  
7 anticipatory question. This Daniel Bendetti, of course,  
8 I've got his name on my notes, and I've got a request for a  
9 subpoena for him. He is a former employee of Reading. Is  
10 that correct?

11 MR. COLE: Yes, Your Honor.

12 THE COURT: Are you still -- is he still alive as  
13 a possibility?

14 MR. COLE: Yes, Your Honor.

15 THE COURT: Okay. That's all I wanted to know.  
16 And I think I should pass on a little bit to the added  
17 abuse-of-process issue or the to-be-added, and the one thing  
18 that just comes to my attention or comes based on the  
19 experience in the Phase I are these tapes. And I, again,  
20 want to remind Mr. Hutton about that rule, Section 1.357,  
21 and I'm just going to give you some observations for what  
22 they are worth.

23 I would expect that Mr. Hutton would want to get  
24 access to those tapes, the videotapes that Adams relied upon  
25 that were prepared by the students, and compare those tapes

1 against what they purport to represent as far as what  
2 Reading actually put on -- actually broadcast for that  
3 period of time. That to me would make just common sense.  
4 In other words, you would be looking to test the  
5 reliability, just the sheer reliability, of those tapes.

6 Now, to do that, it's going to require -- if we're  
7 talking about two weeks, it's going to require some time,  
8 and it's going to require a little bit of ingenuity. It's  
9 going to require --

10 MR. HUTTON: -- an army of transcribers.

11 THE COURT: Well, no, not necessarily. That's  
12 what I want to get to. It shouldn't. That's why I'm saying  
13 that you and Mr. Cole and Mr. Shook may want to talk about  
14 this, but it seems -- I was thinking about this the last  
15 couple of days. If you got a third party, somebody -- I  
16 doubt it would be a volunteer, but somebody who would -- you  
17 would have to pay to do this -- would have to be joint paid  
18 -- to have them review the tapes as an independent agent,  
19 and at the same time as he or she is reviewing them to  
20 obviously make a copy, at a minimum, a copy for Mr. Hutton  
21 and probably -- I don't know if Mr. Shook would want one at  
22 that stage, but at least a reliable copy that Hutton can use  
23 in his trial preparation.

24 I want to be sure from the record that there is no  
25 question but that whatever it is that you're arguing about

1 tapes, that it can be represented as being a true and  
2 accurate copy, both tapewise and transcriptwise, as to what  
3 Adams has in its files. In other words, that there's no  
4 slippage and that this is not going to be some argument or  
5 some question as to whether or not this is the true version  
6 or whether there was some modification or there was  
7 something done to the tapes.

8 I'm trying to anticipate that now because if it  
9 gets into that kind of a question, it can become just  
10 unbearable as far as the burden on the case is concerned.  
11 So it is an anticipatory strike on my part.

12 MR. HUTTON: Are you anticipating that the third  
13 party would transcribe the tapes or review the tapes and be  
14 prepared to testify about the tapes?

15 THE COURT: Well, all or any of the above. At a  
16 minimum, at a minimum, this third party could be an  
17 independent or a disinterested custodian for whatever period  
18 of time it takes to copy those tapes. Alternatively, you  
19 could send somebody, of course, over to Mr. Cole's firm, and  
20 together the tapes could be -- if you have the system over  
21 there, you could make a copy right then and there, as long  
22 as you were sure you were satisfied that you were going to  
23 be able to send that person into court and testify,  
24 preferably, of course, by stipulation, but in a worst case  
25 scenario, that you would be able to bring that person into

1 court, and that person could authenticate the copy.

2 So all I'm trying to do is think ahead, and the  
3 more you think ahead about the mechanics of doing this, the  
4 simpler it's going to be. I don't expect to introduce into  
5 evidence videotapes. I really don't. If there's some  
6 glitch at points in the taping that you want to make a  
7 point, then that should be reduced to written transcription.  
8 I shouldn't have to view a tape. Now, I'm giving you my  
9 druthers.

10 I'm giving you advance notice on this. What  
11 actually happens the day of the hearing, you know, we'll  
12 see, but you know my feelings about this. There is a  
13 specific rule covering it, so I'm well within my rights to  
14 insist on the transcripts. There is no way that you can  
15 write what's on a videotape, what you are seeing on a  
16 videotape.

17 MR. COLE: Your Honor, if I could just --

18 THE COURT: Go ahead.

19 MR. COLE: -- interject at this point.

20 THE COURT: Yeah.

21 MR. COLE: First, our firm has no capacity to do  
22 duplication. If Mr. Hutton wants copies, what I would  
23 suggest is that I'd be happy to coordinate with him. The  
24 tapes right now are in two cardboard boxes, and there is  
25 four times 14. I believe there's four per day times 14. I

1 think it's 14. It may be 16 or 17 days. I'm not sure, but  
2 there's two big boxes.

3 He and I can select some commercial video copy --  
4 videotape-duplication service and take them over there and  
5 just plunk them down and say make copies. I'm sure that I  
6 don't want to have sit there and run real-time --

7 THE COURT: I'm sure you don't.

8 MR. COLE: -- duplications on a VCR, and my guess  
9 is Mr. Hutton doesn't either, and I suspect there are  
10 high-speed duplication places that can get it done more  
11 efficiently. So if he wants copies, I'm happy to cooperate  
12 with him on that level, and he can see the originals if he  
13 wants. He can see what they look like, just in terms of  
14 they are pretty unexciting videocassettes.

15 THE COURT: Well, I'm sure that they are, but on  
16 the other hand, it's got to be -- Mr. Hutton has to know  
17 exactly what he is getting, and I have to know that the  
18 representations coming from Mr. Hutton particularly and Mr.  
19 Shook, but particularly from Mr. Hutton because he is the  
20 one that's going to be focused on it, that he has got a  
21 basis for saying what he is representing.

22 And as I say, it gets to become very tricky if  
23 there is not a good chain of custody or, and this can be  
24 stipulated to. I mean, I could be just blowing air up here.  
25 You all stipulate a way to do this. That's going to be fun.

1           So there you go. But I want to process to  
2 continue to be worked on, even if there is a request for an  
3 interlocutory appeal on the ruling, which I'll have to look  
4 at, but I'm giving this very careful consideration.  
5 Unfortunately, Mr. Shook wasn't in court that day, but I  
6 think you will see very clearly what I'm getting at.

7           All right. I don't see what else I can do as far  
8 as planning ahead. Obviously, we're going to meet again on  
9 the 16th of February, and we would also take up a discovery  
10 schedule. By that time, if there's any additional pleadings  
11 with respect to what I write today or what I issue today,  
12 hopefully I'll have time to address that, and we could use  
13 the 16th as an opportunity to also plan more specifically to  
14 work out discovery on that issue unless you all want to move  
15 that date up. I could move next week on it, but I just  
16 think for the next three or four weeks there's a heck of a  
17 lot of work to do and you will just have to take one thing  
18 at a time.

19           The witnesses, the students, would certainly -- I  
20 would expect the students to be deposed, and I would expect  
21 all of the partners to be deposed. So the scope of the  
22 discovery -- although the questioning should not have to  
23 last that long, the scope -- the numbers of the discovery  
24 should be, the numbers of witnesses to be discovered would  
25 be pretty considerable. So, again, Mr. Shook, I don't know

1 to what lengths the Bureau's budget can accommodate all  
2 that, but we'll just have to see.

3 MR. COLE: Your Honor, when you refer to partners,  
4 may I correctly assume that you are referring to the Adams  
5 principals?

6 THE COURT: Yes, yes. I'm sorry, yeah. The Adams  
7 partnership, yeah, of which there are six of seven. Is that  
8 correct?

9 MR. COLE: Well, it's a corporation.

10 THE COURT: Oh, it is a corporation. Well, I  
11 refer to them as "partners." I'm not going to go back and  
12 change my MO&Os on that basis, but I'm referring to them as  
13 partners. Certainly it's a syndicate. It's a venture.  
14 They are doing it in corporate form. But those are the  
15 people. Am I right in the number? Are we talking about six  
16 or eight, something like that?

17 MR. COLE: That's probably correct. I'm not sure.  
18 I haven't counted them recently, but it's approximately that  
19 number. It's not a whole lot more than that.

20 THE COURT: So, I mean, there's going to be a fair  
21 amount of work to do on that issue, too. Now that takes us  
22 again up to the hearing date. I'm not going to try and pin  
23 anybody down right now, but it seems to me that it would not  
24 be realistic to talk before April. Does anybody have a  
25 thought about that?

1 MR. COLE: Do you anticipate trying both of the  
2 added issues simultaneously?

3 THE COURT: Unless something comes up as to --  
4 somebody convinces me or something comes up as to why we  
5 shouldn't, I think we should go back to back on them. I  
6 wouldn't think that it would take more than a week on each.  
7 The real hard work is now. Well, it's hard to try, too, but  
8 I mean, the minority is things are going to be organized,  
9 and people are going to be here. We know now about internal  
10 numbering of documents. This should be a breeze for a  
11 logistical standpoint.

12 MR. HUTTON: My rustiness hopefully has gone away.

13 THE COURT: Well, I'll remind you if that's a  
14 problem, but I don't think I can say any more on that. What  
15 would your reaction be? Would you think April would be  
16 reasonable to be thinking about it?

17 MR. HUTTON: I think -- well, let me put it this  
18 way. That's in the ballpark of what I had been thinking  
19 coming in here today, and I had been expecting you to add  
20 the issue, so that's about what I was thinking anyway.

21 THE COURT: Mr. Cole?

22 MR. COLE: The approximate timeline is, again,  
23 within the ballpark.

24 THE COURT: Mr. Shook?

25 MR. SHOOK: April is fine. I have one added

1 thought, though, with respect to the issue. I take it that  
2 at least some of what went into your thinking occurred as a  
3 consequence of testimony that Mr. Gilbert gave --

4 THE COURT: That's correct.

5 MR. SHOOK: -- in my absence.

6 THE COURT: That's correct. It's going to be  
7 perfectly clear on what I've written, yes.

8 MR. SHOOK: Assuming for the moment that a  
9 pleading is filed by Mr. Cole requesting permission to  
10 appeal the addition of the issue, the Bureau's preference  
11 right now would be to not say anything further what we had  
12 already said in part because in order to comment  
13 intelligently on whatever it is that Mr. Cole might say, it  
14 would necessitate at least our review of the transcripts,  
15 which may or may not be available to us for quite some time.

16 THE COURT: They should be. No?

17 MR. SHOOK: Well, there should be, and then there  
18 is what actually reaches our offices.

19 THE COURT: Well, maybe I could shortcut that a  
20 little bit. Would Reading be willing to get expedited copy  
21 on Mr. Gilbert's testimony if that becomes necessary? Talk  
22 to your client about it.

23 MR. HUTTON: I'll have to talk to the client.  
24 It's pretty expensive to expedite.

25 THE COURT: Well, it would only be that one

1 section. It would only be that one day or that one portion.

2 MR. SHOOK: That also assumes that Your Honor  
3 would actually, you know, want further input from us should  
4 such a pleading actually be filed by Mr. Cole.

5 THE COURT: It's an important issue. I would want  
6 input from the Bureau, you know, one, if you want to give me  
7 input, and secondly, if you're in a position to give me  
8 input, but I'm not going to hold anything up for that. I  
9 don't think it's -- you're just going to have to read what I  
10 wrote and make your own decisions. I'm just trying to keep,  
11 in a sense, today the only thing I'm trying to do is just  
12 kind of keep the train moving. That's all. Let's see.  
13 We'll take it one step at a time.

14 MR. SHOOK: Now, along those lines, and I didn't  
15 really necessarily think of this as a preliminary matter,  
16 and I wasn't sure -- I may be jumping the gun here,  
17 anticipating, you know, where you may be going next, but  
18 relative to the unauthorized-transfer-of-control issue, one  
19 of your recent orders had left it up to us on an informal  
20 basis to contact you and let you know whether or not we had  
21 anything further to say on the subject.

22 THE COURT: I'm glad you brought that up.

23 MR. SHOOK: We have reviewed our prior pleadings.  
24 We have also had an opportunity to, you know, review and  
25 think about the documentary evidence that has come in and

1 also the testimonial evidence that came in as a consequence  
2 of questioning by all parties at the time. It's our  
3 position that we believe there is enough information on the  
4 record now to make reasonable findings relative whether or  
5 not there was an unauthorized transfer of control.

6 With respect to whether or not there might have  
7 been an accompanying misrepresentation, it is our view on  
8 the basis of what we know the record to be that there has  
9 not been sufficient evidence produced to warrant addition of  
10 such an issue.

11 THE COURT: Well, I thank you for bringing that  
12 up. I didn't have it on my checklist. All right. I want  
13 to hear what Mr. Hutton's and Mr. Cole's view are with  
14 respect to what you have said. Why don't we hear from Mr.  
15 Cole first and then Mr. Hutton?

16 MR. COLE: I was not prepared -- I was not  
17 expecting Mr. Shook to go into this detail at this point.  
18 The only concern I would have is that during one of the days  
19 -- I believe it was Wednesday morning -- when Mr. Shook was  
20 not here because of his health, Mr. Parker provided some  
21 additional testimony from counsel table, which I believe  
22 constituted testimony, concerning the circumstances, certain  
23 circumstances relating to his understandings about the  
24 extent to which he controlled STV Reading stock, which, I  
25 believe, without going into great detail, relates back to

1 the unauthorized-transfer-of-control question.

2 I would simply ask the Bureau to consider that  
3 testimony and maybe withhold any final determinations as to  
4 whether or not a misrepresentation issue is warranted until  
5 it considers what Mr. Parker said in the greater scheme of  
6 the events of the fall of 1991.

7 THE COURT: Well, I think what I might just have  
8 to do is just let that hang a little bit longer. I know Mr.  
9 -- well, let me hear from Mr. Hutton. Let me hear from Mr.  
10 Hutton.

11 MR. HUTTON: I'll be blunt. I think we're  
12 flogging a dead horse here. I think there's been extensive  
13 testimony on the issue, and I don't see any need for any  
14 further efforts to uncover evidence. Everything is in the  
15 record. Adams had an extensive chance to cross-examine  
16 Parker. I don't see the need for any continued proceedings.

17  
18 THE COURT: All right. Let me tell you what I'm  
19 hearing now. Mr. Shook has suggested that the scope of  
20 examination be open for that purpose, and to me I thought it  
21 was just a brilliant suggestion because under the  
22 comparative-renewal standard, compliance with Commission  
23 rules and regulations is one of the issues, one of the  
24 subissues.

25 So the question is left as to whether or not there

1 might have been a transfer of control that would have  
2 violated the Commission rules as opposed to adding an issue  
3 that there was a willful violation of control that would  
4 have all of the consequences of an added issue. I take it,  
5 misrepresentation would have to be tied in with that to  
6 really get to the guts of such an issue, which would be, in  
7 effect -- which would not, in effect -- it would actually be  
8 a disqualifying issue.

9 Now, so having said all of that, from what I'm  
10 hearing -- I'm not sure if I'm hearing it right from Mr.  
11 Shook, at least whether I'm absorbing it the right way. Are  
12 you saying is that there is a transfer-of-control issue now  
13 to be resolved on this record but only insofar as it would  
14 impact the comparative-renewal standard?

15 MR. SHOOK: That is our position.

16 THE COURT: Not a disqualifying issue?

17 MR. SHOOK: Correct.

18 THE COURT: So I think, except for Mr. Cole, I  
19 think you all are saying the same thing. So there is no  
20 need -- I don't see any need to ask Mr. Shook to comment on  
21 this in writing unless you want to. You can, but --

22 MR. SHOOK: No. That was the point of making my  
23 statement today, was to get out on the record our views.

24 THE COURT: It sounds clear to me, and you're  
25 going to come in with something by Friday on this. Right?

1 MR. HUTTON: Yes.

2 THE COURT: I required that. And again, I want it  
3 less than 10 pages, and I want it -- you can do it in  
4 points. I just want to be sure that there is nothing  
5 hanging out there that I'm missing.

6 MR. HUTTON: I appreciate having that chance.

7 THE COURT: I'm hoping that it would help you.  
8 I'm very glad you brought that up, Mr. Shook.

9 That's all that I have, then, for today. Go  
10 ahead, Mr. Hutton.

11 MR. HUTTON: I do have one additional matter, and  
12 this relates to the abuse-of-process issue. In one of our  
13 pleadings relating to that issue we had indicated that we  
14 thought it would be appropriate to designate the additional  
15 or the individual principals of Adams as parties to the case  
16 for purposes of that issue for this reason. I would expect  
17 that that issue would encompass a potential forfeiture by  
18 Adams.

19 However, Adams is essentially a shell corporation  
20 with no assets of its own. It's funded through  
21 contributions made from time to time by the individual  
22 stockholders of Adams. And so we had suggested that it  
23 would be appropriate to make the individual principals of  
24 Adams parties to the case for purposes of that issue. And  
25 there are a couple of reasons. One is it would enhance the

1 government's chance of collecting any forfeiture should a  
2 forfeiture be imposed, and secondly, if this issue should  
3 ever move into civil litigation, it would make it a matter  
4 of res judicata and would not have to be filed against the  
5 individual principals of Adams.

6 And so for purposes of efficiency in litigation,  
7 as well as for the government's interest in maximizing its  
8 possibility of collecting any possible forfeiture, I would  
9 ask that the issue make it clear that the individual  
10 stockholders of Adams are being made parties to the case for  
11 purposes of that issue.

12 THE COURT: The individual stockholders of Adams?

13 MR. HUTTON: Right. Mr. Gilbert, Mr. Fickinger,  
14 et cetera.

15 THE COURT: Well, they are parties, they are  
16 principals of the corporation, so they are all in this  
17 together. What would have to be done beyond what's already  
18 been done, make them individual parties to the case?

19 MR. HUTTON: Right.

20 THE COURT: You're getting into civil damages,  
21 then. You know, if the Enforcement Bureau wants to take a  
22 position on that, it sounds like it's right down the alley  
23 of an enforcement issue, but from the way this case has been  
24 given to me to hear, I'm not going to do anything more than  
25 I've done. If you want to file a motion at some point for

1 forfeiture, but usually it's the Bureau or it's the  
2 Commission that is interested in forfeitures. If there is a  
3 forfeiture in this case, it isn't going to go to Reading. I  
4 can tell you that.

5 MR. HUTTON: I understand that, but I just raised  
6 it so we can get the Enforcement Bureau's comments and  
7 thoughts on it. I think it's an appropriate thing to do.

8 THE COURT: Well, do you want to address it now,  
9 or do you want to think about it, Mr. Shook?

10 MR. SHOOK: Oh, I'm usually more than happy to  
11 jump right in. The way this case has developed, we now have  
12 disqualifying issues really with respect to both applicants.  
13 My recollection is, and anybody here can correct me if I'm  
14 misremembering, the issue that was added with respect to  
15 Reading did not include a forfeiture possibility. This was  
16 either Reading survives the issue and lives to have its  
17 application judged comparatively, or it goes down, and the  
18 application is kaput.

19 It seems to me that we might have a significant  
20 problem if we were going to treat Adams differently from the  
21 standpoint of adding a forfeiture possibility, either with  
22 respect to the corporation itself or with respect to the  
23 individual principals. And we didn't have such a mechanism  
24 set up to deal with Reading and/or any of the offending  
25 persons who might have been involved with respect to the

1 issue that's added.

2 With that in mind, my preference would be to  
3 simply have the disqualifying issue added, and Adams either  
4 survives, or it does not.

5 THE COURT: Well, I mean, you can answer that, Mr.  
6 Cole, but that's what I'm inclined -- certainly I'm not  
7 going to put anything in on a forfeiture. At this stage of  
8 the case, for all of the reasons certainly that Mr. Shook  
9 had said, but in addition, I don't think that -- right now,  
10 I don't have hard evidence that everything that's in these  
11 memos MO&Os that are setting the issues down, that  
12 everything in there actually happened and actually can be  
13 proven.

14 If after the record, if after the hearing record  
15 is totally completed, and I'm not inviting it, but if  
16 somebody wanted to move it, I think -- if the Bureau was  
17 going to be opposed to it, I would be very, very, very, very  
18 reluctant to get into forfeiture because the case was not  
19 given to me by the Commission -- it was designated with  
20 forfeiture as being on anybody's mind. And I have seen  
21 hearing designations where forfeiture is clearly  
22 contemplated if the facts warrant it, and that is not the  
23 case. This doesn't strike me as being that type of a case.

24 MR. SHOOK: Certainly, it would seem to me, you  
25 know, forfeiture is a possibility from your end, and it's

1 something that we would advocate in the event, say, a  
2 principal lied in your presence. If there is a  
3 misrepresentation that occurs right in front of you, I see  
4 forfeiture as a possibility there.

5 Here, you know, for example, one of the things  
6 that I don't believe was raised in the motions to enlarge  
7 that had been filed by Adams seeking the motion against  
8 Reading or, for that matter, by Reading seeking the motion  
9 against Adams, any thought or discussion as to whether a  
10 forfeiture was appropriate or a real possibility given when  
11 some of these events occurred, the status of the entities at  
12 the time the misbehavior occurred, whether the misbehavior  
13 is continuing in nature, whether it was ever corrected.

14 There are some, I believe, rather significant  
15 questions that would have to be addressed before we would be  
16 in an intelligent position to determine whether or not a  
17 forfeiture was a real possibility. So that's, for me, an  
18 additional reason not to try to have a forfeiture imposed at  
19 this stage.

20 THE COURT: I agree with everything you said. I'm  
21 just not going to get into it. I mean, also it also, you  
22 know, puts -- anything like that puts my appearance of  
23 nonbias, you know, it's asking for trouble. If they wanted  
24 it in the designation order, they would have put it in the  
25 designation order.

1           MR. HUTTON: Okay. I understand your points. I  
2 just want to come back and state why I think it's a fair  
3 thing to ask for. Number one, Reading stands to lose  
4 everything if it loses its license, whereas Adams, if its  
5 application is dismissed or denied, there is no significant  
6 loss or damage to them. They just have lost whatever they  
7 have invested in prosecuting their application.

8           Secondly, if their application does constitute an  
9 abuse of process, then I think it would be entirely  
10 appropriate to impose some sanction on them because the mere  
11 dismissal or denial of their application is pretty  
12 meaningless, particularly now that we've moved into the era  
13 of auctions. Anyone who applies for a frequency in the  
14 future will have to pay fair market value for that  
15 frequency, and so it's not as if Adams is being foreclosed  
16 from any future possibilities of getting a license for  
17 little or nothing. I understand your points, but I just  
18 think a matter of fairness, it's an appropriate step to  
19 take.

20           MR. COLE: Your Honor, if I could be heard on that  
21 last point.

22           THE COURT: Yeah, go ahead. Go ahead.

23           MR. COLE: I have nothing to add to what Mr. Shook  
24 said, but I am constrained to point out that if an  
25 applicant, if a party of an applicant is disqualified, my

1 understanding of Commission policy and precedent for as long  
2 as I can remember is that a disqualification is, in fact, a  
3 very serious stain on that applicant's record which would  
4 theoretically preclude it or make it significantly more  
5 difficult to obtain any further licenses in the future, and  
6 that alone is a significant deterrent, or should be.

7           Obviously, we have in Mr. Parker's case, he has  
8 had significant problems in the past, and maybe he doesn't  
9 view his significant problems as having hindered him to  
10 getting future licenses, but our understanding is that once  
11 disqualified, an applicant faces a very, very substantial  
12 burden to get back into an FCC licensee position, and that  
13 alone is a major deterrent, in our view.

14           THE COURT: It's a big blow, and I take it with  
15 extreme seriousness, and getting into the forfeiture melee  
16 is just going down a road that I don't think I have -- I  
17 have technically authority to do it, but I don't think that  
18 this case was set down for a hearing with that in mind,  
19 subject to what Mr. Shook says, of course. If there is  
20 something that's really outrageous going on in the course of  
21 the hearing, all bets are off.

22           I guess my only footnote to what Mr. Cole said,  
23 and this is not too realistic, but it's the only option --  
24 in the worst case scenario the only option the applicant  
25 would have would be to wait 10 years. Right?

1           MR. COLE: That's assuming that I buy into your  
2 understanding of that policy, which I still do not, and with  
3 all due respect, Your Honor, I suspect I suspect that  
4 somewhere along the line I will have the opportunity to  
5 present that to a higher authority, but certainly if I were  
6 to join in your view, that would be correct.

7           THE COURT: If you joined in my view, that would  
8 be correct. All right. Well said. It's almost 11:00, and  
9 I think that we've -- is there anything else that anybody  
10 else has? Is there any other point?

11           MR. COLE: No, sir.

12           THE COURT: That's it. We're in recess until  
13 February 16th, unless there is reason to get together before  
14 then. Thank you.

15           MR. HUTTON: Thank you, Your Honor.

16           THE COURT: Thank you.

17           (Whereupon, at 11 a.m., the hearing was  
18 adjourned.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 99-153  
CASE TITLE: Reading Broadcasting & Adams Communications  
HEARING DATE: January 19, 2000  
LOCATION: Washington, Dc

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 1-19-00

Theodore Fambro  
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Official Reporter  
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Washington, D.C. 20005

**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 1-19-00

Theodore Fambro  
Theodore Fambro  
Official Transcriber  
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**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 1-28-00

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