

FCC MAIL SECTION

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

FCC 00M-28

00073

In re Applications of)
)
READING BROADCASTING, INC.) 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)

ORDER

Issued: April 3, 2000 Released: April 5, 2000

Based on discussion at a Prehearing Conference held on March 31, 2000, the following procedural and hearing dates for Rebuttal, Phase II and Phase III are set:¹

Procedural Dates

- April 7 (Noon) – Deadline for Reading to file motion for leave to call expert witness. (Any such motion should allow for discovery under FRCP 26).
- April 14 (Noon) – Opposition to Motion.
- April 14 – Adams response to Joint Bureau/Reading Interrogatories.²

¹ By letter dated and transmitted March 30, 2000, counsel advised that they were prepared to go to trial on all issues on June 13, 2000. Procedural dates were set by the undersigned at the conference without objection.

² The Enforcement Bureau and Reading were authorized to serve Adams with joint Interrogatories on the abuse of process issue to be tried in Phase III. Those interrogatories should be served by Monday, April 3.

- May 5 – Discovery closes (all documents produced and all depositions taken).³
- May 16 – Exchange cases (premarked exhibits⁴, sworn written testimony (optional), requests for official notice, stipulations).
- May 18 – Trial Briefs exchanged.⁵
- May 22 – Subpoenas submitted for signature if needed.

Hearing Dates

- June 12 – Admissions Session for Public Witness transcripts, Phase I Rebuttal,⁶ and Phase II cases, commencing at 9:30 a.m.
- June 13 – Hearing of Rebuttal, Phase II⁷ (one day hiatus) and Phase III,⁸ commencing at 10:00 a.m.

³ Some allowance will be made to clean up deposition discovery which cannot be completed for good reason. Counsel should agree to reasonable but brief postponements to accommodate witnesses on dates that will not impede the hearing.

⁴ The requirements for assembling exhibits are set forth in Order FCC 99M-42 at fn.7. To the extent it is feasible, exhibits should be submitted in three ring binders. Counsel are reminded of the need for internal pagination of exhibits. For reference, the next exhibit number for Reading should be Exh. 25 and the next exhibit number for Adams should be Exh. 44. Thus far the Bureau has not marked or introduced exhibits.

⁵ Prescribed contents of Trial Briefs are set forth in Order FCC 99M-42 at fn. 8. The Bureau is not required to file a Trial Brief. But any Comment on Trial Briefs which the Bureau deems appropriate must be filed by May 23.

⁶ Memorandum Opinion and Order, FCC 00M-13, released February 8, 2000. On March 24, 2000, Adams filed an Outline of Facts and Testimony to be the Subject of rebuttal Evidence Presented by Adams Communications Corporation.

⁷ Phase II: Memorandum Opinion and Order FCC 99M-61, released October 15, 1999, appeal denied, Memorandum Opinion and Order, FCC 99M-73, released November 9, 1999.

⁸ Phase III: Memorandum Opinion and Order, FCC 00M-07, released January 20, 2000, appeal denied, Memorandum Opinion and Order, FCC 00M-19, released March 6, 2000.

Time Out

There will be a one-day break after the conclusion of Phase II, unless it ends on a Friday.⁹

Burdens of Proof

The burdens of proceeding with the evidence and the burdens of proof have been assigned to the parties who sought the issues See Communications Act of 1934, as amended, 47 U.S.C. Section 309(e) (the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant but for added issues the burdens shall be assigned by the Commission). Once a prima facie case is made out, the burden shifts to the party against whom the issue was added. Compare NLRB v. Transportation Management Corp., 103 S.Ct. 2469 (1983) (burden shifting permissible under APA). See also Department of labor v. Greenwich Collieries, 114 S.Ct. 2251, 2257-2258 (1994) (approving procedure when party with burden of proof [persuasion] establishes a prima facie case supported by credible evidence, that proof must be rebutted or accepted as true.¹⁰

FEDERAL COMMUNICATIONS COMMISSION¹¹



Richard L. Sippel
Administrative Law Judge

⁹ The beginning of Phase III shall commence with an Admissions Session.

¹⁰ Because of the deep scope of the presentation and consideration of facts in connection with adding the issues, there is no need seen for a specific ruling on the establishment of prima facie cases or the shifting of burdens during the course of the hearing. The allocations of proof will be evident from the Trial Briefs and no one should be surprised.

¹¹ Copies of this Order were e-mailed to counsel on the date of issuance.