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

In re Applications of	)	MM Docket No. 99-15[illegible]
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of Station WTVE(TV), Channel 51 Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS CORPORATION	)	File No. BPCT-940630KG
	)	
For Construction Permit for a New Television Station to Operate on Channel 51, Reading, Pennsylvania	)	

To: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

OPPOSITION OF ADAMS COMMUNICATIONS CORPORATION
TO "MOTION TO STAY THE CLOSE OF DISCOVERY
AND TO AMEND THE SCHEDULING ORDER"

1. Adams Communications Corporation ("Adams") hereby opposes the "Motion to Stay the Close of Discovery and to Amend the Scheduling Order" ("Motion to Stay") submitted on May 1, 2000 by Reading Broadcasting, Inc. ("RBI"). In summary, no legitimate basis for the requested relief has been offered by RBI. To the contrary, the record -- including RBI's Motion to Stay -- unquestionably demonstrates that RBI has simply declined the ample opportunities already afforded it to conduct discovery in a diligent and timely manner. The Court and the other parties should not be forced to suffer significant disruption of their schedules in order to accommodate RBI's dilatory conduct here.

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Background

2. The Motion to Stay relates to RBI's discovery efforts concerning Phase III of this case. The Phase III issues were sought by RBI on November 2, 1999 and added by the Presiding Judge, at RBI's request, by Memorandum Opinion and Order, FCC 00M-07, released on January 20, 2000. Thus, RBI has been promoting the addition of these issues for some six months already, and RBI has been on notice for almost three and one-half months that those issues would likely be litigated. While Adams did seek leave to appeal the addition of the Phase III issues, such leave was denied by Memorandum Opinion and Order, FCC 00M-19, released on March 6, 2000. Thus, RBI has been on notice for approximately two months that the Phase III issues would definitely be litigated.

3. Since the Phase III issues were added at RBI's request, we can reasonably assume that RBI had some gameplan for discovery and trial of those issues. And even if RBI had not formulated such a gameplan when it first sought the Phase III issues on November 2, 1999, it certainly had ample time after the addition of those issues in January, 2000 in which to do so.

4. Initially, discovery and trial of the Phase III issues were to be conducted following the close of the Phase II hearing. That schedule, however, was disrupted in order to accommodate RBI's counsel, who advised the Court and the parties that the impending birth of his child would interfere with certain Phase II trial dates which were about to be established following substantial discussion among the Court and the parties. See

Tr. 1333-37.

5. As an accommodation to RBI, the Court and the parties agreed to defer the Phase II trial so that discovery under the Phase III issues could be completed and both the Phase II and Phase III issues tried at the same time. Tr. 1337-39. Under that schedule, discovery was to be completed by May 5, 2000. That schedule was reached at a hearing conference on March 31, 2000. See Order, FCC 00M-28, released April 5, 2000. So RBI had at least one full month to initiate and complete its Phase III discovery.

6. At the March 31, 2000 conference, the Enforcement Bureau ("Bureau") sought leave to proceed through interrogatories rather than depositions. Tr. 1386. Such leave was granted as an exceptional matter [1/], although the Presiding Judge cautioned that the Bureau's interrogatories should be "[n]othing too extensive". Tr. 1387.

7. At that point RBI advised the Court that RBI might also seek to utilize interrogatories. In response, the Presiding Judge cautioned RBI about potential difficulties in using interrogatories:

> ALJ: . . . in pinning down witnesses from interrogatories, unless you're asking about what place he was at at a certain time or what documents he referred to or what other people knew about it, is a pretty trick thing to do.

Tr. 1387. The following colloquy ensued between counsel for RBI and the Presiding Judge:

[1/] The Presiding Judge stated, "I'll make an exception for the Bureau." Tr. 1387.

RBI: Well, I mean, for instance, Mr. Gilbert couldn't recall any names or any details about any of the people who did the taping, and we want to depose them. We have to find out who they are.

ALJ: Well, that's legitimate. Those interrogatories should go out pronto. Those types of questions I put in a different category. They're interrogatories, no question about it, but if you're just looking for names, dates and places, you know, those should go out pretty quick.

If you're going to go down through his testimony and start asking questions with respect to what he testified to in terms of substance, you know, it might get a little bit more -- it can become more problematic.

RBI: Okay.

Tr. 1387-88. Shortly after that exchange, the Presiding Judge re-stated his warning:

ALJ: As I say, if you're going to get into narrative, judgmental type answers then those become much more problematic.

Tr. 1389.

8. Despite the Court's clearly-stated concerns about "narrative, judgmental" interrogatories, on April 3, 2000, RBI served on Adams interrogatories which strayed far from the pin-point "names, dates and places" category of questions, asking broad questions concerning various matters relating to Adams's application.

9. Adams responded to the interrogatories on April 19, 2000. [2/] At the same time Adams responded to the RBI/Bureau

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[2/] A modest three-business-day extension was consented to by RBI and the Bureau. That extension was necessitated by the fact that, as Adams had alerted the Court and the parties at the March 31 conference, Mr. Gilbert was out of the country until April 10, and was therefore unable to begin work on the response (continued...)

document production request.

10. Meanwhile, RBI apparently did absolutely nothing about initiating any other form of discovery. It did not file any notices of depositions; it did not seek to obtain any documents from non-parties (through subpoenas); it did nothing.

11. As noted, under the schedule established by the Presiding Judge at the March 31 conference, discovery under Phase III is scheduled to be completed on May 5, 2000. On May 1, 2000 -- more than a month after the discovery and hearing schedule was established, and less than a week before the close of discovery -- RBI filed its Motion to Stay in which it formally announced for the first time an intention to take a number of depositions and seek (presumably) documents from a number of non-party sources. Because those depositions and document requests cannot be completed prior to the May 5 close of discovery, RBI seeks a largely open-ended extension of its ability to initiate discovery.

Discussion

12. RBI offers no support for the relief it requests. Nor does it explain exactly why, less than a week before the close of discovery, RBI has not bothered to initiate the discovery which it now says it intends to undertake. Instead, in a total of five sentences (at 2-3 of the Motion to Stay), RBI offers vague, platitudinous statements which fail to explain RBI's situation or

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[2/] (...continued)
until that date. See Tr. 1389. Adams notes that its responses were filed only nine days after Mr. Gilbert's return to the office.

to justify the extraordinary relief requested.

13. According to RBI, in the "hope" of "conduct[ing] its discovery . . . in an orderly and systematic manner", RBI awaited Adams's answers to interrogatories and document requests "prior to undertaking depositions". Motion to Stay at 2. There is, of course, nothing wrong with that "hope" as an abstract matter. But, particularly when the overall discovery schedule is relatively tight, it is important for parties not to sit back and do nothing.

14. Here, for example, even if RBI preferred to have all documents available prior to actually taking the depositions, RBI could and should have submitted, simultaneously with its interrogatories, notices of its intention to take the depositions which it now says it would like to take. [3/] Significantly, of the ten proposed deponents listed in RBI's Motion to Stay, all but one of them had been identified for RBI long ago. The three Adams principals, Mr. Gilbert, Wayne Fickinger and Elinor Woron, were identified in Adams's application filed in 1994. The same is true for Garrison Cavell (Adams's consulting engineer) and

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[3/] This is the approach which Adams took in its discovery in Phase II. And, while RBI claims (without any detailed basis) to be concerned that RBI might end up having to take depositions without having completed document production, RBI expressed no similar concern when Adams was repeatedly forced to take depositions in precisely the same posture. As recently as March, 2000, despite the fact that Adams had served a document request on RBI months before, and even though responses to that request had been due in February, Adams was ordered to proceed with the deposition of former RBI counsel Eric Kravetz, even though document production had not theretofore been completed. Additional Kravetz-related documents were then produced by RBI <u>after</u> the deposition was concluded.

John Q. McKinnon (President of the American National Bank and Trust Company of Chicago ("ANBTC")). All of these proposed deponents have now been known to RBI for almost six years. Nothing prevented RBI from filing, simultaneously with its interrogatories, notices to take their depositions.

15. Essentially the same is true with respect to M. Anne Swanson, another "deponent" on RBI's list. Ms. Swanson is an attorney at Dow, Lohnes & Albertson who initiated the process of obtaining an appraisal of Station WTVE(TV) in approximately June, 1999. Adams understood that the cost of that appraisal was to be split three ways: one-third to be paid by Adams, one-third by Ms. Swanson's client (whom she did not identify, but who appeared, from the text of the appraisal, to be Telemundo), and one-third by RBI. If Adams's understanding in this regard was correct, then RBI knew about the appraisal and Ms. Swanson's role in arranging for the appraisal almost a year ago. And even if RBI were to claim ignorance as of June, 1999, it was put on notice of Ms. Swanson's involvement during Mr. Gilbert's appearance during the Phase I hearing in January, 2000. Tr. 1098. Nothing prevented RBI from filing, simultaneously with its interrogatories, a notice to take Ms. Swanson's deposition.

16. In its Motion to Stay, RBI also lists three "Corporate Designee - Records Custodian[s]" as potential deponents. While RBI says that it plans to take their depositions, Adams suspects that that is not really the case. Rather, the purpose of naming such "records custodians" would ordinarily be <u>not</u> to take their depositions, but instead to obtain documents from their corporate

files. Non-testimonial depositions, in which the non-party "deponent" is served with a subpoena duces tecum which specifies certain documents the production of which will satisfy the terms of subpoena, are conventional. So presumably these three "records custodians" are really not deponents, but are instead the anticipated targets of document production requests directed to non-parties.

17. But if that is the case, RBI had absolutely no excuse at all to delay the process of noticing those three "depositions" and thereby initiating the non-party document production effort. RBI did not need to receive Adams's answers to interrogatories, because RBI already knew that each of the companies in question was involved in Adams's application to some degree: as noted above, ANBTC was identified in the financial qualifications portion of Adams's application; Conestoga Telephone and Telegraph Co., another of these documents-only deponents, was also identified in Adams's application; and the third such deponent, Telemundo Network Group, Inc., was presumably known by RBI to have been involved in the June, 1999 appraisal at the time of that appraisal. RBI's failure thus far to initiate that non-party document production effort is completely unexcused and inexcusable.

18. The only one of RBI's ten listed deponents who RBI may legitimately say was not known to it prior to April 19, 2000 is Paul Sherwood, the individual responsible for the videotaping in the Reading area. But Adams did identify Mr. Sherwood in Adams's answers served on RBI on April 19, and Adams simultaneously

provided RBI documents concerning Mr. Sherwood. Thus, again, RBI could have noticed Mr. Sherwood's deposition once it learned his name. And yet, RBI has had that information for two weeks, and no notice to take Mr. Sherwood's deposition has been filed.

19. RBI's vague suggestion that it somehow needed more information before it could move forward at all with the deposition process is flatly wrong. RBI could, more than a month ago, have sought the subpoenas for the three non-party document requests. RBI could, more than a month ago, have noticed the Adams principals, Mr. Cavell, Mr. McKinnon and Ms. Swanson. RBI could, two weeks ago, have noticed Mr. Sherwood. RBI did none of the above.

20. According to RBI, RBI has been "prejudiced in its ability to timely ascertain the identities and locations of knowledgeable witnesses", Motion to Stay at 2-3, although RBI does not provide even a generic description of who those "knowledgeable witnesses" might be. Moreover, in view of the fact that RBI already has a list of ten witnesses (including the three "records custodians"), it is clear that RBI's ability to ascertain the identities of at least those potential witnesses has not in any event been "prejudiced". And Adams is frankly at a lost to imagine what other sort of "knowledgeable witnesses" RBI might have in mind.

21. This is particularly so because RBI attributes this "prejudice in its ability" to some supposed incompleteness in Adams's discovery responses "with respect to a number of critical matters." Motion to Stay at 2. RBI does not enumerate or

otherwise describe what those "critical matters" might be. [4/] Presumably any such "critical matters" comprise the items listed in RBI's Motion to Compel, which seeks the following:

(a) documents and information concerning the preparation of Adams's application;

(b) documents and information concerning "research" about "potential construction permit applications";

(c) documents concerning "efforts . . . to prepare a potential application . . . for a television construction permit (other than in Reading, Pennsylvania)";

(d) documents supporting Adams's conclusion that WTVE's programming was not addressing the public interest and need of Reading;

(e) the identity of the "equipment used for review" by Mr. Gilbert when he reviewed the videotapes made at his request by Mr. Sherwood; and

(f) "some sort of physical description, age, weight, height, hair color" of an individual whom Mr. Gilbert interviewed six years ago, but whose name Mr. Gilbert did not obtain;

22. As to the materials covered in (a)-(d) (i.e., the preparation of the Adams application, and Adams's familiarity with home shopping stations and Station WTVE(TV)), Mr. Gilbert and other Adams principals have already been available for examination with respect to those matters, and Mr. Gilbert, in particular, has testified at some length about them. See Gilbert

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[4/] By way of contrast, see Adams's Comments, filed March 23, 2000, relative to the discovery responses of RBI and Sidley & Austin in Phase II. Those Comments provided detailed descriptions of Adams's extensive discovery efforts and the bases for Adams's belief that substantial information was still being withheld from it. Adams's detailed showing contrasts sharply with the wholly uninformative five-sentence "argument" advanced by RBI in its Motion to Stay (at 2-3).

Dep. at, e.g., 13-21, 26-28, 33-35; Tr. at, e.g., 1040-42, 1046-47, 1056-85, 1088-92. It is not clear what information RBI expects to elicit through interrogatories which was not already available to it in deposition or cross-examination at the hearing.

23. As to item (e), RBI cannot seriously contend that the precise specifications of a videotape recorder are a "critical matter" the unavailability of which might "prejudice its ability to ascertain the identities and locations of knowledgeable witnesses."

24. And finally, as to item (f), Mr. Gilbert has provided all the information that he has concerning this particular individual.

25. Thus, while RBI speaks broadly in its Motion to Stay about supposed "critical matters" and potential "knowledgeable witnesses", RBI's own Motion to Compel does not support those claims. To the contrary, neither RBI's Motion to Compel nor its Motion to Stay contains any indication whatsoever that RBI is missing any information which could conceivably have prevented it from proceeding with discovery. In light of this, no basis exists for the relief requested by RBI's Motion to Stay.

26. Further, even if RBI's reliance on interrogatories has, for the sake of argument, stymied RBI's discovery efforts -- and Adams hastens to point out that that clearly has not been the case -- RBI was warned, with unmistakable clarity by the Presiding Judge during the March 31 hearing conference -- i.e., before RBI prepared its interrogatories -- about the inherent

difficulties with interrogatories. RBI ignored that warning and elected to propound precisely the kind of "narrative, judgmental" interrogatories about which the Presiding Judge had specifically expressed concern. Under these circumstances, RBI cannot credibly suggest that RBI has proceeded diligently in its discovery efforts.

27. Extraordinary relief cannot and should not be granted where the asserted basis for the requested relief stems exclusively from the requesting party's obvious lack of diligence. RBI was given an ample opportunity to initiate and complete discovery. RBI chose not to avail itself of that opportunity. Instead, it merely propounded broad interrogatories of the kind about which RBI had been cautioned by the Presiding Judge. RBI failed to initiate any other form of discovery at all, including forms (e.g., third-party document production) not dependent in any way on Adams's answers to the interrogatories. RBI has offered no credible explanation for its dilatory approach. Under these circumstances, RBI's Motion to Stay must be denied.

28. Denial of the Motion will not adversely prejudice RBI to any significant degree. As noted above (and in Adams's Opposition to Motion to Compel filed on May 3, 2000), RBI has, in the context of Phase I, already had substantial opportunities to examine Adams's principals concerning Adams's application and related matters. The Presiding Judge afforded RBI considerable latitude to examine Mr. Gilbert about "home shopping" issues during Phase I, before the Phase III issues were even added.

That being the case, RBI already has significant familiarity with the underlying facts. Further, Adams has responded to RBI's interrogatories, which sought a broad range of information concerning "home shopping" matters.

29. By contrast, the Court and the other parties would be adversely affected if RBI's motion were to be granted. Adams, in particular, has substantial burdens facing it in the next hearing session. Those include completion and presentation of Phase I evidence, presentation of the Phase II direct case, and preparation for defense with respect to the Phase III issues. It would be unreasonable in the extreme to expect that, while engaged in all those matters, Adams's principals and its counsel should also be available to accommodate discovery requests which RBI elected not even to initiate until less than a week before the scheduled close of discovery.

30. Granting RBI's requested relief would also seriously disrupt the contemplated hearing process. While RBI glibly suggests that "all other dates" currently scheduled may remain in place (Motion to Stay at 5), the problems with that suggestion are obvious. How, for example, can Adams prepare to address RBI's Phase III presentation when RBI apparently contemplates the continuation of discovery in Phase III until the eve of the hearing itself? As another example, it is virtually certain that the transcripts of any depositions conducted on the eve of the hearing would not be available for use by any party.

31. Since RBI's request arises exclusively from RBI's own lack of diligence, and since that request, if granted, would

adversely affect the Court and the other parties and disrupt this proceeding, and since RBI has in fact already engaged in examination of Adams's principals with respect to the matters at issue in Phase III, Adams submits that RBI's Motion to Stay must be denied, and the discovery should be deemed closed as of May 5, 2000.

Respectfully submitted,

/s/ Harry F. Cole
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May 4, 2000

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of May, 2000, I caused copies of the foregoing "Opposition of Adams Communications Corporation to 'Motion to Stay the Close of Discovery and to Amend the Scheduling Order'" to be hand delivered (as indicated below), addressed to the following:

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