

FCC MAIL SECTION

May 12 9 01 AM '00
Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FCC 00M-29 0032

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BPCT-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)	

ORDER

Issued: May 4, 2000 Released: May 5, 2000

Counsel for Reading Broadcasting, Inc. ("Reading") has requested seven subpoenas for discovery. Five of the subpoenas were signed.¹ The reasons that two subpoenas were not signed are discussed below.

Procedure

Reading seeks the issuance of subpoenas for discovery under the Commission's Rules [47 C.F.R. §§1.331 – 1.340]. The Rules provide that a subpoena request that is made outside of the courtroom must be verified. 47 C.F.R. §1.333(b). The subpoenas tendered by Reading were not verified. However, in the interest of facilitating trial preparation, that defect can be cured. 47 C.F.R. §1.243(f) (Presiding Judge's authority to regulate course of hearing).

¹ The subpoenas signed are directed to: Paul Sherwood (video taping of WTVE programming); Garrison Cavell (consulting engineer); Telemundo Custodian (appraisal and programming); Anne Swanson, Esquire (appraisal); Conestoga Telephone & Telegraph Co. (transmitter site).

The Rules contemplate that discovery subpoenas directed to non-parties are to be issued after notices are served and objected to. 47 C.F.R. §1.333 (e). If there are no objections there is no need for the subpoenas. However, time is of the essence here. It may facilitate discovery if subpoenas are served with the notices to depose. Therefore, Reading should serve the signed subpoenas with the notices to depose.

Any opposition to a notice of deposition shall be treated as a motion to quash any accompanying subpoena.

All reasonable efforts shall be made to accommodate witnesses, facilitate discovery and avoid, where possible, time-consuming discovery compliance motions.

Reasons for Two Subpoena Denials

John Q. McKinnon (“McKinnon”)

Reading seeks documents and deposition testimony from Mr. McKinnon who has been identified as a person associated with American National Bank & Trust Co. of Chicago, Illinois (“American National”) a banking institution which provided a loan commitment to Adams Communications Corporation (“Adams”). Reading alleges that the representations made to Mr. McKinnon in support of the loan application and statements as to the reasons given for the loan commitment are relevant to Adams’ bona fides in filing its application.

Corporate Designee – Records Custodian for American National

Reading identifies American National as a source for a loan commitment to Adams. Reading seeks documents and testimony relating to such commitment. Reading alleges that the discovery is relevant to the issue of Adams’ bona fides in filing its application.

Subpoena requests for McKinnon and for American National are being denied and written reasons are required to be given for those denials. 47 C.F.R. §1.335. The documents and testimony sought to be discovered from Mr. McKinnon and American National would be relevant to a financial certification or a financial qualification issue. But the issue added against Adams is limited to Adams’ good faith intentions to own and operate Channel 51 and not whether the Adams group can finance the obtaining of the license or the construction of the station. See Memorandum Opinion and Order, FCC 00M-19, released January 20, 2000, appeal denied, Memorandum Opinion and Order, FCC 00M-19, released March 6, 2000. In fact, one of the circumstances that justified adding abuse of process issues against Adams was the receipt by Adams’ principals of a substantial payoff in another renewal challenge in which individual members (shareholders) of the Adams group had been successful both on-the-merits and in a settlement. Id. (FCC 00M-19) at Para. 5.

It is axiomatic that the Commission's discovery process may not be used to search for new issues. Discovery Procedures, 11 F.C.C. 2d 185 (1969). Therefore, the evidence on a loan commitment is not found to be relevant to the abuse of process issues. Such discovery would result in a probable waste of time and would work an unnecessary hardship on Adams and American National.

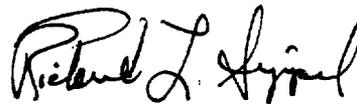
In this same regard, it is noted that subpoenas have been authorized for the discovery of a consulting engineer (Cavell) and for information concerning Adams' transmitter site (Conestoga). The evidence of engineering efforts and a site selection have more of a nexus with the added issue and the scope of that discovery would appear to be reasonable under the added abuse of process issues. Also, the information sought from a consulting engineer and a site source is primarily objective fact evidence. By contrast, an inquiry into the bona fides of Adams' financial arrangements under the circumstances would be more in the nature of a speculative and burdensome fishing expedition.

Rulings

Accordingly, IT IS ORDERED that by **May 11, 2000**, Reading Broadcasting, Inc. SHALL FILE a declaration or other verification attesting to the truth of the matters represented in its Request for Issuance of Subpoenas.

IT IS FURTHER ORDERED that for reasons stated above, subpoenas requested by Reading Broadcasting, Inc. for John Q. McKinnon and American National Bank & Trust Co. of Chicago, Illinois ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION²



Richard L. Sippel
Administrative Law Judge

² Copies of this Order were e-mailed to all counsel on the date of issuance.