

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
READING BROADCASTING, INC.) MM Docket No. 99-153
)
For Renewal of License of)
Station WTVE (TV), Channel 51) File No. BRCT-940407KF
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

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ADAMS COMMUNICATIONS CORPORATION
TRIAL BRIEF FOR PHASES II AND III

Pursuant to the Presiding Judge's Order, FCC 00M-28, released April 5, 2000, Adams Communications Corporation ("Adams") hereby submits its Trial Brief with respect to Phases II and III of the captioned proceeding.

I. Phase II

The issue to be considered in Phase II of this proceeding is:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

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

1. Concise Proffer

Adams intends to prove that:

(a) In at least two reported proceedings, Micheal Parker (an officer, director and dominant principal of Reading Broadcasting, Inc. ("RBI")), or entities controlled by Mr. Parker, were found to have engaged in, inter alia, "attempted fraud" and a "transpicuous sham", see Religious Broadcasting Network, 3 FCC Rcd 4085, 4091 (Rev. Bd. 1988) and "an effort to deceive the Commission", see Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777, 4778 (1988), in their dealings with the Commission.

(b) In Religious Broadcasting Network, at the request of a competing party, the Presiding Judge added a disqualifying "real party in interest" issue with respect to Mr. Parker's involvement with the application of San Bernardino Broadcasting Limited Partnership ("SBBLP"). The Presiding Judge found that, while Mr. Parker was not disclosed as a party to the SBBLP application, in fact Mr. Parker had prepared, sponsored and controlled SBBLP and continued to control it. Because of these findings, the Presiding Judge resolved the "real party in interest" issue adversely to SBBLP and disqualified the Parker-controlled applicant. On exceptions, the Review Board expressly affirmed the Presiding Judge's "core conclusion" with respect to

the real-party-in-interest issue. At no time since have the findings and/or conclusions of the Presiding Judge or the Review Board been reversed or modified by any forum.

(c) After the findings of "attempted fraud", "transpicuous sham" and "effort to deceive", Mr. Parker filed multiple applications with the Commission. Questions in each of those applications asked whether, with respect to any party to the application, there had been any adverse findings made in any judicial or administrative context concerning, inter alia, fraud; those applications also asked whether there were then pending any proceedings involving such matters. In the event that such findings of misconduct had been made or such proceedings were then pending, the applications required full disclosure of the proceeding(s) in question, the facts upon which the proceeding(s) were based, the nature of the offense committed, and the disposition or current status of the matter. In each of his applications filed after the decisions in Mt. Baker and Religious Broadcasting Network, Mr. Parker answered these "fraud-related" questions in the negative, notwithstanding the adverse findings of "attempted fraud", "transpicuous sham" and "effort to deceive".

(d) In each of the applications referenced above, in response to questions other than the application's "fraud-related" questions, Mr. Parker did mention the Mt. Baker proceeding; in the same context in some, but not all, of those applications, Mr. Parker also mentioned the Religious

Broadcasting Network proceeding. In none of those references to either Mt. Baker or Religious Broadcasting Network was there any indication that those cases included determinations of potentially disqualifying fraudulent or deceitful misconduct. The description of the Religious Broadcasting Network matter was phrased to suggest that any issue which had been considered in that proceeding related only to comparative considerations, not to any basic qualifying character considerations.

(e) Four applications filed by Mr. Parker during 1991-1992 contained essentially verbatim exhibits (referred to generically herein as "the Other Broadcast Interests Exhibit") which referred to, and provided deceptively limited descriptions of, the Mt. Baker and Religious Broadcasting Network proceedings. The language set forth in the Other Broadcast Interests Exhibit first appeared in Mr. Parker's application ("the Norwell Application"), in which Mr. Parker sought to acquire a controlling interest in the licensee of Station WHRC(TV), Norwell, Massachusetts. By his own choice, Mr. Parker was not represented by communications counsel in connection with the preparation of the Norwell Application. Mr. Parker is unable to state who prepared the language of the Other Broadcast Interests Exhibit as that language appeared in the Norwell Application.

(f) The Other Broadcast Interests Exhibit did not include any indication as to whether any basic character issue(s) had been sought or designated with respect to any of the applications listed in that exhibit. A basic character issue had

been sought, and added, in Religious Broadcasting Network with respect to the Parker-related application in that proceeding.

(g) In 1992, a Commission staff member processing Mr. Parker's application ("the Dallas Application") for consent to acquire the license of international broadcast Station KCBI, Dallas, Texas, asked Mr. Parker (or one of his representatives) whether any basic character issues had been sought or added with respect to any of the applications described in the Other Broadcast Interests Exhibit. Eric Kravetz, a Washington, D.C. communications attorney, was then retained to assist in preparing a response to the staff member's inquiry. Mr. Kravetz had represented the proposed transferor in the Norwell Application, but had not represented Mr. Parker or any entity controlled by him.

(h) Mr. Kravetz was unaware of the facts and circumstances underlying the Parker-related application in Religious Broadcasting Network. Mr. Kravetz spoke with Mr. Parker (or possibly Linda Hendrickson, an assistant to Mr. Parker) who advised Mr. Kravetz that no basic character issues had been sought or added with respect to any of the applications listed in the Other Broadcast Interests Exhibit in the Dallas Application. Based on that information, Mr. Kravetz prepared an amendment specifically stating that "no character issues had been added or requested against" the applications listed in the Other Broadcast Interests Exhibit. Mr. Kravetz sent that amendment to Mr. Parker, who signed it and returned it

to Mr. Kravetz for filing with the Commission. As noted above, however, a basic character issue concerning the Parker-related applicant had been sought and added in Religious Broadcasting Network. That issue had also been tried and resolved unfavorably to the Parker-controlled applicant by the Presiding Judge in that case.

(i) Commission records indicate that the Commission's staff relied on the false representations in that amendment in processing the Dallas Application, which was granted within one day of the submission of the amendment.

(j) In view of the language of the decisions adverse to him, and in view of the language of the application forms, Mr. Parker could not reasonably have believed that his responses in those application forms, or in his amendment to the Dallas Application, accurately and forthrightly disclosed all information sought by the Commission.

(k) Mr. Parker will probably assert that he believed that the descriptions of the Mt. Baker and Religious Broadcasting Network matters in the Other Broadcast Interests Exhibit and in the amendment to the Dallas Application were accurate, based on advice of counsel, including particularly the advice of R. Clark Wadlow, who represented a number of entities in which Mr. Parker held interests during the approximate period 1983-1992. It is also anticipated that Mr. Parker will rely in particular on a letter, dated February 18, 1991, from Mr. Wadlow to Mr. Parker.

(l) Such reliance is inherently incredible and

unreasonable in view of the unequivocal nature of the reported decisions of the Commission in Mt. Baker, the Review Board and the Presiding Judge in Religious Broadcasting Network. For example, despite his claim of reliance on counsel's advice, Mr. Parker could not identify who prepared the language of the Other Broadcast Interests Exhibit. Mr. Wadlow, who was serving as communications counsel to at least some of Mr. Parker's interests at the time of the Norwell Application, was not involved at all in the preparation of the Norwell Application.

(m) The inherent incredibility and unreasonableness of any claimed reliance on counsel is also illustrated by Mr. Wadlow's February 18, 1991 letter. In that letter, Mr. Wadlow stated that:

It is our opinion that the [ALJ in Religious Broadcasting Network] simply concluded that SBBLP had failed to report your activities and involvements with SBBLP -- which the ALJ found to be such as to make you a real party-in-interest. However, the ALJ did not find that you had done anything irmproper [sic] or that anything you had done reflected adversely on you.

(n) The "advice" conveyed in Mr. Wadlow's letter is inconsistent with the Presiding Judge's decision in Religious Broadcasting Network, as well as the subsequent decisions of the Review Board in that proceeding. Moreover, the bona fides of the Wadlow letter are doubtful in view of the fact that Mr. Wadlow, as counsel for a competing applicant in the Religious Broadcasting Network proceeding, had argued as follows to the Review Board:

The record [of the Religious Broadcasting Network hearing] unequivocally demonstrates that Parker:

(1) identified the broadcasting opportunity and found an applicant; (2) created the corporate documents, partnership documents and offering circulars for the applicant; (3) prepared the application and programming proposal; (4) signed up Ms. Van Osdel; (5) transferred his equity interest to his relatives as he has done with his other broadcast projects; (6) arranged to be retained as consultant, enabling him to receive handsome consulting fees; (7) selected his employee as the corporate secretary; (8) hired the attorneys; (9) hired the engineers; (10) secured the financing; (11) dealt with the equipment supplier; (12) promoted the project and sold it to the investors; (13) maintained the relationship with corporate and communications counsel during the processing of the application; and (14) controlled the applicant's books. [citations omitted] As a result, the ALJ was certainly correct in his conclusions that SBBLP should be disqualified or, at the very least, denied any integration credit. [citations omitted]

Having advanced that argument to the Review Board, Mr. Wadlow could not seriously have believed that the "ALJ did not find that [Mr. Parker] had done anything irdmproper [sic] or that anything [Mr. Parker] had done reflected adversely on [him]."

(o) The bona fides of the Wadlow letter are further undermined by the fact, established by Mr. Wadlow's billing records, that the time spent speaking with Mr. Parker when he called Mr. Wadlow to solicit the letter, drafting the letter, and getting the letter in final form amounted to a total of only 45 minutes. In preparing his letter, Mr. Wadlow apparently did not review any of the decisions in Religious Broadcasting Network.

(p) Mr. Parker's failure to provide complete and forthright descriptions of, inter alia, the Religious Broadcasting Network proceeding cannot be deemed to have been inadvertent or the result of good faith reliance on the advice of

counsel. Regardless of what Mr. Parker's belief relative to the completeness and adequacy of those descriptions may have been prior to his Dallas Application, in October, 1992 the Commission's processing staff expressly alerted Mr. Parker of the Commission's need for additional information relative to those descriptions when the staff contacted Mr. Parker and sought an amendment to the Dallas Application. Mr. Parker was therefore on express notice of the need to provide additional information concerning whether any character issues had been sought and/or added with respect to, inter alia, the Parker-controlled applicant in Religious Broadcasting Network.

(q) Mr. Parker's response to the staff inquiry was demonstrably false: in the amendment to the Dallas Application, Mr. Parker stated that "no character issues had been added or requested" there, when in fact character issues had been requested, had been added, and had been resolved adversely to the Parker-controlled applicant in Religious Broadcasting Network. The false response was based on information provided to Mr. Kravetz (who had not previously represented Mr. Parker) by Mr. Parker or his associate, Ms. Hendrickson.

2. Summary of Witness Testimony

Adams intends to call the following witnesses to testify concerning the Phase II issue:

Micheal Parker
R. Clark Wadlow
Paula Friedman
Eric Kravetz
Andree Ellis
Ken Scheibel

(a) Micheal Parker -- Although a hostile or adverse witness, Mr. Parker is expected to testify, inter alia, that:

(i) He was personally familiar with the decisions in the Mt. Baker and Religious Broadcasting Network proceedings.

(ii) He thoroughly reviewed applications (including the Norwell Application, the Dallas Application and the amendment to the Dallas Application) which contained, inter alia, the Other Broadcast Interests Exhibit, and he personally signed those applications.

(iii) He does not recall who drafted the Other Broadcast Interests Exhibit. He may testify that that exhibit may have been drafted by a business/bankruptcy attorney in Philadelphia, based on information compiled in connection with a Disclosure Statement submitted to the bankruptcy court in the Reading Broadcasting, Inc. bankruptcy proceeding.

(iv) He or his associate, Ms. Hendrickson, was contacted by a Commission staff member seeking more information about to the Dallas Application, retained Mr. Kravetz to assist in responding to the staff's inquiry, and advised Mr. Kravetz

that no character issues had been sought or added in connection with any of the applications described in the Other Broadcast Interests Exhibit. Mr. Parker thoroughly reviewed and signed the amendment which Mr. Kravetz prepared based on that information.

(v) He is unaware of any decision by the Review Board or the Commission reversing the adverse findings and conclusions of the Presiding Judge and the Review Board in Religious Broadcasting Network concerning the Parker-controlled applicant in that proceeding.

(b) R. Clark Wadlow -- Mr. Wadlow is expected to testify, inter alia, that:

(i) He represented Mr. Parker (or Parker-controlled entities) from approximately 1983 through 1992 (or possibly 1993).

(ii) On February 18, 1991, Mr. Parker called him and requested that he prepare a letter concerning the effect of the Religious Broadcasting Network decision on Mr. Parker's qualifications. Mr. Parker told him that Mr. Parker needed the letter to present to some third party. Mr. Parker was in a hurry to get the letter, and Mr. Wadlow therefore prepared it and provided it to Mr. Parker in short order. According to Mr. Wadlow's billing records, the entire transaction -- including the call from Mr. Parker, and the drafting and finalization of the letter -- took approximately 45 minutes.

(iii) Mr. Wadlow had represented a party adverse to the Parker-controlled entity in Religious Broadcasting

Network. In reply exceptions filed on behalf of that client, Mr. Wadlow argued that the Presiding Judge in that case had disqualified the Parker-controlled entity because of Parker's activities and that that disqualification was correct.

(iv) Mr. Wadlow was not involved in the drafting of the Norwell Application, including the Other Broadcast Interests Exhibit. He did not review the information contained in the Other Broadcast Interests Exhibit in order to form any independent determination as to the accuracy of that information.

(c) Paula Friedman -- Ms. Friedman is expected to testify, inter alia, that:

(i) She was the attorney at Sidley & Austin primarily responsible for the drafting of the application ("Reading Application") for consent to the transfer of control of Reading Broadcasting, Inc. which was filed in November, 1991.

(ii) She was not involved in the drafting of the Other Broadcast Interests Exhibit which was included in the Reading Application. Instead, she obtained the language for the exhibit from the Norwell Application. She did not review the information contained in the Other Broadcast Interests Exhibit in order to form any independent determination as to the accuracy of that information.

(d) Eric Kravetz -- Mr. Kravetz is expected to testify, inter alia, that:

(i) He was counsel for the proposed transferor in

the Norwell Application. In that role, he filed the Norwell Application with the Commission. However, he was not involved in the drafting of any portion of the transferee's portion of the Norwell Application, i.e., the portion of that application which related to Mr. Parker. In particular, he was not involved in the drafting of the Other Broadcast Interests Exhibit which was included in the Norwell Application. Instead, he merely received the transferee's portion of the Norwell Application from Mr. Parker, or possibly a representative of Mr. Parker, combined that portion with the transferor's portion which he had prepared on behalf of his client, and filed the resulting application with the Commission. Mr. Kravetz did not review the information contained in the Other Broadcast Interests Exhibit in order to form any independent determination of the accuracy of that information.

(ii) After the Norwell Application was granted, he did not represent Mr. Parker or any Parker-controlled entity other than in the ministerial filing of a notification to the Commission concerning consummation of the Norwell transaction until October, 1992. In late October, 1992, Mr. Kravetz was asked by Mr. Parker or his associate, Ms. Hendrickson, to assist in the preparation of an amendment to the Dallas Application. Mr. Kravetz had not previously been involved in any way with the Dallas Application and had not heard from Mr. Parker since the consummation of the Norwell transaction approximately a year before.

(iii) Mr. Kravetz contacted the Commission staff person who was processing the Dallas Application and determined the information she needed. He relayed that information to Mr. Parker or Ms. Hendrickson, who may already have spoken with the staffperson directly. Mr. Kravetz asked Mr. Parker or Ms. Hendrickson whether any character issues had been sought or added with respect to any of the applications described in the Other Broadcast Interests Exhibit in the Dallas Application. Mr. Kravetz was advised that no such issue(s) had been sought or added. Mr. Kravetz did not independently investigate that information. Instead, relying exclusively on the information he had been given by Mr. Parker or Ms. Hendrickson, he drafted an amendment and sent it to Mr. Parker. The amendment was returned to him, signed, and he filed it with the Commission.

(e) Andree Ellis -- Ms. Ellis is expected to testify, inter alia, that:

(i) She was the Commission staff person who processed the Dallas Application.

(ii) A worksheet obtained by Adams pursuant to the Freedom of Information Act was prepared by her in the course of processing the Dallas Application. That worksheet reflects that she relied on the amendment filed by Mr. Kravetz on behalf of Mr. Parker on October 29, 1992 in the processing of the application.

(f) Ken Scheibel -- Mr. Scheibel is expected to

testify, inter alia, that:

(i) He was the Commission supervising attorney who approved the grant of the Dallas Application. His approval was given within 24 hours of receipt of the October 29, 1992 amendment to that application filed by Mr. Kravetz on behalf of Mr. Parker.

(ii) In approving the Dallas Application, Mr. Scheibel relied on that amendment.

3. Documents

Pursuant to the Presiding Judge's Order, on May 16, 2000, Adams exchanged its Phase II direct case exhibits.

Exhibits 1-6 consist of copies of applications filed on behalf of Mr. Parker (or entities controlled by Mr. Parker) between 1989, i.e., after the issuance of the decisions in Mt. Baker and Religious Broadcasting Network, and 1992. These all contain descriptions of one or both of those decisions. The accuracy and completeness of those descriptions are a central focus of Phase II.

Exhibit 7 consists of the amendment to the Dallas Application filed by Mr. Kravetz on behalf of Mr. Parker. As discussed above, this amendment contains a demonstrable misrepresentation.

Exhibit 8 consists of FCC Form A-378, reflecting the grant of the Dallas Application on October 30, 1992. This document establishes that the Dallas Application was granted the day after the amendment (Exhibit 7) was filed; it also establishes the

identity of the Commission staff member responsible for approving the Dallas Application.

Exhibit 9 consists of a worksheet prepared by Ms. Ellis in the course of her processing of the Dallas Application. It includes a notation concerning the filing of the amendment by Mr. Kravetz which establishes that the staff relied on that amendment; it also establishes the identity of the Commission staff member who processed the application.

Exhibit 10 consists of the February 18, 1991 letter from Mr. Wadlow to Mr. Parker concerning the supposed impact on Mr. Parker's qualifications of the Presiding Judge's decision in Religious Broadcasting Network.

Exhibit 11 consists of Mr. Wadlow's billing records for the month of February, 1991. They reflect the time spent in connection with the preparation of the February 18, 1991 letter (Exhibit 10, above). These records are relevant to an assessment of the validity and reliability of the advice given in Mr. Wadlow's letter (Exhibit 10) and the bona fides of any claim of reliance on that letter.

Exhibit 12 consists of billing records of Mr. Kravetz's firm, Brown, Nietert & Kaufman, reflecting time and expenses recorded with respect to projects relating to Mr. Parker. This helps to establish the fact that Mr. Kravetz had no substantial involvement with Mr. Parker prior to October, 1992, and only minimal involvement with him thereafter.

Exhibit 13 consists of an excerpt from reply exceptions

submitted in Religious Broadcasting Network by Mr. Wadlow. The excerpt contains a discussion of the Presiding Judge's disqualification of the Parker-controlled applicant in that proceeding. This exhibit is relevant because that discussion is completely inconsistent with Mr. Wadlow's assertions in his February 18, 1991 letter (Exhibit 10) on which Mr. Parker claims to have relied. As a result, the validity and bona fides of Mr. Wadlow's letter, and any claimed reliance on it, are subject to serious question.

4. Points and Authorities

Adams does not presently contemplate any evidentiary or procedural arguments concerning the foregoing.

The ultimate substantive issue herein is well-established. All applicants have an undeniable obligation to be fully forthcoming as to all facts and information that may be decisionally significant to their applications. E.g., Swan Creek Communications v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994); Silver Star Communications-Albany, Inc., 102 FCC2d 1179, 1211, 59 RR2d 801 (1986); Fox River Broadcasting, Inc., 93 FCC2d 127, 53 RR2d 44 (1983). This obligation arises from the fact that the Commission must be able to rely completely on the representations made to it by its regulatees. E.g., Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d 454 (D.C. Cir. 1980), citing inter alia FCC v. WOKO, Inc., 329 U.S. 223 (1946).

II. Phase III

The issues to be considered in Phase III of this proceeding are:

- A. To determine whether the principals of Adams Communications Corporation ("Adams") filed, or caused to be filed, an application for construction permit in the hope or expectation of achieving through litigation and settlement, a "precedent" or other recognition that the home shopping television broadcasting format does not serve the public interest.
- B. To determine in light of findings and conclusions as to issue A above, whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television broadcasting station at Reading, Pennsylvania.
- C. To determine in light of findings and conclusions as to issues A and B above, whether Adams Communications Corporation has engaged and/or is engaging in an abuse of process, i.e., an abuse of the Commission's comparative renewal litigation and settlement process.
- D. If issues A and/or B and/or C are true, to determine whether Adams Communications Corporation is qualified to receive a Commission license, even if Adams would be willing to accept a settlement payment that is limited to legitimate and prudent expenses in return for dismissing its application

Memorandum Opinion and Order, FCC 00M-19, released March 6, 2000, modifying Memorandum Opinion and Order, FCC 00M-07, released January 20, 2000.

1. Concise Proffer

While Adams does not have the burden of proceeding under the Phase III issues, Adams believes that the proofs ultimately adduced pursuant to those issues will establish that:

- (a) Adams was aware that, through the filing and

successful prosecution of a "comparative renewal" application, it could acquire a valuable television broadcast authorization for considerably less than the fair market value of the existing station. This opportunity was attractive to Adams's principals who are experienced business people and, in some cases, experienced broadcasters.

(b) Adams was also aware that, if it were to file a "comparative renewal" application, it would not be able to dismiss that application in return for payment. A number of Adams's shareholders had been shareholders of Monroe Communications Corporation ("Monroe"). Monroe had filed and prosecuted a "comparative renewal" application for a television authorization in Chicago. After a decade of litigation, Monroe's application had been granted. During the pendency of the incumbent licensee's appeal of that decision, the incumbent licensee offered Monroe a substantial payment to dismiss its application, and Monroe accepted. In approving that settlement, the Commission specifically found that Monroe had not filed its application for the purpose of entering into such a settlement.

(c) At the time that Monroe was approached about the possibility of settlement, Monroe consulted its counsel concerning the legality of such a settlement. Monroe's counsel advised Monroe that such a settlement would be permitted in the case of Monroe because of circumstances unique to that case. Monroe's counsel specifically advised that the Commission's rules and policies regarding settlement had been revised in 1989, seven

years after the filing of the Monroe application, and that dismissal of a "comparative renewal" challenge application for profit was no longer permitted under the revised rules. Thus, while the Monroe proceeding may have been settled by Monroe for a profit, Adams's shareholders knew that no for-profit settlement opportunity would be available for any such challenge application which Adams might file. They were explicitly reminded of this again in 1993, when Howard Gilbert, an officer, director and shareholder of Monroe who is also an officer, director and shareholder of Adams, discussed with counsel the possibility of filing "comparative renewal" applications. Adams has at no time intended to seek any settlement which would entail the dismissal of Adams's application.

(d) Adams was also aware that, in a "comparative renewal" proceeding, the incumbent licensee/renewal applicant is normally accorded a "renewal expectancy" which results in a conclusive advantage for the incumbent licensee/renewal applicant over the challenger. As a result, Adams recognized that, in order to successfully prosecute a "comparative renewal" application, it would normally have to establish that the incumbent licensee targeted in the challenge was not entitled to any "renewal expectancy".

(e) Adams was familiar with Commission and judicial precedent concerning the awarding of a "renewal expectancy". Adams understood that such an expectancy should not be awarded to an incumbent licensee which had failed to provide substantial,

locally-oriented, locally-produced programming dealing with issues of importance to the local audience. Accordingly, Adams also understood that, if it was to successfully prosecute a "comparative renewal" challenge and thereby obtain a television construction permit, Adams should select as a target a station which was not providing substantial, locally-oriented, locally-produced programming dealing with issues of importance to the local audience.

(f) A number of Adams's principals were familiar with "home shopping" programming. From their personal observation of such programming, they concluded that that programming was not serving the public interest because it did not provide substantial, locally-oriented, locally-produced programming dealing with issues of importance to the local audience. Additionally, Mr. Gilbert reviewed materials from the Commission's proceeding concerning the "must-carry" rights of "home shopping" broadcast stations. Those materials further convinced Mr. Gilbert that "home shopping" stations might not be entitled to any "renewal expectancy".

(g) Adams therefore concluded that "home shopping" stations would be vulnerable to "comparative renewal" challenge. Adams believed that such a challenge would give Adams the opportunity not only to obtain a valuable broadcast authorization for a bargain price, but also to advance the public interest by demonstrating to the broadcast industry the continued regulatory importance of providing substantial, locally-oriented, locally-

produced programming dealing with issues of importance to the local audience. Mr. Gilbert in particular had recognized the desirability of such programming, from a public interest perspective, as early as 1950.

(h) In mid- to late 1993, Mr. Gilbert obtained from counsel a list of "home shopping" stations and determined the dates on which the renewal applications of those stations would be due. The next such renewal deadline was for stations in Massachusetts, which were due to file renewal applications on December 1, 1993. In November, 1993, Adams was formed. Initially, Adams intended to challenge the renewal of Station WSHH(TV), Marlborough, Massachusetts, a "home shopping" station. Mr. Gilbert travelled repeatedly to Massachusetts in December, 1993-February, 1994. In the course of those trips Mr. Gilbert observed the "home shopping" programming of Station WSHH(TV), spoke with residents of the station's service area about the station's programming, and also engaged in an extensive search for a suitable transmitter site.

(i) Despite Mr. Gilbert's efforts, no non-short-spaced site for the Marlborough channel could be located. While Adams recognized that it could file an application specifying a short-spaced site and requesting a waiver of the Commission's spacing requirements, Adams was concerned that such a waiver request could provide the Commission with a basis for dismissing the Adams application summarily, without allowing Adams to engage in a substantive "comparative renewal" challenge.

(j) Adams was further concerned that, if that were to happen, other "home shopping" stations would in the meantime be alerted to the possibility of a challenge by Adams or by any other potential competing applicant, and might attempt to provide substantial, locally-oriented, locally-produced coverage of local issues in order to preempt such a challenge. Since Adams's goal was not only to advance the public interest but also to acquire for itself a television authorization at a bargain price, Adams had no desire to forewarn other "home shopping" licensees of the possibility of a "comparative renewal" challenge.

(k) The next "home shopping" station coming up for renewal was Station WTVE(TV), Reading, whose renewal application was due to be filed on April 1, 1994. In March, 1994, Adams retained a consulting engineer to begin the process of locating a suitable transmitter site. During the period February-June, 1994, Mr. Gilbert travelled to Reading or the Reading area a number of times for the purpose of searching for or inspecting potential transmitter sites and familiarizing himself with the area. By June, 1994, he had located a suitable transmitter site and had confirmed its availability for Adams's purposes. Adams specified that site in its application. After the filing of Adams's application, Adams completed the negotiation with the site's owner and entered into formal agreements assuring Adams the use of the site.

(l) During his visits to Reading and the Reading area, Mr. Gilbert also undertook informal investigations concerning the

extent to which local residents were aware of the programming provided by Station WTVE(TV). He interviewed approximately 30-40 persons. Mr. Gilbert was struck by the fact that none of the interviewees with whom he spoke was aware of Station WTVE(TV) at all, even though it was and remains the only television station licensed to Reading. Mr. Gilbert even visited the offices of the Reading Eagle, the local Reading newspaper, to inquire about the station. He was surprised that the woman he spoke with at the Eagle indicated that she was unaware of the station or its programming.

(m) Based on the results of his interviews, Mr. Gilbert was confident that Station WTVE(TV) was not providing any substantial, locally-oriented, locally-produced programming about issues of importance to the local audience. To further confirm this, Mr. Gilbert sought to have the station's programming videotaped in order to retain a conclusive record of the nature of the station's programming. He arranged to have an individual, Paul Sherwood, who was then living in the WTVE(TV) service area, make such tapes. Pursuant to Mr. Gilbert's initial request, Mr. Sherwood prepared and sent to Mr. Gilbert tapes reflecting approximately 24 hours of June 1, 1994 programming. Mr. Gilbert received those tapes on or about June 7, 1994, and promptly reviewed all of the first one or two six-hour tapes in "real time", and the remaining tapes in "fast forward" mode, to confirm that the programming was as he expected it to be. He then instructed Mr. Sherwood to proceed with taping, 24 hours per

day, starting on or about June 13, 1994 through June 30, 1994.

(n) As the taping was underway, Mr. Gilbert spoke with Mr. Sherwood concerning the programming being taped. Mr. Gilbert had alerted Mr. Sherwood to Mr. Gilbert's interest in any programming which did not involve "home shopping", and had asked Mr. Sherwood to note any such programming. During their conversations, Mr. Sherwood advised Mr. Gilbert about Mr. Sherwood's observations in that regard. Mr. Sherwood also made notations on the labels of the videotapes concerning such programming, and provided Mr. Gilbert with written summaries of his observations.

(o) Mr. Sherwood provided Mr. Gilbert with the finished June 13-30 tapes in at least two separate batches -- one on or about June 21, 1994, the second on or about July 5, 1994. Mr. Gilbert reviewed the tapes as they arrived. Rather than watch them in "real time", however, he "fast-forwarded" through the "home shopping" portions, stopping the tape for any programming which appeared not to be "home shopping". When such non-"home shopping" programming appeared, Mr. Gilbert stopped the tape, re-wound it slightly to begin several minutes prior to the non-"home shopping" material, and watched that programming in "real time".

(p) Based on all of these efforts, by the end of June, 1994, Mr. Gilbert was convinced that Station WTVE(TV) was not providing any substantial, locally-oriented, locally-produced programming relating to issues of importance to the local

audience. On that basis he believed that the station would not be entitled to a "renewal expectancy" and that a competing application by Adams would have a reasonable chance of success. Mr. Gilbert discussed his conclusions with other Adams shareholders, and Adams decided to proceed with the filing of its application.

(q) During the period March-June, 1994, as Adams contemplated the preparation of an application for the Reading channel, Adams contacted American National Bank and Trust Company of Chicago and obtained assurance of the availability of financing. That assurance was reduced to writing in a letter dated June 23, 1994.

(r) In its discussions with its consulting engineer, Adams repeatedly made clear its intent to provide locally-oriented, locally-produced programming.

(s) Adams's shareholders have known since before Adams's formation that the Commission's rules preclude the dismissal of a "comparative renewal" challenge application for profit. Adams filed its application for the purpose of acquiring a valuable television authorization at a bargain price with the additional advantage that a successful "comparative renewal" challenge would advance the public interest by demonstrating to the broadcast industry the continued regulatory importance of providing substantial, locally-oriented, locally-produced programming dealing with issues of importance to the local audience.

(t) Consistent with its understanding of the Commission's rules, Adams has never sought to engage in any discussion of any settlement of this proceeding. Mr. Gilbert was approached once by Mr. Parker, who offered Adams \$250,000 to dismiss its application. Mr. Gilbert declined to discuss the offer and terminated the conversation in less than five minutes. In May-June, 1999, after this proceeding had been designated for hearing, Adams was approached by M. Anne Swanson, an attorney with the firm of Dow, Lohnes & Albertson, on behalf of a client whom she did not identify. Ms. Swanson asked if Adams would be interested in participating in the cost of an appraisal of Station WTVE(TV), with Adams, RBI and Ms. Swanson's client each paying one-third the cost of the appraisal. Mr. Gilbert agreed to participate in order to obtain an appraisal of the station. Adams had not previously researched the value of the station, but Mr. Gilbert was willing to obtaining an appraisal for the low cost associated with Ms. Swanson's proposal. After the appraisal was obtained, there were no substantive discussions with Ms. Swanson or anyone else concerning any possible settlement of the proceeding.

2. Summary of Witness Testimony

Adams intends to call the following witnesses to testify concerning the Phase III issues:

Howard N. Gilbert
Wayne Fickinger
Garrison C. Cavell

(a) Howard N. Gilbert -- Mr. Gilbert is expected to offer testimony supporting all of the information set forth in the foregoing proffer.

(b) Wayne Fickinger -- Mr. Fickinger is an officer, director and shareholder of Adams. He is expected to offer testimony corroborating Mr. Gilbert's testimony concerning Adams's goal of acquiring a construction permit and advancing the public interest by demonstrating to the broadcast industry the continued regulatory importance of providing substantial, locally-oriented, locally-produced programming dealing with issues of importance to the local audience.

(c) Garrison C. Cavell -- Mr. Cavell is Adams's consulting engineer. He is expected to testify that at all times in his dealings with Adams, he understood that Adams intended to prepare, file and prosecute a successful application for Channel 51 in Reading, that Adams intended to construct and operate the station upon grant of the construction permit, and that Adams intended to provide substantial locally-oriented, locally-produced programming on its station.

3. Documents

Pursuant to the Presiding Judge's Order, on May 16, 2000, Adams exchanged its Phase III direct case exhibits.

Exhibit 1 consists of a memorandum, dated August 15, 1991, from Harry F. Cole to Mr. Gilbert, providing advice concerning the Commission's settlement rules. This document demonstrates

that Mr. Gilbert was fully aware of the Commission's revised rules concerning settlement in August, 1991, and that he was also fully aware that the rules which permitted Monroe to dismiss its application for profit were no longer in effect.

Exhibits 2-6 consist of materials concerning "home shopping" programming which were provided to and reviewed by Mr. Gilbert in 1993. These documents establish that Mr. Gilbert's interest in challenging the renewal of "home shopping" stations was based on, inter alia, relevant regulatory considerations.

Exhibit 7-11 consist of documents relating to Adams's transmitter site (Exhibits 7-10) and its financial certification (Exhibit 11). These documents demonstrate that Adams undertook the preparation of its application in a deliberate and diligent manner. The transmitter site documents also demonstrate that, even after Adams had obtained the "reasonable assurance" necessary for filing its application, Adams proceeded to complete its formal negotiations with the transmitter site owner and ultimately entered into formal agreements concerning Adams's use of that site. These documents support Mr. Gilbert's testimony that Adams has, and has since its inception consistently had, a serious, bona fide, intent to successfully prosecute its application through to a grant and, upon grant, to build and operate the station.

Exhibits 12 and 13 consist of letters from Mr. Cavell to Mr. Cole and Mr. Gilbert, respectively. They include references to Mr. Cavell's understanding concerning Adams's intention to

provide locally-oriented, locally-produced programming. They therefore corroborate Mr. Gilbert's testimony.

Exhibit 14 consists of the appraisal materials obtained from Ms. Swanson. Inasmuch as these materials make no reference to any settlement proposal, they corroborate Mr. Gilbert's testimony that no such settlement was under consideration in connection with the appraisal.

Exhibits 15 and 16 consist of correspondence and related materials between Mr. Gilbert and Mr. Sherwood. These materials corroborate Mr. Gilbert's testimony concerning (a) his hiring of Mr. Sherwood to videotape programming during June, 1994, and (b) his instructions to Mr. Sherwood to pay particular attention to any non-"home shopping" programming which Mr. Sherwood might note on the programming being taped.

4. Points and Authorities

Adams does not presently contemplate any evidentiary or procedural arguments concerning the foregoing.

With respect to the ultimate substantive issue herein, the evidence will demonstrate that, as a matter of fact, Adams prepared, filed and prosecuted its application with the good faith intention of obtaining a grant of that application and thereafter constructing and operating a station on Channel 51 in Reading, Pennsylvania. A consideration central to Adams's willingness to pursue this matter was Adams's belief that "home shopping" stations may not serve the public interest, because in Adams's view such a failure to serve the public interest would

increase, if not insure, the likelihood of successful prosecution of Adams's application. While Adams believes that a successful "comparative renewal" challenge would advance the public interest by demonstrating to the broadcast industry the continued regulatory importance of providing substantial, locally-oriented, locally-produced programming dealing with issues of importance to the local audience, Adams's primary goal is to obtain the Channel 51 authorization. At no time has Adams hoped or expected to enter into any settlement pursuant to which its application would be dismissed.

Respectfully submitted,


/s/ Harry F. Cole
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May 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of May, 2000, I caused copies of the foregoing "Adams Communications Corporation Trial Brief for Phases II and III" to be hand delivered (as indicated below), addressed to the following:

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