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 Before the **FEDERAL COMMUNICATIONS COMMISSION** FCC 00M-36
 Washington, D.C. 20554 00174

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 26, 2000 Released: May 30, 2000

It was deemed necessary to hold a Prehearing Conference on short notice on May 25, 2000.¹ See Order FCC 00M-34, issued May 24, 2000. The purpose of the Conference was to consider and rule on a non-party's objections to portions of a subpoena duces tecum ("subpoena") that had been issued on May 10, 2000, to Telemundo Network Group, Inc. ("Telemundo").

Subpoena

The subpoena was issued on May 4, 2000, by the undersigned Presiding Judge at the request of Reading Broadcasting, Inc. ("Reading"). It called for documents concerning (1) appraisals of the value of Station WTVE(TV) made for or in conjunction with Adams Communications Corporation ("Adams"); and (2) documents relating to Adams that were in the possession of Telemundo. A number of responsive documents were produced by Telemundo on May 19, 2000. A second production of documents is being made today, May 26, 2000.

¹ Presiding Judges are authorized to convene a conference to hear argument and issue a ruling on any disputes that may arise under the Commission's Rules. 47 C.F.R. §1.313 (protective orders).

First Production and Objections

Accompanying the May 19 production was a letter from Telemundo's counsel in which Telemundo advised Reading that responsive documents that were being made available did not include telephone records, work product and attorney-client privileged documents, and documents deemed confidential. These withheld documents were identified as including attorney notes, internal law firm memoranda, personal schedules, calendars, and billing records. At 3:00 p.m., on May 23, 2000, Reading filed and served an Opposition to Objections by Telemundo. At 12 noon on May 25, 2000, Telemundo provided a responsive pleading and a Privilege Log.

The purpose of the Prehearing Conference of May 25 was to address the questions raised by Reading with respect to Telemundo's document production, the matters raised in Telemundo's response, the sufficiency of production, the documents withheld, and the need for in camera inspection.²

In Camera Review

For reasons that are detailed in the transcript, Telemundo is to produce by **June 2, 2000**, the documents identified in the Privilege Log that was submitted by Telemundo. The documents are to be accompanied by a memorandum of points and authorities on the application of attorney-client and/or work product privileges.³ Counsel for Reading may file a responsive pleading by **June 5, 2000**.

² Counsel attending the Prehearing Conference were advised on-the-record that the Presiding Judge recently had signed a subpoena ad testificandum requested by Reading for the hearing testimony of M. Anne Swanson, Esquire, on June 19, 2000. The subpoenaed documents that are in question are to be available for the Swanson testimony, to the extent that they are not protected by privilege and that their production is not unduly burdensome. These rulings are for documents to be used at an imminent hearing. Therefore, a prompt resolution on the withheld documents is necessary for preparation by counsel and by Ms. Swanson. In that latter connection, counsel were advised on-the-record that Ms. Swanson is to receive notice in advance of her testimony of the identity of the documents that will be used by Reading's counsel in the questioning. There are to be no surprises.

³ In order to assure timely delivery to the undersigned at OALJ, Counsel for Telemundo should call the Legal Technician in advance and coordinate a hand over at the front entrance of the Portals.

Search, Redaction and Production

Telemundo has been required to review telephone records (to the extent feasible and only for the Washington, D.C. office of Dow, Lohnes & Albertson), billing records, Ms. Swanson's notes, and Ms. Swanson's calendars for the period between March, 1999 and October 31, 1999. Redacted copies of those documents are to be prepared for production that mention, refer or relate to: (1) an appraisal of Station WTVE(TV) for or in conjunction with Adams Communications Corporation; and/or (2) that mention, or relate to Adam's and/or Adams' principal, Mr. Howard N. Gilbert; and/or (3) that mention, refer or relate to Adams' counsel, Gene Bechtel, Esquire and/or Harry Cole, Esquire in the context of an appraisal of Station WTVE(TV) for or in conjunction with Adams and/or any proposal for settlement or other disposition of this case before an Initial Decision.⁴

Copies of redacted, responsive documents are to be available for production by **June 8, 2000**. However, such production may await a ruling on a reimbursement for costs and expenses as explained below. Also, on **June 8, 2000**, Telemundo shall submit to the Presiding Judge an inventory of documents and a status report as to any category of documents that are not able to be assembled by that date and/or that explains why any of the documents called for are not included in the production.

Protective Relief

The burdens of the above search and production by Telemundo and Dow, Lohnes & Albertson in these discrete areas at the request of Reading must be considered under the Commission's Rule on protective orders. 47 C.F.R. §1.313 (measures to protect from annoyance, expense, embarrassment or oppression). The Rule specifically provides that an order requiring document production "may specify any measures" to protect a party from "expense."

The matter of expense was first raised by Telemundo's counsel in his pleading Response of May 25, page 6, citing FRCP 45(c)(2)(B), and orally at the Conference. Reading's objection to any reimbursement for costs based on the FRCP was effectively sustained and the discussion moved on from argument for expenses and costs reimbursement to logistics.

However, on further reflection under 47 C.F.R. §1.313, supra, which was not raised at the May 25 conference, and for reasons detailed in the footnotes below, Telemundo may, at its option, submit to the Presiding Judge on **June 7, 2000**, an

⁴ It is recognized that Ms. Swanson may have had contacts with Mr. Bechtel or Mr. Cole during the relevant period on matters that are unrelated to this case. That information is irrelevant and is not the subject of this discovery. However, it is recognized that it presents a circumstance that could add to the burden of a search for responsive evidence.

itemized accounting of the costs and expenses incurred.⁵ The Presiding Judge will consider such costs and expenses in conditioning Telemundo's production on a payment or a sharing of those costs and expenses by Reading.⁶ For that purpose, Reading must file its responsive pleading to Telemundo's Request by **June 8, 2000**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁷



Richard L. Sippel
Administrative Law Judge

⁵ This is a sua sponte revisit to a ruling at the May 25 Conference. There, Reading's counsel argued that the authority of Commission administrative law judges was not analogous to that of a district court judge under FRCP 45, the only protective order authority that was cited, inferring that Reading could not be obligated under a ruling that conditioned the production of Telemundo's documents upon any reimbursement of Telemundo's expenses. But there was no mention of the protective relief under §1.313 of the Commission's Rules. That Section authorizes the Presiding Judge to issue "any order consistent with the provisions [of the Rules]." It specifically provides that there be "assurance" to protect against "annoyance, expense, embarrassment or oppression." Under that authority, a provision for expenses is deemed appropriate in ordering Telemundo to undertake an expedited document search, redaction and production in order to accommodate Reading's evidentiary needs at a hearing which commences in two weeks.

⁶ Counsel for Reading also argued on the equities that Reading was subjected to similar inconvenience and expenses. But there was no comparable burden in document production required of Reading or of Reading's outside counsel. Moreover, Telemundo, a non-party, is differently situated than Reading, a party seeking its license renewal. Telemundo is entitled to consideration under §1.313 for its costs, expenses and inconvenience, particularly in view of the tight schedule that must be imposed and an intervening holiday.

⁷ Copies of this Order were e-mailed or faxed to all counsel, including Michael D. Hays, Esquire, counsel for Telemundo, on the date of issuance.