Gilbert's most recent efforts to obscure Adams' involvement with Telemundo came in the Phase III hearing, on June 21, 2000, at which time Gilbert gave the following testimony:

> Mr. Cole: Did you have any other contacts about potential settlement of the Reading proceeding after the unidentified man phone call?
>
> Mr. Gilbert: I have a third series of discussions which are somewhat ambiguous in nature as to were they discussions about settlement or not, but Ms. Swanson of Dow Lohnes called me and stated that she was interested in getting an appraisal.
>
> Q: And what did you tell Ms. Swanson?
>
> A: I didn't respond at all to whatever she was saying, and I'm not clear what she was saying about that. I said I would be interested in getting an appraisal, particularly since she told me, and this is a correction of previous testimony that it would be $5,000. I previously thought it was $10,000, which would be split three ways, between us, Reading and her client, and she refused to name who her client was.[20]
>
> Q: Do you recall when this conversation with Ms. Swanson occurred?
>
> A: It was in the spring of '99.
>
> Q: So am I correct that you just stated that you agreed to join in the appraisal?
>
> A: Yeah, and I gave her a different – I have a lot of respect for Dow Lohnes over the years, They are a first-class firm, and I knew a partner there would be somebody of substance and reality. Yes.

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20 This answer is at odds with Gilbert's January testimony:

> Mr. Hutton: Was the woman who raised this [appraisal] idea a representative of Telemundo?
>
> Mr. Gilbert: She alleged she was.

(Gilbert Testimony, Tr. at 1096:10-12.) Further, Ms. Swanson testified that she most likely identified her client in her initial call to Gilbert. (Swanson Testimony, Tr. at 2224:25-2225:9.) In any case, it seems unlikely that she would have "refused" to identify her client, particularly since Telemundo is later identified in the appraisal itself.

Q: Did you – in agreeing to join in the appraisal, did you tell Ms. Swanson that Adams was willing to become involved in settlement-related discussions?

A: Never. I just wanted to get the appraisal for one-third of $5,000.

Q: Did Ms. Swanson provide the appraisal?

A: Yes.

Q: Do you recall when that happened?

A: I think it occurred in early July, if I am correct.

Q: And did you speak with her at the time that the appraisal arrived?

A: Yes.

Q: Do you recall – call you tell us what that conversation concerned?

A: Well, first, it was a short conversation as I recall. You may have been present, I'm not sure, Harry. I may have been in your office when it occurred. And it was something, "I got the appraisal and I see that your client is Telemundo," because the appraisal mentions Telemundo in it.

Q: Did the conversation include any reference, to your recollection, of settlement?

A: She may have said something but I'm not sure if she did or not, I just don't remember. But I surely said nothing on it, and if I did, I indicated we weren't interested in settlement. But I did have several conversations with her, I told her I was interested in an affiliation agreement with Telemundo because I knew our people were interested in Hispanic broadcasting.

(Gilbert Testimony, Tr. at 2502:14-2504:19.) This most recent story plainly contradicts Gilbert's prior testimony; furthermore, even this revision does not fully comport with the evidence taken as a whole. Thus, for example, Gilbert most certainly participated in post-appraisal discussions about settlement with Ms.

Swanson, in fact, making it clear that Adams was only interested in pursing serious negotiations. (Swanson Testimony, Tr. at 2268:6-2274:7; Swanson Notes at 10-11.)

Adams' testimony with respect to its dealings with Telemundo concerning the prospects of settlement is plainly and knowingly false. In addition, Adams' intent to deceive is demonstrated by Adams' motive, for obvious reasons in light of the pending abuse of process charges, to hide any evidence of settlement negotiations. Adams' repeated and ongoing obfuscation with respect to its dealings with Telemundo raises significant doubts as to Adams' candor sufficient to warrant further inquiry.

2. Telemundo Programming

Like his testimony about Adams' dealings with Ms. Swanson and Telemundo with regard to potential settlement, Gilbert's testimony concerning Adams' dealings with Telemundo with regard to programming is also plainly and knowingly false. Thus, at his deposition in October, 1999, Gilbert unequivocally testified:

> Mr. Hutton: Have you ever had any discussions with Telemundo or any other programmer about providing programming to the station if your application is successful?
>
> Mr. Gilbert: No.

(Gilbert Depo., 22:20-23:2.) Gilbert gave the same unequivocal answer in January, 2000:

> Mr. Hutton: Has any representative of Adams ever had any discussions with any programmer about providing programming to the station in the event your application is successful?
>
> Mr. Gilbert: No.

(Gilbert Testimony, Tr. at 1107:11-14.)

As became clear during Ms. Swanson's testimony on June 19, 2000, as part of Phase III, Gilbert's testimony that he never had any discussions with any programmer, including Telemundo, about providing programming to the station if Adams' application is successful was clearly and knowingly false. Thus, the evidence adduced at the Phase III hearing,[21] shows that:

- On July 14, 1999, less than three months before his deposition, Gilbert contacted Ms. Swanson to express Adams' interest in a Telemundo affiliation (Swanson Testimony, Tr. at 2277:11-2278:6; Swanson Notes at 12);
- On July 15, 1999, Gilbert and Ms. Swanson further discussed the possibility of Telemundo providing Adams with Spanish language programming in the event that Adams' application were to be successful (Swanson Testimony, Tr. at 2281:2-2282:19; Swanson Notes at 14);
- On July 16, 1999, Ms. Swanson spoke with Mr. Cole and with Ms. Gaulke about "Adams' interest in affiliation and settlement." (Billing Records (Reading Hearing Ex. 50, p.10); July 16, 1999 Fax Cover Sheet from Ms. Gaulke to Mr. Sokol (a copy of the July 16, 1999 Fax Cover Sheet is attached hereto as Exhibit E); and
- The Adams-Telemundo affiliation issue was tabled to avoid the possibility of a lawsuit by Reading which, at the time, operated WTVE as a Telemundo affiliate station (Swanson Testimony, Tr. at 2286:1-12; July 16, 1999 fax cover sheet from Ms. Gaulke to Mr. Sokol (Exhibit E).)

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[21] In response to an objection by the Enforcement Bureau, the ALJ limited the scope and extent of questioning on the programming / affiliation issue. (Tr. at 2278:7-2279:2.)

In particular, in recounting her July 15, 1999 conversation with Gilbert, Ms. Swanson testified:

> Mr. Southard: If you could turn to the page to Reading Exhibit 52, page 14.
>
> Ms. Swanson: I'm on Exhibit 52, page 14.
>
> Q: And what are these?
>
> A: These are the phone notes from July 15th. They appear to be with Howard Gilbert.
>
> * * *
>
> Q: The last, the third line from the bottom on this page seems to say "Bob Hage (sic) wants to meet in NYC." Is that, did I read that right?
>
> A: Right.
>
> * * *
>
> Q: Do you know what he wanted to meet in New York about?
>
> A: As I go through the notes, it seems to be to meet with Telemundo. He [Gilbert] makes reference to another person, Wayne, I don't even, somebody who was a former president of J. Walter Thompson – I don't know his last name – apparently talked to Telemundo, maybe about Chicago, I think. I'm not sure. It says, "If we win" – and you've got, this means 85 to 90% chance of winning the hearing. "Interested in Telemundo relationship if we win. He wanted to tell me this. Bib Hage (sic) would like to meet in New York City or Howard meet with them." I guess it's a meeting with Telemundo about what happens in terms of getting programming to the station.

(Swanson Testimony, Tr. at 2281:2-2282:19; see also Swanson Notes at 14.)

Adams' interest in an affiliation with Telemundo was acknowledged in Ms. Gaulke's July 16, 1999, message to Mr. Sokol stating:

> Also, Adams counsel called Anne and said that they fully expected to be successful in getting the license to the station and wanted to begin discussions with us immediately about an affiliation. Anne & I agreed

> that we should not begin discussions with them, as Parker may try to claim tortuous (sic) interference against us.

(July 16, 1999 fax cover sheet from Ms. Gaulke to Mr. Sokol (Exhibit E).)

Thus, the evidence establishes that, not only did Adams *have* discussions with Telemundo about providing programming to the station if Adams' application is successful, Gilbert, himself, initiated the discussions. His testimony in October and January that no such discussions ever took place was plainly false and, considering that the discussions occurred less than three months prior to his October 1999 deposition, he most certainly knew that the testimony was false when he gave it.

Most recently, in his Phase III testimony, two days following Ms. Swanson's appearance, Gilbert suddenly sought to revise his previously unequivocal testimony that no Adams representative had ever discussed, with Telemundo or any other programmer, obtaining programming in the event that Adams' application were successful. Thus, Gilbert conceded that, indeed, he had had "several conversations" with Ms. Swanson wherein he told her that Adams "was interested in an affiliation agreement with Telemundo because [he] knew [Adams'] people were interested in Hispanic broadcasting." (Gilbert Testimony, Tr. at 2504:16-19.)

In a desperate attempt at damage control, Gilbert concocted the following explanation of his prior, plainly false, testimony:

> Mr. Cole: You told Ms. Swanson that Adams was interested in an affiliation agreement with Telemundo?
>
> Mr. Gilbert: Right.

> Q: Do you recall in your testimony in January you indicated that you had not engaged in any discussions concerning programming for Adams' proposed *station*[22]?
>
> A: Yes.
>
> Q: How can you say that when you advised Ms. Swanson that Adams was interested in an affiliation agreement with Telemundo?
>
> A: I don't think that that's – that's not the – when I'm talking about programming, I'm discussing the nature of programs that you would have on a program, rather than an affiliation agreement.

(Gilbert Testimony, Tr. at 2504:20-2505:8.) This proffered excuse, however, not only fails to explain the inconsistency, it does not even make sense. Ms. Swanson testified that a network affiliation includes providing programming to the affiliate. (Swanson Testimony, Tr. at 2279:4-7.) And Gilbert himself previously testified that an affiliation with Univision or Telemundo was necessary in order to put a station on the air with Spanish language programming. (Gilbert Testimony, Tr. at 1007:13-1009:9, 1127:18-1130:10.) Gilbert clearly understood in January that an affiliation involved programming and his testimony that Adams never discussed programming while having himself, only months before, approached Telemundo seeking an affiliation was knowingly false.

Adams' testimony with respect to its discussions with Telemundo concerning the provision of programming is plainly and knowingly false. In addition, Adams' intent to deceive is demonstrated by Adams' motive, for obvious reasons in light of the pending abuse of process charges, to conceal all its dealings with Telemundo.

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22 Errata – the original transcription reads "proposed *statement*."

Adams' false and misleading testimony with respect to its dealings with Telemundo raises a substantial and material question as to Adams' candor.

C. The Sherwood Tapes

1. Gilbert's Alleged Review of the Tapes

Throughout the course of these proceedings, Gilbert has given various, differing, accounts of his alleged review of the videotapes prepared by Paul Sherwood (the "Tapes"). Gilbert's testimony also suffers from certain factual disabilities. These discrepancies raise substantial questions as to Adams' candor with respect to that review.

The motive for deceit is apparent. Adams' claim that it undertook a bona fide investigation of WTVE's programming prior to filing its application depends in large part on Gilbert's claim that he reviewed the Tapes, believed them to be of WTVE's programming, and concluded therefrom that WTVE was not serving the public's interest. If, however, as Reading believes, Gilbert did not review the Tapes (or, at best, made only a nominal effort to review the Tapes), Adams' bona fides become even more uncertain. Thus, Gilbert had every incentive to fabricate and exaggerate his review of the Tapes.

At the outset, Gilbert did not even claim that he reviewed the Tapes, but relied only upon the reports he had from Mr. Sherwood. Specifically, in his November 22, 1999, Declaration, Gilbert states:

> . . . I retained a number of individuals under the direction of a single individual to videotape, prior to the filing of Adams' application, the programming of Station WTVE(TV) for two weeks, 24 hours per day, seven days per week. As that taping project was on going, I spoke regularly with the person who was in charge of making the tapes, and

> I was regularly briefed on the contents of the programming being taped. The information which I obtained through those reports strongly confirmed my belief that the station was not serving the public interest.

(Gilbert Decl., ¶ 12.) At no point in the Declaration does Gilbert even intimate that he reviewed the Tapes.

In contrast, however, at the hearing in January, Gilbert testified that he did, in fact, personally review the Tapes. (Gilbert Testimony, Tr. at 1068:7-11, 1083:18-1085:20, 1088:3-1089:1.[23]) Specifically, after having claimed to have reviewed all the Tapes, Gilbert explained:

> Mr. Cole: Did you review those tapes in real time or in some other mode?
>
> Mr. Gilbert: In fast forward.
>
> Q: So you didn't sit there and watch hour for hour all the tapes?
>
> A: I watched all the tapes and all the transmissions, but I – I learned how to – Particularly, I didn't articulate or realize until I heard the – There was a way we knew that the PSA was coming. I'll

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[23] In particular, Gilbert stated:

> The Court: All right. At what point in time did you decide and say okay, I've seen enough?
>
> Mr. Gilbert: I never said I saw enough. I watched every transmission. This was part of like belt and suspenders, Your Honor.
>
> Q: You said two weeks, though –
>
> A: Yeah.
>
> Q: Two weeks, 24 hours a day.
>
> A: I watched it all. It was not exactly fun.

(Gilbert Testimony, Tr. at 1088:17-1089:1)

just qualify or articulate. There was this music that would come in front of the PSA. That's how we stopped the fast forward.[24]

Q: And Your Honor, this is not a question but I think you clarified it on –

A: I did some fast forward, some real time. Just to get the flavor of the sales pitch.

(Gilbert Testimony, Tr. at 1134:25-1135:14.)

In his January testimony, Gilbert also claimed that he believed the Tapes were of WTVE's programming because they contained "Reading, PA PSAs":

The Court: Well these are just Reading PSAs that were run by a variety of stations in Reading? When we're talking about Reading PSAs, I thought you meant the ones that the station was running?

Mr. Gilbert: As far as I – They were Pennsylvania PSAs, its been awhile since I looked at them. And they were Pennsylvania, and as I recall they were Reading, PA PSAs.

Mr. Hutton: What do you mean by Reading, PA PSAs?

Mr. Gilbert: They had to do with – First off, they were rudimentary. They had to do with Pennsylvania problems, and as I recall they had to do, occasionally there was a mention of Reading.

(Gilbert Testimony, Tr. at 1085:7-20.)

Reading's Assistant General Manager, George Mattmiller, testified in June, however, that the only PSAs on the Tapes were those produced for national consumption by the Missing Children Help Center, located in Tampa, Florida, that

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[24] Gilbert's claim to have reviewed the Tapes, in part, by "listening" to the audio during those times when he allegedly reviewed the Tapes in "fast forward" mode is patently false. (Gilbert Testimony, Tr. at 1134:11-1135:14, 2539:15-2540:5.) Specifically, using a standard VHS video player / recorder as Gilbert claims he did, it is simply not possible to hear the audio during fast forward review. That explanation also varies from Adams' Answers to Interrogatories which state only that Gilbert monitored the "video portion of the programming" to detect shifts from the home shopping programming to another type of programming. (Adams Answers to Interrogatories at 11-12.)

none of the missing children identified in those PSAs were identified as being missing from Reading, Pennsylvania, and that in the approximately 392 hours of recorded programming, only one of the children was identified has having gone missing from the Philadelphia-Wilmington-Atlantic City combined Metropolitan Statistical Area. (Testimony of George Mattmiller ("Mattmiller Testimony"), ¶¶ 1, 9-15 (Mr. Mattmiller's testimony is part of the record as Reading Hearing Ex. 47.)) Thus, it appears that Gilbert was simply making up his January testimony as he went along, in an effort to rationalize his failure to recognize that the Tapes were not of WTVE's programming

Adams further revised its description of Gilbert's review of the Tapes in its subsequent answers to interrogatories sworn to by Gilbert. Specifically, Adams stated:

> Mr. Gilbert's review consisted of "real-time" review of 100% of the first several tapes, consisting of approximately 24-36 hours of programming. After that, he utilized the "fast forward" function which permitted him to see the video portion of the programming on the remaining tapes while advancing the tape quickly. In that way, Mr. Gilbert was able to determine when the programming shifted from "home shopping" programming to any other type of programming. Each time such a shift occurred, Mr. Gilbert stopped the tape, backed it up to a point several minutes prior to the shift, and then reviewed the tape in "real time" until the programming returned to "home shopping". At that point, Mr. Gilbert used the "fast forward" function again until he located the next shift in programming from "home shopping."

(Adams' Answers to Interrogatories at 11-12.)

Adams' story changed again in its Supplemental Answers to Interrogatories, when Gilbert revised the amount of his "real time" review of the tapes from the 24

to 36 hours claimed in the April 19, 2000, Answers to Interrogatories down to 6 to 12 hours. (Supplement to Adams' Answers to Interrogatories at 10-11.)

In June, however, Gilbert further narrowed the scope of his review:

> Mr. Cole: So you received the tapes from June 1. What did you do next?
>
> Mr. Gilbert: Viewed them. Put them in machines in our office; sat down and watched the tapes.
>
> **Q: What did you see on the tapes?**
>
> **A: Well, I saw 24 hours of programming, and strangely enough, in light of what happened, on the first six-hour segment, which is the one I watched most intensely, there were three Pennsylvania public service announcements. They were really dealing with missing children.**

(Gilbert Testimony, Tr. at 2487:13-22 (emphasis added).)

Gilbert's most recent emphasis on the first six hours of the Tapes, revised down from his prior claims of 24 to 36 hours and then 6 to 12, was most certainly done in an effort to draw support for his claim that he believed that the Tapes were of WTVE's programming by referencing the three Pennsylvania missing children PSAs identified by Mr. Mattmiller:

> Mr. Cole: What did you understand to be the importance of the fact that the missing children from Pennsylvania were on the tape that you were watching?
>
> Mr. Gilbert: It indicated that I was watching a Reading program.

(Gilbert Testimony, Tr. at 2487:25-2488:4.) Gilbert then attempted to support his testimony of having seen "Pennsylvania" PSAs by reference to Mr. Mattmiller's written testimony. Thus, Gilbert testified:

Mr. Cole: If I could refer you, Mr. Gilbert, to Attachment E to Mr. Mattmiller's exhibit, that is Reading Exhibit 47, Attachment E, which is a listing of the breakdown of missing children announcements according to groups, and I believe we previously understood among the parties that Group A as defined on or as set forth on the top of this exhibit refers to the June 1 tapes.

Would you confirm that three of the missing children announcements in the first taping Group A is Pennsylvania?

Mr. Gilbert: That's correct.

Q: That's consistent with your recollection, is it not?

A: Yes.

(Gilbert Testimony, Tr. at 2496:16-2497:4 (emphasis added).) On cross-examination, however, Gilbert reluctantly conceded that he had no *actual* recollection of seeing those PSAs:

Mr. Southard: You testified that you saw three missing children PSAs that were about Pennsylvania; is that correct?

Mr. Gilbert: Correct.

Q: Is that something that you actually remember today as you sit here?

Pause.

Do you have an actual recollection of seeing those PSAs at the time that you reviewed the tape?

A: No, not today.

(Gilbert Testimony, Tr. at 2540:6-14.) Thus it appears that Gilbert's most recent justification of having reviewed the Tapes but failed to recognize that they were not of WTVE is based wholly on Mr. Mattmiller's summary of the Tapes and not on any actual recollection, despite the initial claim to such recollection.

Gilbert's convenient conclusion that he believed the Tapes were of WTVE's programming based on the **three** "Pennsylvania" PSAs is also dubious in light of

the fact that, in that first six hour tape Gilbert claims to have "watched most intensely" there were **four** PSAs for children missing from **Florida** (which is where the programming did, in fact, originate). (Mattmiller Testimony, Reading Hearing Ex. 47 at E1.)

Moreover, Gilbert claims to have watched all of the PSAs in "real time." (Adams' Answers to Interrogatories at 11-12.) If that was true, however, why didn't he conclude that, if not Florida (there being four PSAs for children missing from Florida in the first six hour tape and 20 such PSAs overall), the programming came from Texas (there being four PSAs for children missing from Texas included in the first 24 hours taped and 12 such PSAs overall), or New York (there being, overall, 26 PSAs for children missing from New York) (Mattmiller Testimony, Reading Hearing Ex. 47 at E1-E4.)[25] At the very least, one would have expected that the instances of so many PSAs for children missing from States other than Pennsylvania (only 9 of the 131 PSAs were for children missing from Pennsylvania, and none of them from Reading) would have raised a question as to the source of the programming recorded.

Gilbert's further efforts to reconcile the fact that the Tapes were not of WTVE's programming with his claim that he actually reviewed them simply serves to weaken that claim. Thus, had Gilbert in fact reviewed the Tapes, certainly he would have noticed the lack of any identification of WTVE or any paid advertising.

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[25] In sum the PSAs are for children missing from NY(26 PSAs), FL(20), TX(12), PA(9), CO(8), IL(7), NC(7), AZ(6), CA(6), OH(6), WV(6), OK(5), MI(3), ND(2), WI(2), GA(1), ID(1), IN(1), MD(1), OR(1), and VA(1). (Mattmiller Testimony, Reading Hearing Ex. 47 at E1-E4.)

(Mattmiller Testimony, Reading Hearing Ex. 47, ¶ 5-6.) Gilbert has tried to explain his failure to notice the lack of station identifications for WTVE by asserting that he was "focused on the timing of the PSAs and the nature of the PSAs and the fact that they were canned and so on." (Gilbert Testimony, Tr. at 1078:21-25.) However, in light of the complete lack of any PSAs relating to Reading, that explanation is certainly questionable.

Moreover, if Gilbert's claim to having reviewed the Tapes and having believed them to be of WTVE's programming is to be believed, not only must the Court overlook Gilbert's inconsistent testimony about the review process, accept his claim about the "Pennsylvania" PSAs, and accept his failure to notice the absence of WTVE station identifications or any paid advertising, but the Court must also accept that Gilbert also failed to account for the hourly identifications of the programming as that of the "Home Shopping Club." As Mr. Mattmiller attests, at approximately 50 minutes after the hour, in addition to the PSAs (which Gilbert claims to have watched in "real time"), the Tapes reflect "a five-second network identification of the Home Shopping Club consisting of the Home Shopping Club logo and the works "Home Shopping Club" sung in a jingle. (Mattmiller Testimony, Reading Hearing Ex. 47, ¶ 7.) In addition, the Court would have to accept Gilbert's overlooking the longer, 30-second, identification of the Home Shopping Club, which aired in some, but not all, of the breaks, consisting "of a depiction of the home Shopping Club logo, the words "Home Shopping Club" being sung to a jingle, and the following voiceover announcement:

> You are watching America's original shop at home television service, bringing you 24 hours of savings, fun and excitement every day. Live from Tampa Bay, Florida, it's the Home Shopping Club.

(Mattmiller Testimony, Reading Hearing Ex. 47, ¶ 8.)

Reviewing the evidence as a whole, it appears that even a cursory review of the Tapes would have, at the very least, raised questions about the origin of the programming recorded. Yet Gilbert claims that he reviewed all of the Tapes and, not only did he not question the origin of the programming but concluded therefrom that they were in actuality the programming of WTVE. Gilbert's testimony in this respect is highly dubious. What's more, in light of Gilbert's need to have reviewed the Tapes in order to support his claim that, based upon such review, he concluded that Reading's programming was not serving the public's interest, there is ample motive to fabricate such a review. The facts, however, do not support Gilbert's claimed review and, at the least, raise sufficient questions to require designation of a misrepresentation/lack of candor issue.

2. Sherwood's "Reports"

As noted above, Gilbert first claimed to have based his conclusion that WTVE was not serving the public interest on the reports he received from Mr. Sherwood. (Gilbert Decl., ¶ 12.) In that Declaration, Gilbert claims that "[a]s the taping project was on-going, I spoke regularly with the person who was in charge of making the tapes, and I was regularly briefed on the contents of the programming being taped." (Id.) In Gilbert's January testimony, "regularly" became "daily." (Gilbert Testimony, Tr. at 1069:13-21.)

Contrary to Gilbert's testimony, Mr. Sherwood testified at his May 19, 2000, deposition, that, as far as he could recall, he spoke to Gilbert only once or twice during the course of the taping project. (Transcript of the May 19, 2000, Deposition of Paul Sherwood, 44:20-45:14 (pertinent excerpts of Mr. Sherwood's deposition transcript are attached hereto as Exhibit F.)) Mr. Sherwood confirmed that recollection in his June 19, 2000, hearing testimony, stating that he spoke to Gilbert once after have done the initial June 1, 1994 recording and then once during the process of making the remaining Tapes. (Sherwood Testimony, Tr. at 2149:2-18.)

In June, Gilbert recanted his January testimony that he spoke to Mr. Sherwood on a daily basis and, instead, claimed that he had spoken with Mr. Sherwood a couple of times a week.

> Mr. Cole: Now, back in your January testimony, I believe you testified that you spoke with Mr. Sherwood every day or on a daily basis during the taping.
>
> Do you recall that testimony?
>
> Mr. Gilbert: Yes.
>
> Q: Do you have any reason to wish to revise that testimony?
>
> A: Yes, sir. It is my understanding that I really didn't talk to him every day. I talked to him a couple of times a week.
>
> Q: Prior to your testimony in January, had you reviewed in detail any records concerning the taping process involving Mr. Sherwood?
>
> A: No.
>
> Q: So was the basis for your January testimony?
>
> A: Once again, it was my recollection of what had occurred six years prior.

> Q: Since then have you had the opportunity to review other information concerning the taping process?
>
> A: Yes, I have, and that information leads me to revise my answer.

(Gilbert Testimony, Tr. at 2492:10-2493:5.) That "other information," however, turned out to be Mr. Sherwood's deposition testimony.

> Mr. Southard: Well, Okay. How did it come up that you changed your testimony from the – the first testimony, if I recall correctly, was that you spoke to [Mr. Sherwood] on a daily basis to your current testimony.
>
> Mr. Gilbert: Oh, I saw his deposition.
>
> Q: Okay, so you changed your testimony based on Mr. Sherwood's deposition?
>
> A: Yes.

(Gilbert Testimony, Tr. at 2549:13-20.)

Gilbert's testimony, based as it is on Mr. Sherwood's testimony rather than any apparent independent recollection by Gilbert, raises serious questions as to the veracity of his prior testimony – e.g., that he spoke to Mr. Sherwood on a daily basis – and, for that matter, on his present testimony that he spoke with Mr. Sherwood "a couple times a week." Given the importance Adams has placed on Mr. Sherwood's "reports" to support the conclusion that Reading was not serving the public interest, Gilbert had ample motive to fabricate the extent of his contacts with Mr. Sherwood. These apparent fabrications raise sufficient questions to warrant further inquiry.

3. Gilbert's Instructions

In addition to his claims about the number of times he spoke with Mr. Sherwood, Gilbert has asserted that, during his initial contact with Mr. Sherwood, he was very specific about instructing Mr. Sherwood to tape WTVE and that Mr. Sherwood had assured him that he could receive WTVE's broadcasts on his television. Thus, Gilbert claimed in January:

> Mr. Hutton: Had you taken any steps or had he taken any steps to verify that WTVE was actually carried on the cable system being taped?
>
> Mr. Gilbert: He told me he had before we started.

(Gilbert Testimony, Tr. at 1082:15-18.) And in June, according to Gilbert, not only had Mr. Sherwood told him he could receive WTVE's signal on his cable system, but he actually verified it for Gilbert:

> Mr. Cole: Did you know whether Mr. Sherwood was capable of receiving Station WTVE at whatever place he intended to do the taping from?
>
> Mr. Gilbert: At the time I thought I did, yes.
>
> Q: And how –
>
> A: I had him turn on the channel to make sure he was getting it. He said he was getting it. And I said, okay, you qualify on that basis too. That was a mistake, of course.

(Gilbert Testimony, Tr. at 2484:23-2485:6.) In fact, claims Gilbert, if anyone is mistaken about the taping instructions, it is Sherwood:

> Mr. Shook: Now, I believe in direct testimony, in response to a question from Mr. Cole, you had indicated that when you first spoke with Mr. Sherwood that you had requested that he tape the programming of Channel 51 in Reading, Pennsylvania.
>
> Mr. Gilbert: Yes.

Q: Do you recall that?

A: Yes.

Q: Would it be more correct to testify that when you had asked Mr. Sherwood to video tape programming that you simply asked him to video tape the programming of a home shopping channel that could be received in that area?

A: No.

Q: You were very specific that you had wanted him to video tape Channel 51 in Reading?

A: Yes.

Q: And if Mr. Sherwood recollected that his instruction was to video tape home shopping programming, that that was an error on his part?

A: Yeah. Yes.

(Gilbert Testimony, Tr. at 2554:15-2555:8.)

Gilbert's claim to having very specifically instructed Mr. Sherwood to tape Channel 51 in Reading and his further claim that, in response to those very specific instructions, Mr. Sherwood actually verified that he could receive WTVE by turning on the channel is plainly contrary to Mr. Sherwood's recollection of those instructions. (Sherwood Testimony, Tr. at 2139:11-2140:8.)

More importantly, however, Gilbert could not possibly have "very specifically" instructed Mr. Sherwood to tape WTVE's programming, nor could Mr. Sherwood have possibly verified that he could receive WTVE by turning on the channel for the simple reason that *Mr. Sherwood did not receive WTVE on his television!* Specifically, at the time he did the taping, Mr. Sherwood received all his television programming through a cable system operated by Suburban Cable Company.

(Sherwood Testimony, Tr. at 2147:7-2148:4, 2165:15-18, 2169:15-23.) At the time Suburban Cable *did not* carry WTVE. (TV Times, from the Reading Eagle for the week of May 29 to June 4, 1994, at 5 (a copy of the TV Times is in the record as Adams Hearing Ex. 11.))

Gilbert's testimony about his instructions to Mr. Sherwood and Mr. Sherwood's verifying his ability to receive WTVE in response to Gilbert's instructions is plainly false. That deception is clearly motivated by the desire to circumvent the negative impact of having failed to properly instruct Mr. Sherwood as to the taping and the concomitant implication that Adams made only a superficial effort to tape the programming as window-dressing to support a later claim to having conducted an investigation of WTVE's programming. Given the plain falsity of Gilbert's testimony on this matter and the apparent motive for fabrication, sufficient reason exists to warrant further inquiry.

D. Programming In General

Adams has given inconsistent explanations of the nature of the programming it intends to air should it succeed to the license for Channel 51 in Reading, Pennsylvania. Those inconsistencies raise sufficient doubts as to Adams' candor to warrant further inquiry.

Thus, A. R. Umans, a Vice President and Director of Adams, claimed that he discussed the issue of programming with Messrs. Gilbert and Haag at the "onset" of the application and that Adams intended, from the very beginning, to have the station broadcast as a Spanish language station. (Transcript of the October 14, 1999, Deposition of A. R. Umans (Umans Depo.), 8:20-11:2 (the Umans Depo. is in

the record as Reading Hearing Ex. 45.)) Mr. Haag, however, remembers no such conversations. (Haag Depo., 18:21-19:2 (Reading Hearing Ex. 44).)

In contrast, however, Adams' application, filed on June 30, 1994, makes no mention at all of Spanish language programming. Specifically, the application, states:

> Adams Communications Corporation ("Adams") will provide regularly scheduled news, public affairs and other nonentertainment programming (including locally-produced and locally-oriented programming and public service announcements) responsive to the needs and interests of Reading and the rest of the station's service area."

(Adams Application, Exhibit 4 (a copy of the Adams Application is in the record as Reading Hearing Ex. 10.)) If, as Mr. Umans claims, Adams intended from the beginning to pursue Spanish language programming, then Adams' statement of its programming intent in its application is false or, at least, misleading. Conversely, if the application is correct, then Umans' claim is false.

Adams has, however, further dissembled with respect to its programming intentions. Thus, Gilbert testified in January that it was Wayne Fickinger who was the driving force behind Adams' interest in Spanish language programming. (Gilbert Testimony, Tr. at 1125:1-1127:17.) Mr. Fickinger, however, stated at his deposition that, prior to May or June of 1999 (which more than coincidentally coincides with the time Adams was negotiating possible settlement or affiliation with Telemundo), there was no plan to provide Spanish language programming in Reading. Specifically, Mr. Fickinger testified:

Mr. Hutton: Have you had any discussions with any of the other stockholders of Adams Communications about the programming that Adams would air on this station if Adams is successful?

Mr. Fickinger: I talked with two of the leaders, yes.

Q: What was the nature of that discussion?

A: Hispanic is what we currently would be planning to do.

Q: When did you have that discussion?

A: The first time around I'm going to say about four of five months ago and this morning.

Q: Would the plan be to affiliate with a Hispanic network or to air independent Hispanic programming?

A: I don't know.

Q: Was that discussed?

A: Not in my presence.

Q: Was the availability of an affiliation with a Hispanic network discussed?

A: Not really. There was one mentioned that works with them, but no affiliation was discussed.

Q: Which one – I'm sorry. Which one works with them?

A: The one that currently works with the station, with Channel 51.

Q: To your knowledge, has anyone affiliated with Adams Communications held discussions with a representative of a Hispanic network on any subject?

A: Not to my knowledge.

Q: Prior to four or five months ago, did you have any understanding or any discussion with other Adams principals as to what programming Adams would air if Adams were successful?

A: No.

(Transcript of the October 14, 1999, deposition of Wayne J. Fickinger ("Fickinger Depo."), 9:8-10:19 (emphasis added) (pertinent excerpts of the Fickinger Depo. are attached hereto as Exhibit G.))

In his testimony in June, however, Mr. Fickinger recanted his prior testimony, stating instead that he always understood that Adams' planned to broadcast Spanish language programming:

> Mr. Cole: Mr. Fickinger, would you please state what your understanding of Adams' programming plans with respect to the Reading station were, to the best of your knowledge, at the time the application was filed?
>
> Mr. Fickinger: As far as I was concerned, our programming was to be an Hispanic, an Hispanic station. We looked at some of the demographics and it looked like the Hispanic area in Berks County was growing significantly. It was a – perhaps in Berks County, somewhere around 23-24 percent of the county population was Hispanic.
>
> Additionally, we had hoped to reach over into Philadelphia as well.

(Fickinger Testimony, Tr. at 2444:18-2445:4.) Not only does this most recent testimony flatly contradict Mr. Fickinger's deposition testimony, but, as previously discussed, it contradicts the plain language of Adams' programming intent in its application.

Mr. Fickinger attempted to explain the inconsistency between his deposition testimony that, prior to May or June of 1999, he had no understanding of what programming Adams would air if Adams were successful, and his hearing testimony that he understood from the very beginning that Adams planned to air Spanish language programming if it were successful, by claiming that "I was always under

the assumption – I was always under the assumption that it was designed to be an Hispanic station. Never did I consider that any kind of conversation was necessary." (Fickinger Testimony, Tr. at 2445:5-21.) Mr. Fickinger did not explain, however, how it was possible to have an "assumption" about the station's proposed programming without having any "understanding" about such programming. At best, Mr. Fickinger's testimony lacks candor.

Mr. Fickinger further testified that his "assumption" that Adams would run Channel 51 as a Spanish language station was a carry over of the Adams' principals' efforts to air Spanish language programming in Monroe. (Fickinger Testimony, Tr. at 2447:3-2449:13.) Yet, Adams has repeatedly claimed that Monroe abandoned, on the doorstep of success, its pursuit of Channel 44 in Chicago, because of the lack of availability of Spanish language programming. Thus, Gilbert, at his October deposition stated:

> Mr. Hutton: And why was the decision made for Monroe Communications to dismiss its application?
>
> Mr. Gilbert: Well, we were committed to, A, getting the channel back into the public. We succeeded in that. We were also committed to Hispanic broadcasting. We felt at that point there was going to only be one channel left, and they wouldn't deal with us and we were afraid of what was going to happen. Only Univision appeared to be the other channel at that point. Telemundo was going bankrupt.

(Gilbert Depo., 47:9-18.) Of course, by the time Adams filed its present application, not only was Telemundo going bankrupt, it had, in fact, gone bankrupt. If Univision would not deal with Adams[26] and Adams would not deal with Telemundo merely because of a fear it was going bankrupt, it becomes difficult to accept that shortly after Monroe abandoned the Channel 44 application Adams had an intention to file a new comparative application for a new station on which it intended to air Spanish language programming.

More importantly, the idea that Adams, now and always, intended to air Spanish language programming if its application were successful cannot be reconciled with Gilbert's claim that Adams has never had any discussions with any programmer about providing programming to the station if the application is successful or his contention that Adams' pursuit of an affiliation with Telemundo had nothing to do with programming. (Gilbert Depo. 22:20-23:2; Gilbert Testimony, Tr. at 1107:11-14, 2504:20-2505:8.) If Adams has always been intent on airing Spanish language programming, as it now claims, why would it not attempt, at an early stage, to secure an agreement for such programming with a Spanish language programming provider, particularly in light of what happened in Monroe?

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[26] In November, in opposition to Reading's motion to add the abuse of process issue, Gilbert claimed that Monroe had engaged in "substantive discussions" with both Telemundo and Univision and that "after extensive discussions with [Univision], [Univision] underwent an ownership change in connection with which the network unilaterally ceased its negotiations with Monroe." (Gilbert Decl., ¶ 5.) In January, however, Gilbert testified that Monroe had never had any negotiations with Univision and that Univision refused to deal with Monroe because that already had a long term agreement with someone else. (Gilbert Testimony, Tr. at 1008:22-1009:9.) This clearly contradictory testimony raises serious questions about Adams' candor during these proceedings.

Certainly, one would expect that Adams would want to make sure it didn't have to abandon Channel 51 in Reading for lack of available Spanish language programming. Yet Adams maintains that it has never discussed programming with Telemundo or anyone.

Likewise, if it always intended to air Spanish language programming, why didn't it say so in its application?

The inconsistencies in the record regarding Adams' intent to provide Spanish language programming raise sufficient doubts as to Adams' candor to warrant designation of a misrepresentation/lack of candor issue.

E. Corporate Dissolution

1. Annual Reports

On August 31, 1998, Adams Communications Corporation was dissolved under the provisions of Section 101 of Chapter 156B of the Massachusetts General Laws. (Certificate of Dissolution (the Certificate of Dissolution is in the record as Reading Hearing Ex. 72.)) In pertinent part, Section 101 provides that "[i]f a corporation has failed to comply with the provisions of law requiring the filing of reports with the secretary . . . the state secretary may dissolve the corporation . . . ." Mass. Gen. Laws Ann., Ch. 156B, § 101.

At trial, Mr. Gilbert testified without reservation:

> Mr. Southard: Does Adams prepare annual reports?
>
> Mr. Gilbert: Yes.
>
> Q: Have those reports been regularly filed with the Massachusetts Secretary of State?

A: Yes.

(Gilbert Testimony, Tr. at 2522:6-10.)

The very next day after giving the foregoing testimony, however, Mr. Gilbert signed, under penalty of perjury, an Application for Revival to the Massachusetts Secretary of the Commonwealth stating that Adams had been dissolved "due to the corporation's failure to file Annual Reports." (Adams' Application for Revival (a certified copy of the Application for Revival is attached hereto as Exhibit H.))

Clearly one of these stories is false. While Gilbert will certainly concoct a convenient explanation for this inconsistency in opposition to this Motion, the inconsistency itself raises substantial questions about Adams' candor and warrants further inquiry concerning Adams' intent.

2. <u>Notice of Dissolution</u>

During his testimony on June 21, 2000, Mr. Gilbert further testified as follows:

> Mr. Shook: Were you notified by the Commonwealth of Massachusetts on or shortly after August 31, 1998, that Adams Communications Corporation had been dissolved?
>
> Mr. Gilbert: No.
>
> Q: When, if ever, prior to today, were you notified that the corporation had been dissolved?
>
> A: Never.
>
> Q: So today is the first time it's come to your attention that according to the Commonwealth of Massachusetts' records Adams Communications Corporation is dissolved and has been since August 31, 1998?
>
> A: Yes.

(Gilbert Testimony, Tr. at 2552:10-21.)

In contrast to Mr. Gilbert's testimony that Adams had no notice of the dissolution, Section 101 of Chapter 156B of the Massachusetts General Laws, pursuant to which Adams was dissolved, provides:

> The state shall give the corporation at least ninety days notice of the proposed dissolution . . . . The notice shall be given by mail to the corporation at the address of its principal place office as shown in the records of the state secretary and in such other manner as the state secretary may require. The notice shall state that the corporation will be dissolved ninety days from the date of the notice, or at such later date as the secretary shall order. The notice shall state the reasons for the proposed dissolution and shall state that the corporation may, within sixty days of the date of the notice, request a hearing to show cause why it should not be dissolved.

Mass. Gen. Laws Ann., Ch. 156B, § 101.

By law Massachusetts was required to give Adams notice of the proposed dissolution and, certainly, when it dissolved Adams on August 31, 1999, the Commonwealth was satisfied that it had done so. The discrepancy between the de jure notice coupled with the fact that the corporation was actually dissolved and Mr. Gilbert's claim that Adams did not receive any notice raises questions as to Adams' candor sufficient to warrant adding the issues sought.[27]

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[27] The fact of actual dissolution for over a year, from August 31, 1998, through June 22, 2000, raises an additional question; specifically, had Adams regularly filed its annual reports as Gilbert claims, the filing of the 1998 and/or 1999 reports would have been rejected, the corporation having been previously dissolved. Adams would, as a result, have had actual notice of the dissolution.

IV. CONCLUSION

As demonstrated above, Adams has made numerous misrepresentations during the course of these proceedings that raise significant questions as to its candor; accordingly, the requested issues should be added and further inquiry made into these matters.

Respectfully submitted,

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Dated: July 17, 2000

CERTIFICATE OF SERVICE

I, hereby certify that I caused a copy of the foregoing, Reading Broadcasting, Inc.'s Motion to Enlarge Issues and supporting Memorandum to be HAND DELIVERED, this 17th day of July, 2000, as follows:

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