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

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	)	

PROTECTIVE ORDER

Issued: July 17, 2000 Released: July 18, 2000

Background

This is a ruling on a request by nonparty Telemundo Network Group, LLC ("Telemundo") for posthearing discovery protective order directing Reading Broadcasting, Inc. ("Reading") to pay Telemundo an appropriate amount of costs and attorneys' fees in connection with compliance with a Commission subpoena duces tecum ("subpoena).

The subpoena was served by Reading on May 10, 2000. Relief in the nature of a protective order was first requested by Telemundo on May 25, 2000, in a pleading styled "Response of Non-Party Telemundo Network Group, LLC to Reading Broadcasting, Inc.'s Opposition to Objection to Subpoena." In response to Order FCC 00M-36, released May 30, 2000, Reading filed its Opposition to Motion for Legal Fees and Costs on June 8, 2000. Telemundo filed a Reply to Reading's Opposition on June 15, 2000. By Order FCC 00M-40, released June 22, 2000, the Presiding Judge directed Telemundo to submit additional information on fees and expenses. After two extensions of time which were granted[1], Telemundo submitted additional information on July 10, 2000.

[1] See Order FCC 00M-44 and Order FCC 00M-45.

Facts

On November 2, 1999, Reading sought an abuse of process issue against Adams Communications Corporation ("Adams") on allegations charging that Adams had filed a spurious application for the purposes of settlement, i.e., "greenmail." The Enforcement Bureau ("Bureau") filed a Comment in which it acknowledged a concern over the circumstances of an application filed by Adams after the same group had received a settlement for a substantial cash buyout in another market. After hearing first-hand testimony, the Presiding Judge granted Adams' request and added issues. See Memorandum Opinion and Order FCC 00M-07, released January 20, 2000. A request for an appeal was filed and the issues were set upon its denial in March. See Memorandum Opinion and Order FCC 00M-19, released March 6, 2000. From these circumstances, it is concluded that Reading was focused on the abuse of process issue since at least November, 1999. It was in January, 2000, that Reading learned in open court that Adams had ventured on an appraisal of Station WTVE(TV) with Telemundo and that dealings were being conducted through M. Anne Swanson, Esquire, of Dow, Lohnes & Albertson, Telemundo's counsel.

Reading could have sought discovery of Ms. Swanson immediately after the January testimony which would have been granted, subject to reasonable notice and the availability of Ms. Swanson to be deposed. [2] Documents could have been simultaneously sought on January 13. For whatever reason, Reading did not seek discovery of Telemundo and Ms. Swanson until May 4, the day before discovery was to terminate and just a little over one month before the next phase of hearings was to commence. Reading was tardy in January but became fired up in May, seeking expedited and extensive discovery on the issues that it had been seeking since November 1999, and obtained in January.[3]

Apparently anticipating time problems, on May 1, 2000, Reading filed a Motion to Stay the Close of Discovery and to Amend the Scheduling Order. That request for delay was considered. Order FCC 00M-30, released May 8, 2000. Reading was granted interim relief to complete depositions beyond May 5 with five subpoenas signed for depositions,[4]

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[2] With the usual request for interlocutory appeal, there would have been some delay. But at least the initial requests for discovery could have been made in January.

[3] Phase II issues against Reading initially were to be tried in April. Order FCC 00M-18, released February 18, 2000. After a conference held on March 31, new dates for Phase II and Phase III were set for June to commence on June 13, 2000. Order FCC 00M-28, released April 5, 2000. Under that ruling, all discovery was to terminate on May 5, with some exceptions for "clean up deposition discovery which cannot be completed for good reason." Id. at fn. 3. Reading has tried to argue that the footnote left enough room for commencing discovery of Telemundo and Ms. Swanson on May 4. That is a totally unacceptable argument.

including the deposition of Ms. Swanson, and technical rules regarding the use of subpoenas were waived in the interest of accommodating Reading discovery before Phase III, which was to be heard immediately after Phase II. See Order FCC 00M-29, released May 5, 2000.

After a May 8 conference, it was ruled that "there was no authority for delayed deposition discovery which cannot be completed for good reason." Order FCC 00M-31, released May 11, 2000. Reading had not protested at the March 31 conference at which definitive dates were discussed and set. Order FCC 000M-28. Reading had sought a stay of discovery on May 1, four days before discovery was to terminate. In order to stay on the scheduled procedural and hearing time tracks, the subpoenas were signed. But limits were imposed. Ultimately, Reading cut back on certain of its discovery. Order FCC 00M-31. Ms. Swanson's deposition could be taken only if she agreed. But the Telemundo documents were still under subpoena. Id.

The Subpoena

On May 4, 2000, the Presiding Judge, at Reading's request, signed a subpoena duces tecum ("subpoena") addressed to Telemundo that required production of documents relating to the following:

(1) all appraisals of the value of WTVE(TV) in Reading, Pennsylvania, including, but not limited to all communications, correspondence, telephone records, and memoranda by, between, or concerning Adams Communications Corp., Reading Broadcasting, Inc., Anne Swanson and Howard Gilbert;

(2) all documents concerning or relating to Adams Communications Corp., including but not limited to communications, correspondence, telephone records, and memoranda.

On May 10, service of the subpoena was accepted by Telemundo's attorneys. On May 19, Telemundo advised in a transmittal letter that documents had been produced for Reading's inspection and copying on May 15, and informed that no telephone records, (documents claimed to be work product or privileged, or confidential documents classified as attorney notes, internal firm memoranda, personal schedules, calendars or billing records) were being produced. Also on May 19, Telemundo filed a pleading entitled Response to Reading's Subpoena arguing that the subpoena was overly broad, premature, and burdensome and that it was seeking privileged documents. Telemundo also asserted

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[4] Paul Sherwood (video taping of programming), Garrison Cavell (Adams' engineer), Telemundo custodian (appraisal and programming), Conestoga Telephone (Adams' transmitter site), and Ms. Swanson.

that Reading was seeking double discovery since both Reading and Telemundo were parties to a civil lawsuit in a federal district court in Pennsylvania concerning a network affiliation agreement.[5]

Subpoena Compliance

On May 23, Reading filed its Opposition to Telemundo's Objections and requested that an order be issued requiring full compliance with the Subpoena. As for documents claimed privileged or confidential, Reading demanded a privilege documents log and an in camera inspection. Reading argued that the documents sought related to Adams Communications, a non-operating entity that files competing applications, a circumstance that would render all documents in Telemundo's possession relevant. Reading made a similar argument for all documents regarding any appraisal of Station WTVE (TV). Those pleadings were under advisement as the time moved closer to the hearing date of June 12.

Reading also argued that Telemundo's claim of an unduly burdensome subpoena was meritless because Telemundo was being asked to do the same as other nonparty witnesses, three lawyers who had represented Michael Parker on applications for assignments. Reading asserted that its counsel in this case, Holland & Knight, had no connection with the pending civil lawsuit. Reading complained that Telemundo had not even provided a document log with respect to those documents so that Reading did not know the scope and nature of those documents. Reading requested an order directing Telemundo to: produce all non-privileged documents in its possession; produce a document log identifying all documents withheld as privileged; and submit the documents for in camera review.

On May 24, the Presiding Judge issued Order FCC 00M-34, requiring Telemundo to provide Reading with privileged and confidential document logs by the next day and ordering a prehearing conference on May 25 to sort out matters and to set a schedule for an in camera document inspection. The inspection had to be expedited in view of the impending hearing date. On May 25, Telemundo filed a Response to Reading's Opposition to Telemundo's Objection to Subpoena. Telemundo already had made a substantial document production on May 16 and on May 19. Reading had first asked for a privileged document log on May 23, and Reading was asking Ms. Swanson to undertake a review and selection of potentially responsive documents from telephone records, and her notes containing facts and legal conclusions intermixed with personal, social and business matters. Telemundo's discovery had become a tall task to be completed in a short time.

Telemundo complied with Order FCC 00M-34 by providing Reading with a log on the next day in which documents were identified as attorney-client, work product, or both. Certain other documents were identified as documents considered to be confidential.

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[5] Telemundo Network Group LLC v. Reading Broadcasting, Inc., (Civ.No. 99-5601) (E.D.Pa.).

Telemundo also made a third production of documents on May 26, identified as discovery documents in the federal district court litigation that Reading's counsel had apparently failed to inspect.

Telemundo's Request for Expenses

Telemundo persisted in its opposition to making a "time–intensive and costly" review of phone records, notes, billing records, and an attorney's personal calendar. As a result, in its May 25 pleading, Telemundo requested that the search and review efforts of Dow, Lohnes & Albertson be conditioned on Reading's payment of Telemundo's costs and expenses, including reasonable attorneys' fees. Telemundo cited to an analogous Federal Rule of Civil Procedure ("FRCP").[6]

For consideration in connection with the in camera review, Telemundo submitted on June 2, a Memorandum Regarding Privileged Documents Produced in Camera in Response to Subpoena. On June 5, Reading submitted a Response. Both pleadings were filed on an expedited schedule as was necessitated by the June 12 hearing date. Reading had put in motion a series of labor intensive tasks that would need to be expedited. There was much work to do on the eve of a hearing that should have been done much earlier.

Awarding Expenses for Expedited Subpoena Compliance

Order FCC 00M-36 that was issued on May 26, was the first ruling to address Telemundo's request for reimbursement of expenses. The Order recited the sequence of events leading up to a delivery of documents for in camera inspection on June 2, with points and authorities, and Reading's responsive pleading of June 5. Telemundo had to complete redactions by June 8. The selection, delivery and in camera inspection were incident to the testimony of Ms. Swanson on June 19, as required by subpoena. The parties were aware of the protective relief authorized under the Commission's Rule 47 C.F.R. §1.313 which authorizes any order consistent with the rules that assures protection against "annoyance, expense, embarrassment or oppression."

It was ruled in Order FCC 00M-36 that under §1.313:

> 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.

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[6] FRCP Rule 45(c)(2)(B) (authorizing protection of non-parties "from significant expense resulting from the inspection and copying commanded"). There had been no citation by either party to the more apposite Commission Rule 47 C.F.R. §1.313 either in the pleadings or at the Prehearing Conference of May 25.

The Order further ruled:

> [T]here is 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.

Pursuant to Order FCC 00M-36, on June 7, Telemundo submitted an itemized accounting which was represented as showing only half of the fees billed by Dow, Lohnes and Albertson. It did not include expenses and fees of Ballard, Spar, Andrews and Ingersoll, the law firm representing Telemundo in the federal civil litigation in Pennsylvania.

On June 8, Reading filed an Opposition to Motion for Legal Fees and Costs. On June 15, Telemundo filed a Reply to Reading's Opposition. Reading objects to paying for any expenses in connection with the federal district court civil litigation. Telemundo has excluded those costs and fees which are totally extraneous to this hearing. However, merely because Telemundo produced certain of the subpoenaed documents in the civil litigation (particular documents were not identified) Reading is responsible for discovery in this hearing with respect to those documents. Expenses incident to collecting, selecting and submitting for in camera review are to be considered, even if the same documents had been produced by Telemundo in the civil action. However, the expenses of the Ballard, Spar, law firm in connection with any double production will not be allowed. Nor is it being sought.

On July 10, Telemundo submitted its supplemental information on expenses.

Discussion

Authority to Issue Protective Orders

Reading argues that there have been no published or binding Commission decisions under 47 C.F.R. Section 1.313 which may be utilized "to assure proper conduct of the proceeding" or to protect against "annoyance, expense, embarrassment or oppression." That language tracks the same language in FRCP 26(c) which provides the authority for federal court protective orders. There is a related provision under FRCP 45 that protects any non-party "from significant expense resulting from the inspection and copying commanded." In 1968, a Commission policy was adopted to take guidance from those rules of the FRCP "which provide for both discovery and the production and preservation of evidence." The Commission emphasized that presiding judges in comparative adjudicatory hearings "will have full control over the use of these [discovery] procedures - - - to prevent the abuse of parties or witnesses." See Discovery Procedures,

11 F.C.C. 2d 185, 186 – 187 (1968).[7] Section 1.313 was intended to "apply generally to the various [discovery] procedures available." Id. at 186. Therefore, case law under FRCP 45 will be looked to for guidance in the absence of a published Commission opinion or ruling. See 47 C.F.R. §0.445 (interpretations).

A comprehensive report on the Commission's discovery rules was prepared by Max Paglin which was well received and in large part adopted by the Commission.[8] See Amendment of Part I, 82 F.C.C. 2d 527 (1982). The Commission cited §1.313 as authority for protective orders:

> to preclude any use, or particular uses, of these [discovery] procedures in a particular case if he [a presiding judge] finds that their use will not contribute to the proper conduct of the hearing - - - .

Id. at 528 – 529 (Internal cites omitted.) The Commission will not "upset a discovery ruling of a judge absent a strong showing that the ruling is arbitrary, capricious, fundamentally in error or is in disregard of the rights of the parties." See, e.g., Sitron Broadcasting Co., Inc., 18 F.C.C. 2d 78 (1969) (rulings affirmed and discovery requests disallowed because they were seeking to add issues), and Florida – Georgia TV Co., Inc., 14 Radio Reg. (P&F) 2d 365, 369 (Review Bd. 1968) (rulings upheld under strict standard of review, approving as one reason for denial of discovery " an "unreasonable burden" that would be placed on the presiding judge. (Internal citations omitted.)

Protection Warranted

It is clear that Telemundo was, inexcusably, forced to undertake extensive document review, selection and redacting on the eve of a hearing. To its credit and the hard work of its counsel, Telemundo cooperated in an intense, expedited document discovery effort that, mercifully, proved to be successful. Throughout this intense experience, Telemundo was asserting a request for compensation from Reading for expenses and legal fees incurred as a result of its counsels' efforts. At the same time, the Presiding Judge was undertaking in camera inspection of documents on the applicability of privilege, the merits of claims of confidentiality, and the assessment of the propriety of

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[7] A concurrence of two Commissioners noted their concerns about potential abuse of the new procedures and therefore, they wanted to further emphasize the investiture of presiding judges with "considerable authority to prevent abuse," noting their expectation that presiding judges "will exercise this power to make certain that these [discovery] procedures are not abused." Id. at 192 (concurrences of Commissioners Cox and Bartley).

[8] Mr. Paglin recommended enhancing the role of administrative law judges "emphasizing the importance of the judge's role and active participation in, and close supervision of, the discovery process." Id. at 529. The Commission concurred and reiterated the need for firm control by presiding judges over the Commission's proceedings and noted the adequate authority to prevent abuse of parties and witnesses. Id. at 531.

simultaneous redactions of documents. Had Reading commenced this discovery of Telemundo in a timely manner, all of these tasks could have been undertaken and completed over time in an orderly fashion without causing Telemundo such remedial "annoyance" or "oppression." One alternative remedy would have been to refuse outright Reading's discovery as untimely. Or Reading's use of the documents as evidence could have been conditioned upon the payment of expenses. But that would have led to a round of pleadings while the hearing was put on hold. Neither of those dead end alternatives were in the interest of making a record for the resolution of this case in a timely manner. The enforcement of §1.313 could not be permitted to take precedence over the uninterrupted conduct of the hearing. But Reading was on notice that the Presiding Judge was not waiving the question of expenses for Telemundo. See Order FCC 00M-36, supra; and Tr. 2172 – 2175 (there is authority to award discovery compensation but question remains under advisement until testimonial phase of hearing is completed).[9]

Applicable Standards and Analysis

Reading submits no legal precedents and Telemundo cites but two cases. In light of the above analysis of §1.313 and the dynamics of the Telemundo discovery, it is concluded that this is an appropriate case for an award of nonparty costs. In United States v. Columbia Broadcasting System, Inc., et al., 666 F2d 364 (9th Cir. 1982), cert. denied, 457 U.S. 1118, 102 S.Ct. 2929 (1982),[10] the Ninth Circuit made an analysis of the FRCP's reimbursement provisions where a nonparty is put to a substantial burden.[11] That case involved an antitrust suit brought by DOJ against certain networks. The network

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[9] There is a general provision for any person against whom a subpoena is directed to move to quash or limit the subpoena. 47 C.F.R. §1.334. There was no motion to quash filed by Telemundo which could have delayed the proceeding in light of the time constraints, the privilege issues, and the necessity to redact personal and professional matters from an attorney's notes. Without Telemundo's cooperation in its counsels' expediting discovery, the scheduled hearing of this case could have been seriously jeopardized.

[10] There is analogous authority cited in the FRCP Advisory Committee Note, 1991 Amendment, Subdivision (c) for the proposition, inter alia, that a court is not required to fix costs in advance of document production and that in some instances [as here] it may be preferable to leave uncertain costs to be determined after the documents are produced, provided that the risk of uncertainty is fully disclosed to the discovering party. Reading was on notice since May 25 that Telemundo would be seeking compensation and the Presiding Judge warned Reading that the question of compensation would be taken up and addressed after the hearing so as not to get distracted. See Order FCC 00M-36, Order FCC 00M-38, and Order FCC 00M-40.

[11] FRCP 26(c) authorizes district courts to issue "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Compare tracked language of §1.313 taken virtually verbatim from FRCP 26(e).

defendants sought extensive discovery of nonparty program producers (studios) involving out-of pocket costs that exceeded $2 million for massive document productions and depositions extending over a period of years. In their motions to quash and during participation in discovery, the nonparties consistently asserted a right to reimbursement for the recovery of "some discovery costs." The district court never addressed the details of those costs which were denied in a one line order without explanation. The Ninth Circuit would not accept such a short shrift disposition of the question and held that the studios were entitled to "some compensation." The case was remanded for the trial judge to make a record supporting a reasonable amount of compensation, or a record that would support a reasoned ruling denying costs to the nonparties.

In making its analysis of the rule, the Ninth Circuit found that there are few reported decisions on discovery costs and fewer cases yet for costs awarded to nonparties. But the court found there to be four defining factors: (1) the scope of the discovery; (2) the invasiveness of the request; (3) the extent to which the producing party must separate responsive information from privileged or irrelevant material; and (4) the reasonableness of the costs of production. Id. at 371 n.9.

The factors apply here: First, the scope of the Reading request covered documents numbering in the hundreds, a request which was onerous in view of the compressed time allowed and the need to assemble and segregate notes and documents to facilitate simultaneous and multiple in camera reviews. Second, the request required production of a lawyer's handwritten notes and diaries that related to personal, social, medical and bar association matters as well as client matters, all of which had to be sorted out over a short time span. Third, as explained above, there was considerable work required to separate responsive information from documents claimed to be privileged.[12] Fourth, the costs will be discussed and analyzed below.

The Ninth Circuit opinion is clear that discovery cost sharing is an important policy to be enforced in order to avoid having nonparties subsidize an unreasonable share of the costs of litigation and to avoid fishing expeditions. Compare Linder v. Calero – Portocarrero, 31 F. Supp. 2d 134, 136 (D.C.D.C. 1998) where a district court was not even concerned with whether the discovering party (plaintiff in wrongful death action) had "meager financial resources" as compared with the discovered party (CIA). So too here, the resources of Telemundo are irrelevant. Telemundo is entitled to some compensation as a nonparty which has been put upon and the policy of sharing costs with nonparty discoverees applies here. The Ninth Circuit considered circumstances that equally apply here of retrieving, organizing and copying voluminous documents. Although there were no depositions taken of Telemundo, the testimony of Ms. Swanson bore earmarks of a

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[12] For convincing illustrations of the application of these factors to this case, reference can be made to Reading Exhs. Nos. 50 – 80. As this discovery involved a nonparty, there was a continuing effort by the Presiding Judge to eliminate where possible "confidential" musings and thought processes conveyed in confidence to a client that might needlessly put an attorney on the spot. Such redactions were allowed in addressing the "annoyance" or "embarrassment" portions of §1.313. (See e.g., Reading Exh. 60 and Tr. 2248 – 2254).

deposition necessitated to be taken at hearing due to Reading's tardy and incomplete discovery.[13] The court also recognized the efficiencies of the procedures utilized here in going forward with discovery and sorting out the award of costs afterwards. Id. at 367.[14]

Under the Ninth Circuit's decision, a trial court was found to have discretion to award post-compliance reimbursement. In view of the broad instructive language adopted by the Commission in interpreting the purpose and scope of §1.313 which tracks the language of FRCP 26(c), the Presiding Judge should have such discretion here in order to give the Commission's policy of protecting nonparty discoverees from oppressive discovery demands its full meaning and effect.

Calculations of Expenses to be Awarded

One commentator has suggested that judges "be as inventive as the necessities of a particular case require in order to achieve the benign purposes of the rule." Wright and Miller, Federal Practice and Procedure: Civil §2036 at 267, 269. Telemundo requests reimbursement for $35, 464 representing hourly charges of legal assistants, time of counsel in selecting documents and fees for related legal work, and out-of-pocket costs for copying and miscellaneous charges. Telemundo asserts that the amount requested is conservative because there were two law firms that were assembling some of the same documents for different purposes: the civil law suit and this proceeding.[15] There is no reason to question the validity of the amounts claimed by Telemundo. Telemundo's counsel appears have used a reasonable and conservative method for calculating legal

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[13] It was largely due to Ms. Swanson's diligence in reviewing her phone records and personal notes and a timely and organized packaging of these materials by Ms. Swanson and her colleague Mr. Hays that saved the hearing from a potentially protracted and unpleasant examination. Also, credit must be given to Ms. Swanson's cooperative manner on the witness stand in following the cross-reference questioning of Reading's counsel.

[14] As noted, motions to quash are interlocutory and the way to challenge such a ruling is to condition production on up front payment and to refuse to produce until payment is determined. That would entail a subpoena enforcement proceeding and an indefinite delay in completing the hearing, solely to resolve a question of entitlement to costs. Interlocutory subpoena enforcement was neither practical nor sensible.

[15] Telemundo's counsel represents that for time entries when Dow, Lohnes & Albertson was working on joint production, only half of their legal fees are sought here. Counsel assures that in calculating the relevant fees, there were total billings of Dow, Lohnes & Albertson that were divided into the hours attributable to this proceeding.

fees.[16] However, because of a lack of legal authority, there can be no award of legal fees. Furthermore, in a close call, the equities dictate against awarding legal fees. This is not a situation where Reading was attempting to use Telemundo's work product or expert witness. Reading was only trying to develop fact evidence through a nonparty. Adams had acted similarly in its presenting the testimony of nonparty witnesses who also are attorneys: Paula G. Friedman, R. Clark Wadlow, and Eric S. Kravetz.[17] Also, relevant to assessing the equities is the fact that Telemundo has a network affiliation agreement with Reading. Therefore, Telemundo has an interest in the outcome of this case. For that reason, Ms. Swanson was monitoring developments in this hearing from its outset and was regularly reporting her views on the significance of developments to her client, Telemundo. The Ninth Circuit held that where a nonparty discoveree has an interest in the outcome of the case that relationship has some bearing on the "allowance and the amount of reimbursement." 666 F.2d at 372. Since Telemundo has such an interest in the outcome of the hearing and has retained Dow, Lohnes & Albertson from the outset to represent its affiliation interests, it would be inappropriate to require Reading to pay Telemundo's legal fees on an issue that counsel would have been monitoring in any event.

Conclusion

It is concluded that the interest of Telemundo in the prosecution of this case precludes any award of legal fees. Ms. Swanson was monitoring case developments for Telemundo and would have continued to do so regardless of Reading's discovery needs. The fact that Reading's discovery needs required Telemundo to substantially increase its participation for a time does not change the character of Telemundo's interest. Only reasonable out of pocket costs and the hourly charges for legal assistant employees of Dow, Lohnes & Albertson who assisted Ms. Swanson and Mr. Hays (as well as the fact finder) in meeting challenging deadlines will be awarded.

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[16] To illustrate the scope of counsels' work in compensable hours, Mr. Hays billed $13,668 and Ms. Swanson billed $14,994. The fees for the time of the two partners were further broken down to reflect time related to document production (Hays - $1,856; Swanson $12,852) and time reflected to motions, practice and appearances (Hays - $11,810; Swanson $2,142).

[17] Reading has on multiple occasions argued that since Reading had not sought compensation for the discovery and attendance of those two witnesses there should not be an award in favor of Telemundo. Aside from the fact that Ms. Friedman, Mr. Wadlow and Mr. Kravetz did not request any compensation award against Adams, the discovery and related in camera work was minimal compared to the burdens that were placed on Telemundo's counsel. More importantly, Adams gave adequate notice, took depositions in a timely manner, and there was no oppression or major imposition with respect to those three nonparty witnesses.

The itemized allowable costs are as follows:

Legal Assistants:

Ms. Darius	$ 317
Ms. Vayo	$ 105
Mr. Davis	$1,947
Ms. Martinez	$ 50
Total:	$5,419

Costs:

Photocopy	$ 972
Other	$ 413
Total:	$1,385

Grand Total: $6,804

Rulings

IT IS ORDERED that the request for expenses filed by Telemundo Network Group, LLC ("Telemundo"), Opposed by Reading Broadcasting, Inc. ("Reading"), IS DENIED in part and IS GRANTED in part.

IT IS FURTHER ORDERED that Telemundo and Reading shall negotiate towards an agreed amount of compensation for costs in the discovery of nonparty Telemundo.

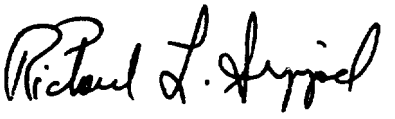
IT IS FURTHER ORDERED that if there is no agreement reached by **July 24, 2000**, Reading SHALL BE ASSESSED the sum of $6, 804 for Telemundo's nonparty discovery costs.

IT IS FURTHER ORDERED that if payment of $6,804 is not made or agreement for payment reached by **July 24, 2000,** Telemundo may request an appeal to the Commission pursuant to 47 C.F.R. §1.301(b).[18]

[18] To encourage a negotiated resolution, the five days provided for an interlocutory appeal shall run from July 25. Otherwise, the pleading cycles under §1.301(b) shall apply. If Telemundo or Reading or both files an appeal, reply pleadings are requested. Id.

IT IS FURTHER ORDERED that Telemundo and Reading are to keep the Presiding Judge apprised of developments with regard to compliance with this ruling.

FEDERAL COMMUNICATIONS COMMISSION[19]



Richard L. Sippel
Administrative Law Judge

[19] Copies of this Order were e-mailed to all counsel, including Mr. Hays and Ms. Swanson, on the date of issuance.