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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

To: Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S CONSOLIDATED REPLY TO
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respectfully submitted,
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Summary

The Bureau continues to believe that both Reading Broadcasting, Inc. (“RBI”) and Adams Communications Corporation (“Adams”) are basically qualified to operate as proposed. Notwithstanding the ferocity and length of each one’s attack on the other, neither RBI nor Adams met its respective burden of proof that the other should be disqualified.

With respect to their comparative qualifications, the Bureau reiterates its belief that RBI is not entitled to a renewal expectancy. Its overall renewal period performance was minimal, and RBI’s proposed findings do not point to any significant omission in the Bureau’s analysis that would warrant a more favorable view of RBI’s record. Because other comparative criteria ultimately may be not deemed as having decisional significance, the Bureau urges the party applicants to devote their attention to achieving a settlement.

I. Preliminary Statement

1. On October 2, 2000, Reading Broadcasting, Inc. (“RBI”), Adams Communications Corporation (“Adams”), and the Enforcement Bureau (“Bureau”) filed proposed findings of fact and conclusions of law (“PFCs”). In accordance with the presiding Administrative Law Judge’s (“ALJ”) Order, FCC 00M-55, released September 18, 2000, the Bureau hereby replies to the PFCs of RBI and Adams. The Bureau’s failure to reply to any particular finding or conclusion contained in RBI’s or Adams’ PFCs should not be construed as a concession to its accuracy or completeness. The Bureau submits that its own proposed findings of fact are an accurate and fair presentation of the relevant record evidence and that its proposed conclusions of law properly apply Commission and court precedent.¹

II. Reply Findings/Conclusions

Adams Issues

Abuse of process

2. RBI contends that in order to establish an abuse of process it need only show the existence of an improper motive. RBI PFCs at pp. 125-26. However, in support of its position, it cites “strike” application cases.² A “strike” application is one filed for the purpose of blocking a potential competitor from acquiring the frequency at issue.

¹ As explained *infra* at n. 10, the Bureau makes one correction to its PFCs.

² Millar v. FCC, 707 F.2d 1530, 1535 n.7 (D.C. Cir. 1983) (“Millar”); Capitol Broadcasting Co., 30 FCC 1, 2, 3 (1961); Blue Ridge Mt. Broadcasting Co., 37 FCC 791, 800 (Rev. Bd. 1964), *rev. denied*, FCC 65-5 (1965), *aff’d sub nom. Gordon County Broadcasting Co. v. FCC*, 6 RR 2d 2044 (D.C. Cir. 1965) (memorandum opinion).

Inasmuch as the situation at bar involves a comparative renewal challenge, and not a “strike” application, Millar and the other cases are inapposite. Accordingly, the mere possibility of an improper motive will not establish that Adams’ filing constituted an abuse of process.

3. The issues as framed seek to determine whether Adams filed its application for the purpose of achieving a settlement, which is proscribed by section 311(d) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 311(d). RBI apparently believes it proved such a purpose because, in its view, Adams did not have a *bona fide* intent to operate channel 51 when it filed its application. In this regard, RBI relies primarily on WWOR, Inc.³ and contends that if *part* of Adams’ motivation was improper, Adams’ application abused the Commission’s comparative renewal process. RBI PFCs at p.127.

4. The Bureau disagrees. At the outset, section 311(d) of the Act authorizes the Commission to approve a settlement involving a broadcast renewal applicant and a challenger if the agreement is consistent with the public interest and no applicant filed for *the* purpose of achieving a settlement. (Emphasis added) Thus, it is insufficient for RBI to show that part of Adams’ motivation was improper. Rather, RBI must demonstrate that Adams’ sole or primary purpose was to achieve a settlement. It did not do so.

5. In WWOR, Inc., the Commission determined that the challenger, Garden State, had filed its application for the purpose of achieving a settlement. Crucial to the Commission’s conclusion was its finding that Garden State’s initially stated reason for

³ WWOR, Inc., 7 FCC Rcd 636 (1992), *aff’d sub nom. Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386 (D.C. Cir. 1993).

filing either lacked credibility or was false. Specifically, the Commission found disingenuous Garden State's testimony that its application was prompted by concern with the renewal applicant's programming. Consequently, the Commission found that Garden State had filed its application because its principals viewed the comparative renewal process as an easy way to make a lot of money.

6. The facts in the instant case are different in several critical respects and thus, in the Bureau's view, warrant a different result. Contrary to RBI's claims, Adams has not given inconsistent testimony as to why it filed its application. Throughout this proceeding, Adams has made known its belief that the home shopping format made it difficult, if not impossible, for a licensee to air enough local issue responsive programming to withstand a renewal challenge.⁴ Indeed, the evidence reflects that the instant challenge occurred not only because Adams learned that WTVE(TV) aired home shopping programming throughout the renewal period but also because Adams believed that WTVE(TV)'s local issue responsive programming was inadequate. That this belief may have resulted from a brief and flawed analysis, which included a cursory review of

⁴ The Bureau disagrees with RBI's suggestion at p. 141 of its PFCs that the Commission's 1993 decision regarding the "must carry" rights of home shopping stations (Cable TV Act of 1992 – Home Shopping Station Issues, 8 FCC Rcd 5321) made them an unlikely target. In this regard, although the Commission determined that home shopping programming served the public interest, the Commission also signaled that such a station could fail to achieve a renewal expectancy if it failed to address issues of local importance. 8 FCC Rcd at pp. 5327 (¶¶ 29-31), 5328 (¶ 36). *See also id.* at 5339 (Separate Statement of Commissioner Andrew C. Barrett), and 5339-40 (Dissenting Statement of Commissioner Ervin S. Duggan). Moreover, as the Commission made clear in Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses, 13 FCC Rcd 15920, 16005-06 (1998) ("Auctions Order") (subsequent history omitted), the renewal expectancy concept, as articulated in the 1980s, survived and governs this proceeding.

the wrong programming, does not mean that it was not genuine. The existence of this belief, together with the other evidence cited in the Bureau's PFCs at ¶¶ 12-14 and 16-17, indicate that Adams did not file for the sole or primary purpose of achieving a settlement, much less a settlement that could establish a precedent regarding home shopping programming.

7. Further, the evidence focusing on Adams' post-filing actions does not lend support to the conclusion that Adams' filing was motivated by a desire to achieve a settlement or was otherwise tainted by abuse. First, Adams never initiated settlement discussions with anyone. Second, even when, arguably, the focus of conversations with Telemundo concerned a possible "white knight" settlement, the evidence also shows that Adams wanted Telemundo to consider becoming its program supplier in the event Adams acquired the permit. Courting a potential program supplier is not consistent with an intent to pursue a settlement. Rather, it plainly suggests that Adams intended to operate the station in the event it succeeded in this proceeding.

8. RBI vigorously advocates that Mr. Gilbert's testimony is incredible. In particular, RBI attacks Mr. Gilbert's claims regarding his pre-filing review of WTVE(TV)'s public service efforts. RBI PFCs at pp. 69-75, 146-160. The thrust of those attacks is that Mr. Gilbert lied repeatedly in order to show that Adams' application was not filed for the purpose of achieving a settlement.

9. The Bureau addressed many of RBI's arguments relative to misrepresentation in the course of opposing RBI's motion to enlarge the issues⁵ and will not repeat the

⁵ The ALJ denied that motion by Memorandum Opinion and Order, FCC 00M-56, released October 18, 2000.

particulars of that opposition here. In so doing, however, the Bureau observed that if it is determined that Adams deliberately gave false testimony during the hearing, disqualification could occur without the need for further hearing. Richardson Broadcasting Group, 7 FCC Rcd 1583 (1992), *aff'd by judgment sub nom. Younts v. FCC*, No. 92-1119 (D.C. Cir. May 10, 1993). In this connection, and, as noted in its PFCs at pp. 58-59, the Bureau wishes to make clear that it is concerned with Adams' failure to document more fully Mr. Gilbert's claims relating to his pre-filing review of WTVE(TV)'s public service efforts. In particular, the Bureau notes that Adams submitted nothing to substantiate Mr. Gilbert's testimony concerning his trips to Reading and what he did while he was there. Moreover, the Bureau is troubled by the fact that Mr. Gilbert's actual review of the tapes sent by Mr. Sherwood was so casual that it did not alert him to the fact that the wrong programming was taped. The Bureau is further troubled by the fact that Mr. Gilbert has not testified consistently about the nature of his review and the extent of his contacts with Paul Sherwood, the man who taped programming at Mr. Gilbert's request. See RBI PFCs at pp. 148-50.

10. Nevertheless, after considering all the record evidence, the Bureau is persuaded, barely, that Adams had a basis for believing that WTVE(TV) was vulnerable to a renewal challenge and that Adams proceeded in accordance with that belief. The Bureau is also persuaded, as it explained in its opposition to RBI's motion to enlarge, that RBI did not raise a *substantial* question about Adams' truthfulness. Thus, although the Bureau agrees with RBI that Mr. Gilbert's testimony has not been entirely consistent, the Bureau concludes for the reasons stated on pp. 59-61 of its PFCs, that RBI failed to meet its burden of proof on the abuse of process issues.

11. On pp. 75-77 and 160-63 of its PFCs, RBI argues that Adams' actions relative to its transmitter site support the inference that Adams did not file for the purpose of building and operating a television station. Likewise, on pp. 66 and 163, RBI contends that Adams' carelessness in failing to comply with Massachusetts filing requirements, which resulted in a temporary dissolution of Adams' corporate status, is inconsistent with an intent to operate a television station in Reading. The Bureau disagrees. RBI has not shown, and it cannot be reasonably inferred, that either matter poses a bar to Adams' operation of a television station. In this regard, there is nothing in the record suggesting that Adams' initial site certification was false,⁶ and there is also nothing suggesting that Adams is foreclosed from using its specified site. Likewise, the evidence is also clear that Adams' corporate status has been revived. None of this calls into question Adams' intent to operate the station if the license is awarded to it.

12. On pp. 80-81 and 165-66, RBI addresses the fee agreement letter, which detailed the payments to be made by Adams to the Bechtel & Cole law firm (RBI Ex. 21). Specifically, RBI points to the bonus provision in the event of an economically favorable settlement and argues that the letter's contemplation of settlement is, by itself, inconsistent with the intention to own and operate a television station in Reading. The Bureau disagrees. By acknowledging the possibility of settlement, the fee agreement letter, dated in June 1999, does nothing more than recognize that the Commission has repeatedly waived section 73.3523 of the Commission's rules⁷ and allowed comparative renewal settlements. Moreover, a careful review of Mr. Gilbert's testimony regarding the

⁶ See Auctions Order, *supra* note 4, 13 FCC Rcd at 15956.

⁷ 47 C.F.R. § 73.3523.

letter does not show that he clearly acknowledged or understood that the bonus provision was in place when Bechtel & Cole began its representation of Adams. *See* Tr. 1017-21, 1032. Thus, that letter adds nothing to a determination of Adams' intentions as of June 1994 when its application was filed.

13. In sum, the totality of the evidence does not indicate that Adams filed for the sole or primary purpose of achieving a settlement. Instead, it appears that Adams believed that it had a reasonable chance of winning a comparative renewal proceeding. That it also believed it could denigrate the value of the home shopping format in the process of winning the litigation is irrelevant.

RBI Issues

Misrepresentation/Lack of Candor

14. Just as RBI has endeavored mightily to show that Adams' Mr. Gilbert is a liar, so, too, Adams has labored at length to show that RBI's Micheal Parker is a liar. Although the Bureau has significant reservations about Mr. Parker's credibility and it agrees with Adams that testimonial inconsistencies abound, the Bureau nevertheless concludes that Adams did not meet its burden of proof on the misrepresentation/lack of candor issues.

15. On pp. 140-45 of its PFCs, Adams attacks Mr. Parker's responses to application questions regarding fraud. In Adams' view, the language from the Review Board's Religious Broadcasting Network decision⁸ clearly constituted a finding of fraud

⁸ 3 FCC Rcd 4085 (Rev. Bd. 1988). *See also* 2 FCC Rcd 6561 (ALJ 1987) (Initial Decision).

by Mr. Parker, which he failed to acknowledge in various applications filed by him or on his behalf between 1989 and 1992. However, as explained by the Bureau in its PFCs at p. 64, the Bureau has consistently argued that application questions concerning fraud focus on non-FCC proceedings. Adams has not demonstrated otherwise. Indeed, another application question explicitly addresses misbehavior occurring in connection with an application or broadcast station. *See* Bureau PFCs at pp. 14-15, 65. Accordingly, because the Review Board's findings concerned a broadcast proceeding, they are irrelevant to application questions concerning non-FCC proceedings.

16. On pp. 149-56 of its PFCs, Adams challenges Mr. Parker's explanations regarding the origin and timing of the narratives describing the Religious Broadcasting Network decision (hereafter the "San Bernardino proceeding"). In this regard, Adams casts some doubt on the notion that the narratives resulted from the expert legal opinion of communications counsel. Adams also shows that Mr. Parker is currently incapable of acknowledging that he, not Anita Van Osdel (the applicant's purported general partner), was responsible for failing to disclose his involvement in the San Bernardino application. Finally, at pp. 161-75 of its PFCs (*see also* pp. 158-59), Adams submits that, to the extent Mr. Parker claimed he was relying on legal advice from communications counsel, he knew the advice was incorrect and unreliable. In this regard, Adams focuses on a February 18, 1991 letter from R. Clark Wadlow to Mr. Parker (RBI Ex. 46, Attachment D). Essentially, that letter opined that the San Bernardino proceeding's Initial Decision had no adverse impact on Mr. Parker's qualifications to be a principal of a Commission licensee. Adams argues vigorously that Mr. Wadlow's letter should have provided no

solace to Mr. Parker, especially in view of the concern shown by the Mass Media Bureau's staff with regard to Christine Shaw's application to acquire KCBI, Dallas.

17. The questions to be resolved in this proceeding are whether Mr. Parker committed deceit, and, if so, whether such deceit should result in RBI's disqualification. Answering those questions requires a determination of what actions Mr. Parker took and his state of mind. In turn, his state of mind can be inferred from his own statements, those of his advisors, and the circumstances that existed at the time the various applications were filed. As discussed in the Bureau's PFCs at pp. 12, 65-66, the narrative concerning the San Bernardino proceeding was not required prior to the termination of that proceeding in late 1990. Moreover, even then, the pertinent application questions required nothing more than provision of the name of the person involved, the nature of his interest, the file number of the application, and the location of the facility sought. The applicants in question provided that information.

18. What the Bureau found (and still finds) troubling was the applicants' (that is, Mr. Parker's) unqualified responses that no unresolved character issue existed and the gloss put on the San Bernardino narrative, which arguably suggested that no disqualifying real party-in-interest issue had been added. On the contrary, a real party-in-interest issue had been added and that issue had not been resolved. Thus, arguably, a character issue concerning him remained unresolved,⁹ and Mr. Parker should have informed the staff that such was the case. Moreover, to the extent he disagreed with this

⁹ In this regard, *see Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 ¶¶ 15-16 (1992) (a finding that a "sham" proposal is unreliable does not necessarily raise an issue of basic qualifications).

assessment, he should have informed the staff about the issue and then explained why he believed it had no impact on his qualifications. However, for the reasons stated in the Bureau's PFCs at pp. 63-67,¹⁰ the Bureau continues to believe that disqualifying deceit did not occur in connection with the 1991-92 applications filed by or on behalf of Mr. Parker. Critical to the Bureau's ultimate conclusion is that the Commission failed to take action outside of the San Bernardino and Mt. Baker proceedings, notwithstanding Mr. Parker's status as the holder of an attributable and reported broadcast interest. As discussed, the Commission's failure to act apparently created a climate of ambiguity, which did not clearly signal to Mr. Parker and his legal advisors that his character qualifications remained in doubt. Indeed, the Commission did not clearly articulate that it was concerned with Mr. Parker's character until 1997,¹¹ and, even then, it took no

¹⁰ The Bureau has determined that its reliance on the language in the Religious Broadcasting Network decision (3 FCC Rcd at 4090) that Mr. Parker held interests "in numerous other broadcast permits" was misplaced. The record in this proceeding indicates that the only interests Mr. Parker may have held at the time of the Review Board's 1988 opinion were his interests in the Mt. Baker permittee and in West Coast United Broadcasting, Inc., licensee of Station KWBB(TV), San Francisco. *See* RBI Ex. 3, p. 1. At the least, Mr. Parker held a reported interest in KWBB(TV) in 1990 when the San Bernardino settlement was approved. The fact remains, however, that the Review Board took no further action relative to Mr. Parker notwithstanding its apparent ability to do so. *See* 0.363 of the Commission's rules, 47 C.F.R. § 0.363 (1988). Likewise, neither did the Commission following issuance of the Mt. Baker decision as well as upon disposition of that applicant's reconsideration petition. The important point to draw from these circumstances was the effect the lack of action had on Mr. Parker and his advisors. Plausibly, they understood that no significant problem relative to Mr. Parker remained. *See* Reading Ex. 46, Attachment D.

¹¹ *See* Two If By Sea Broadcasting Corporation, 12 FCC Rcd 2254 (1997) ("TIBS").

immediate action against Mr. Parker.¹² Under these circumstances, the Bureau concurs with RBI that Mr. Parker and his advisors cannot be faulted for apparently believing, albeit mistakenly, that the real party-in-interest issue had been resolved as a consequence of the Review Board's approval of the San Bernardino settlement. Tr. 2068-70. *See also* RBI PFCs at pp. 114-16.

19. Moreover, contrary to Adams' contentions, this belief was not rendered unreasonable or incredible as a result of the Mass Media Bureau's actions relative to Ms. Shaw's application to acquire the license for KCBI, Dallas. The evidence reveals nothing more than that by June 1991 Mr. Parker knew that the Mass Media Bureau was troubled by the possibility that Ms. Shaw was not the real applicant but merely a front for Eugene Scott of Faith Center fame.¹³ It does not necessarily follow (and Adams did not demonstrate), however, that Mr. Parker therefore *knew* that his July 1991 Norwell, Massachusetts application *required* a "yes" answer to the question regarding the existence of an unresolved character issue (Adams Ex. 51, p. 11). Likewise, it also does not necessarily follow (and Adams did not demonstrate) that the Norwell application's

¹² In this regard, the Bureau notes that in responding to allegations made by Shurberg Broadcasting of Hartford in connection with a 1993 application to assign the license of WHCT(TV), Hartford, to TIBS, the Commission made several observations pertinent here. First, the Commission noted TIBS' argument that "the Commission had granted applications filed by TIBS and Parker [which] indicated that both met the Commission's basic qualifications for licensees." *TIBS, supra* note 9, 12 FCC Rcd at 2255. Later, nonetheless, the Commission stated that "[s]erious character questions also remain regarding the assignee, Parker/TIBS" thereafter citing the Religious Broadcasting Network decisions by the Review Board and the ALJ. *Id.*, at 2257. Finally, the Commission declared that the allegations against the "parties" were sufficiently serious to require a hearing. *Id.* Yet, notwithstanding these observations, the Commission took no action against TIBS' Dallas station. Official Notice Requested.

¹³ *See Faith Center, Inc.*, 82 FCC 2d 1 (1980).

narrative concerning the San Bernardino proceeding (*id.*, pp. 17-18) *required* disclosure of the ALJ's addition of a disqualifying real party-in-interest issue or a more detailed or unfavorable description of the Review Board's decision. In sum, the evidence indicates that Mr. Parker believed that the real party-in-interest issue had been resolved in some manner which allowed the San Bernardino applicant to participate in the universal settlement in 1990 notwithstanding the Review Board's 1988 decision. Given such a belief, it cannot be concluded that Mr. Parker committed deceit in his 1991 and 1992 application responses and narratives. Accordingly, even though Mr. Parker and his advisors could have (and should have) disclosed more forthrightly what occurred in the San Bernardino proceeding, their actions should not result in the loss of RBI's license.

20. On pp. 156-60, Adams discusses the amendment filed by TIBS in connection with its acquisition of Station KCBI (now KAIJ), Dallas, Texas. The Bureau agrees with Adams that TIBS (that is, Mr. Parker) lacked candor in the referenced amendment. In this regard, the question posed by the staff focused on whether a character issue had been added or requested. Even if Mr. Parker believed that such an issue had been resolved,¹⁴ he still should have informed the staff that one had been added. His failure to do so was intentional and deceitful. However, as explained in the Bureau's PFCs at p. 69, Mr. Parker's/TIBS' deceit should not result in RBI's disqualification.

¹⁴ In this regard, however, the Bureau disagrees with RBI's argument on p. 116 of its PFCs that SL Communications v. FCC, 168 F.3d 1354 (D.C. Cir. 1999) supported Mr. Parker's belief regarding favorable resolution of the real party-in-interest issue. SL involved a singleton applicant that sought to sell its application rights following a Commission decision disqualifying it for misconduct. By comparison, the San Bernardino proceeding was still before the Review Board. No final Commission decision had issued, and the real party-in-interest concerning Mr. Parker had not been fully and finally resolved.

21. At pp. 175-82 of its PFCs, Adams focuses on an October 8, 1998 letter Mr. Parker sent to Ann Gaulke, Vice President, Affiliate Relations, Telemundo Network, Inc. (Enf. Bureau Ex. 1) (hereafter the “Gaulke letter”). That letter clearly reflects that, by 1998, Mr. Parker understood that the Commission took a far dimmer view of his prior conduct in the San Bernardino proceeding and the Mt. Baker extension of time application than he had previously acknowledged to be the case. In this regard, Mr. Parker finally admitted to Ms. Gaulke what he would not previously concede in applications submitted to the Commission. First, he reported to Ms. Gaulke that the Review Board had found him to be the real party-in-interest following the ALJ’s disqualification of the applicant for that reason. Second, he reported that the Commission had denied the Mt. Baker extension application and canceled the station’s construction permit because the disparity between information provided by the applicant and the actual facts evinced an intention to deceive the Commission. Adams notes that, nonetheless, Mr. Parker testified repeatedly that the letter was not intended to describe the facts of the San Bernardino (and Mt. Baker) proceeding[s] but merely to apprise Ms. Gaulke of arguments raised against Mr. Parker in another proceeding.¹⁵

22. Like Adams, the Bureau finds disturbing Mr. Parker’s apparent inability to admit forthrightly that his descriptions of the San Bernardino proceeding and the Mt. Baker extension application sent to Ms. Gaulke were more accurate than those provided to the Commission. However, the factual question to be resolved is not what Mr. Parker understood in 1998 but what he understood in 1991 and 1992. As discussed above, that understanding was based on the letter Mr. Parker received from Mr. Wadlow in February

¹⁵ That proceeding was the Hartford proceeding referenced in note 12, *supra*.

1991, together with the circumstances that existed at that time. Accordingly, the Gaulke letter is not sufficient proof that Mr. Parker knew that his 1991 and 1992 application responses and the narratives describing the San Bernardino proceeding and the Mt. Baker application lacked candor.

23. In sum, the Bureau believes that the application responses and narratives provided by Mr. Parker were inadequate. Contrary to his application responses, an unresolved character question remained. Likewise, the application narratives suggested, falsely, that neither the San Bernardino nor the Mt. Baker decisions implicated Mr. Parker's character. At the same time, however, Mr. Parker had received unequivocal advice from expert communications counsel that his qualifications were not adversely affected. Moreover, the Commission had taken no action against him other than in the context of the San Bernardino and Mt. Baker proceedings. In light of those circumstances, the Bureau accepts, with considerable doubt, that Mr. Parker's application responses were not the result of deceit. At the same time, however, the Bureau believes it should be concluded that both Mr. Parker and RBI violated section 73.1015 of the Commission's rules¹⁶ by willfully and repeatedly failing to provide material information in applications submitted to the Commission. Such failures, in addition to those discussed below, bolster the Bureau's arguments (pp. 77-81 of its PFCs) that RBI does not deserve a renewal expectancy.

24. In addition to our concerns relative to the application responses and narratives set forth above, the Bureau is troubled by the glaring misstatements in RBI's November

¹⁶ 47 C.F.R. § 73.1015. *See also* Abacus Broadcasting Corp., 8 FCC Rcd 5110 (Rev. Bd. 1993).

1991 transfer of control application and a related amendment filed in February 1992. As detailed in both the Bureau's PFCs at pp. 50-53 and in Adams' PFCs at pp. 102-12, Mr. Parker issued new RBI stock in October 1991. That issuance, coupled with the failure to issue RBI shares to Dr. Henry Aurandt in connection with his ownership of STV Reading, Inc., resulted in a transfer of control of RBI. However, the November 1991 transfer of control application not only fails to report the issuance of stock, it affirmatively suggests that stock will not be issued until Commission permission to do so is given. Likewise, that application erroneously reports that no change in directors was to occur when, in fact, three of the company's five directors had already been replaced. Finally, the February amendment to the application perpetuates the misinformation appearing in the original application by again suggesting that no stock had yet been issued.

25. Given this background, it is with considerable doubt that the Bureau gives any credit to Mr. Parker's explanations for the application's failure to set forth exactly what the situation was at the time the application was filed. As noted (*see* p. 54 of the Bureau's PFCs), those explanations indicate that Mr. Parker was focused on getting RBI out of bankruptcy and that he simply did not pay attention to the details of the November 1991 application. Ultimately, it is only because these explanations are plausible and are not counterbalanced by substantial evidence of a motive to conceal that the Bureau concludes that disqualifying deceit did not occur in connection with the November 1991 application.

Comparative Issues

26. On pp. 7-17 of its PFCs, RBI describes in some detail the local residence and civic activities as well as the past broadcast experience of its principals. On pp. 84-86 of its PFCs, RBI argues that its principals' residence, civic activities and past broadcast experience warrant the award of comparative preferences. In its PFCs at pp. 7, 14-31, and 224-26, Adams praises the civic activities of its principals and submits that the questionable past broadcast record of RBI's principals, particularly Mr. Parker, calls for a significant comparative demerit. In its PFCs, the Bureau did not address these factors in its assessment of the applicants.

27. After reviewing the applicants PFCs, the Bureau continues to believe that the criteria of local residency, civic activities and past broadcast experience should have no impact on the ultimate decision. Arguably, meeting the needs and interests of the local community is something that could best be accomplished by someone who has an established presence in the community.¹⁷ However, in this case, the Bureau has already analyzed RBI's record in assessing its entitlement to a renewal expectancy. Considering that, in the Bureau's view, RBI has not earned a renewal expectancy, it seems incongruous that RBI should received any preference simply because its ownership is locally-based. Moreover, it seems equally incongruous to award Adams a preference for its principals' civic activities because, however laudable, those activities have nothing to

¹⁷ Cf. Amendment of Parts 73 and 74 – Noncommercial Applicants, 15 FCC Rcd 7386, 7404-10 (2000), *petitions for recon. pending* (where the Commission established a point system for awarding noncommercial construction permits among mutually exclusive applicants, which would give points for "localism").

do with Reading. In any event, each applicant appears to argue that a positive or negative inference is warranted based on RBI's record of service. *See* RBI PFCs at p. 85; Adams PFCs at p. 226. That record, however, is precisely what all parties have analyzed in connection with RBI's entitlement to a renewal expectancy, a criterion that continues to have the backing of both the Commission and the court.¹⁸ Thus, to avoid needless litigation over factors of questionable significance, the Bureau urges that no consideration be given to the factors of local residency, civic activities and past broadcast experience outside the context of the renewal expectancy issue.

28. Review of the renewal expectancy analysis appearing in the applicants' PFCs reveals a substantial divergence of opinion. Not surprisingly, RBI claims entitlement to a renewal expectancy while Adams urges that none is merited. For the reasons stated in the Bureau's PFCs as well as those discussed above, the Bureau is convinced that, in light of precedent, RBI's performance cannot possibly be considered substantial. Rather, its performance was minimal and no renewal expectancy is warranted.

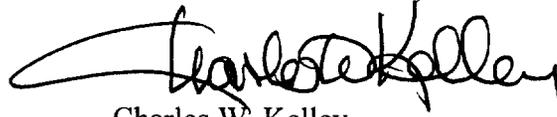
Ultimate Conclusion

29. Both applicants are basically qualified (barely). However, RBI is not entitled to a renewal expectancy. Consequently, because the ultimate choice now depends upon comparative criteria of dubious significance under Bechtel, the Bureau continues to urge

¹⁸ *See* Auctions Order, *supra* note 3, 13 FCC Rcd at 16005-06.

both parties to settle this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles W. Kelley". The signature is fluid and cursive, with a large initial "C" and "K".

Charles W. Kelley
Chief, Investigations and Hearings Division
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A handwritten signature in black ink, appearing to read "James W. Shook". The signature is fluid and cursive, with a large initial "J" and "S".

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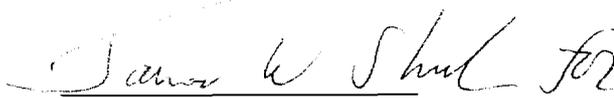
CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division certifies that the Bureau has on this 23rd day of October, 2000, served by hand copies of the foregoing "Enforcement Bureau's Consolidated Reply to Proposed Findings of Fact and Conclusions of Law" on:

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