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

In re Applications of  
READING BROADCASTING, INC.  
For Renewal of License of  
Station WTVE(TV), Channel 51  
Reading, Pennsylvania

and

ADAMS COMMUNICATIONS CORPORATION  
For Construction Permit for a New  
Television Station to Operate on  
Channel 51, Reading, Pennsylvania

To: The Commission

) MM Docket No. 99-153  
)  
) File No. BROC 940407KF

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**BRIEF IN SUPPORT OF INITIAL DECISION  
AND CONTINGENT EXCEPTIONS  
OF ADAMS COMMUNICATIONS CORPORATION**

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## SUMMMARY

In this comparative broadcast renewal proceeding, the Presiding Administrative Law Judge ("ALJ") correctly determined that the application of Adams Communications Corporation ("Adams") should be granted, and the application of Reading Broadcasting, Inc. ("RBI") for renewal of the license of Station WTVE(TV) should be denied.

To reach that result, the ALJ compared the two applicants and correctly found that Adams was superior to RBI in every respect. Reviewing the extensive factual record compiled with respect to RBI's performance during the license term in question, the ALJ correctly found that RBI had provided, at most, only minimal service to its audience. As a result, RBI was not awarded any "renewal expectancy". While the ALJ's comparative evaluation led to the correct conclusion, *i.e.*, that Adams is the superior applicant and its application should be granted, no comparative evaluation was necessary here since the ALJ should have concluded that RBI is not qualified to remain a broadcast licensee.

Micheal Parker -- RBI's President, director, dominant shareholder, and the person responsible for the station's operation throughout the license term -- was found to have engaged in fraud, misrepresentation and lack of candor before the Commission in a number of contexts. His misconduct included matters relating to RBI, and extended even to his testimony in this proceeding. In the ALJ's opinion based on his observation of Mr. Parker, Mr. Parker "cannot be trusted to deal openly with this agency", *ID* at 73. While the ALJ disqualified Mr. Parker, the ALJ incorrectly failed to extend that disqualification to RBI. In so doing, the ALJ misread applicable precedent and ignored substantial evidence establishing that Mr. Parker's disqualifying misconduct could and should be attributed to RBI.

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Pursuant to Section 1.277(b) of the Commission's Rules, Adams Communications Corporation ("Adams") hereby submits its Brief in support of the Initial Decision ("*ID*") of Administrative Law Judge Richard L. Sippel ("ALJ"), FCC 01D-01, released April 5, 2001, in the above-captioned proceeding. As indicated below, this Brief also includes contingent exceptions to certain limited aspects of the *ID*. In the event that no other party to this case submits exceptions to the *ID*, Adams will withdraw its Contingent Exceptions so that the *ID* granting Adams's application may become effective as soon as possible.

### CONCISE STATEMENT OF THE CASE

This is a comparative broadcast renewal proceeding. In June, 1994, Adams filed its application for a construction permit to operate on Channel 51 in Reading, Pennsylvania. Adams's application is mutually exclusive with the April, 1994 license renewal application of Reading Broadcasting, Inc. ("RBI"). The Video Services Division designated the Adams and RBI applications for hearing in May, 1999. *See Hearing Designation Order ("HDO")*, DA 99-865, released May 6, 1999. The *HDO* designated only one issue, the standard comparative renewal issue. The ALJ added two qualifying issues.<sup>1/</sup> The *ID* was released on April 5, 2001.<sup>2/</sup>

The ALJ resolved the Phase II issue adversely to Mr. Parker and RBI, finding that Mr. Parker engaged in repeated fraud, misrepresentation and lack of candor before the

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<sup>1/</sup> The "Phase II" issue was directed to alleged misrepresentation and/or lack of candor by Micheal L. Parker, President and a director of RBI, its dominant shareholder (through Partel, Inc. ("Partel"), a separate corporation wholly-owned by Mr. Parker) and the person responsible for station management throughout the 1989-1994 license term. *See ID* at 2. The "Phase III" issue was directed to alleged abuse of process by Adams. *See ID* at 2-3.

<sup>2/</sup> An extension of time, to and including May 21, 2001, within which to file exceptions to the *ID* was granted by *Order*, FCC 01I-04, released May 3, 2001.

Commission. The ALJ correctly concluded that Mr. Parker is unqualified to be a Commission licensee.

Despite the fact that Mr. Parker had been an officer, director and, through Partel, the dominant shareholder of RBI for essentially all of the license term, and despite the fact that Mr. Parker was found to have repeatedly engaged in fraud, misrepresentation and lack of candor before the Commission, and despite the fact that such misconduct occurred in connection with RBI -- including less than candid representations made to the ALJ during the hearing -- the ALJ concluded that RBI should be deemed basically qualified to remain a licensee, *if* Mr. Parker were to be removed from RBI. As discussed below, that conclusion was erroneous: RBI must be deemed to be disqualified as a result of Mr. Parker's misconduct regardless of whether Mr. Parker is removed from RBI.

The ALJ resolved the Phase III issue favorably to Adams, concluding correctly that Adams did not engage in any abuse of process and is fully qualified to be a broadcast licensee.

The ALJ resolved the standard comparative renewal issue in favor of Adams, finding correctly that: (a) RBI's performance during the relevant license term was at most minimal and not entitled to any renewal expectancy, and (b) under the standard comparative criteria, Adams is the superior applicant.

In his ultimate conclusion, the ALJ correctly held that Adams's application should be granted and RBI's application should be denied.

## STATEMENT OF THE QUESTION PRESENTED

Adams supports the ALJ's conclusions that: (a) Adams engaged in no abuse of process and is basically qualified to be a licensee; (b) Mr. Parker is basically unqualified to be a licensee; and (c) if comparative analysis is necessary, Adams is the comparatively superior applicant.<sup>3/</sup> The one conclusion with which Adams takes strong exception is the ALJ's determination that RBI is basically qualified to remain a licensee. The question presented by that exception is:

When a person is an officer, director and dominant shareholder of a corporate licensee and responsible for the licensee's day-to-day operations, and that person is found to have engaged in repeated instances of disqualifying fraud, misrepresentation and/or lack of candor before the Commission in connection both with the licensee's affairs and with the affairs of other regulatees, should not that disqualifying misconduct be attributed to the licensee-corporation so that the licensee-corporation is disqualified, especially when other principals of the licensee were aware of the wrong-doing individual's dishonesty and acquiesced in and ratified at least some of his wrong-doing?

## ARGUMENT

### **I. THE ALJ CORRECTLY CONCLUDED THAT ADAMS IS COMPARATIVELY SUPERIOR TO RBI.**

1. The ALJ concluded that Adams is comparatively superior to RBI based on analysis of the standard comparative renewal factors. Those factors included: (a) diversification of media ownership; (b) comparative coverage; (c) local residence and broadcast experience; and (d) RBI's claim to a "renewal expectancy".

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<sup>3/</sup> As discussed below, the ALJ's correct conclusions in many respects enjoy considerably more support in the record evidence than is indicated in the *ID*.

**A. *Diversification of media ownership***

2. The ALJ correctly found that RBI is charged with ownership of two broadcast stations -- Station KVMD(TV), Twentynine Palms, California, and International Broadcast Station KAIJ, Dallas, Texas -- in addition to WTVE. *ID* at 5. Also, as of the applicable B Cut-off date Mr. Parker controlled, through a time brokerage agreement, the operation of Station WHCT-TV, Hartford. *Id.*<sup>4/</sup> By contrast, Adams has *no* other attributable media interests. *ID* at 4. Adams was thus properly entitled to a clear, decisionally significant, comparative preference under this factor. *See, e.g., Isis Broadcasting Group*, 5 FCC Rcd 7040, 7041 (¶7)(1993); *Cowles Broadcasting, Inc.*, 86 FCC2d 993, 49 RR2d 1138, 1153 (1981).

**B. *Comparative Coverage***

3. The ALJ properly compared Adams's proposed coverage with the coverage presently provided by RBI's licensed facilities and concluded that Adams is entitled to a preference because of its proposed service to 33% more people than RBI. *ID* at 65. The ALJ characterized Adams's preference as "very slight", *id.*, even though the precedents on which he relied indicate that the preference should have been "slight". *See, e.g., Global*

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<sup>4/</sup> In his conclusions, the ALJ attributed to RBI ownership of "two full-power television stations through [Mr. Parker's] 100% ownership of corporate licensees". *ID* at 65. As indicated above, however, the ALJ's findings attribute to RBI indirect ownership, through Mr. Parker, of one television station (KVMD) and one international broadcast station (KAIJ), and control of another television station (WHCT-TV) through a time brokerage agreement. Those interests are in addition to RBI's direct ownership of Station WTVE(TV). Thus, in his conclusions the ALJ appears to have *understated* the level of RBI's attributable interests. And even if Mr. Parker's time brokerage arrangement with Station WHCT-TV were deemed not to constitute an attributable interest, the fact remains that ownership of no fewer than three broadcast stations -- WTVE(TV), KVMD(TV) and KAIJ -- is attributable to RBI.

*Information Technologies, Inc.*, 8 FCC Rcd 4024, 4031 (Rev. Bd. 1993); *Christian Broadcasting of the Midlands, Inc.*, 99 FCC2d 578, 583 (Rev. Bd. 1984). While it would be appropriate to upgrade Adams's preference from "very slight" to "slight", it is in any event beyond argument that Adams is entitled to *some* preference for its superior technical proposal.

4. In assessing RBI's coverage, the ALJ properly ignored the coverage which would result if RBI were to construct facilities specified in a construction permit which RBI has held for more than five years. *See ID* at 6-7, 65. The ALJ found that there was no reliable evidence to support the notion that RBI would ever construct those facilities. *Id.* RBI has confirmed that finding by filing, on April 30, 2001, an application (File No. BMPCT-20010430AAL) proposing to remain at its present transmitter site. The application contains no explanation for RBI's abandonment of its previously-proposed site.<sup>5/</sup>

5. Accordingly, the ALJ correctly awarded Adams a preference for its superior coverage.

**C. *Local Residence, Civic Involvement and Broadcast Experience***

6. The ALJ awarded RBI some "marginal" "preference" or "credit" for the local residence and civic involvement of some of RBI's principals. *ID* at 7-9, 65-66. He also

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<sup>5/</sup> Adams suspects that the decision, reflected in RBI's April 30, 2001 application, to abandon that previously-proposed site was triggered by the fact that the Commonwealth Court in Pennsylvania had, in a decision released on March 29, 2001, rejected RBI's appeal of a lower court decision enjoining RBI from constructing at that site. A copy of the March 29, 2001 decision is included as Attachment A hereto. Despite the ALJ's specific admonition to Mr. Parker and RBI that the ALJ be advised if "something significant happens, even if it's partially significant" with respect to the transmitter site litigation, Tr. 1907, RBI has failed to notify the ALJ or the Commission about the March 29, 2001 court decision.

indicated that RBI was entitled to some unspecified level of "credit" for the "broadcast experience" of two of RBI's principals, *ID* at 9, although no such credit appears to have been included in the ALJ's final analysis, *see ID* at 65-66.

7. In fact, RBI was entitled to *no* credit or preference at all for *any* local residence, civic involvement or broadcast experience. Historically, consideration of those factors was permitted only in the context of the comparative "integration" criterion which was held to be unlawful in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). Thus, the mere fact of local residence, civic involvement or broadcast experience is irrelevant and immaterial to the comparative issue.

8. In *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999, the ALJ acknowledged this, holding that evidence of those factors would be relevant and material *only to the extent* that those factors could be demonstrated to have had some actual impact on or nexus with the station's historical public service programming during the license term.

9. The record of this proceeding demonstrates only the total *LACK* of positive impact which the claimed local residence, civic activities and broadcast experience of RBI's principals had on the programming of Station WTVE(TV). As discussed in Adams's Proposed Findings at 16-31 and 224-226, the record conclusively establishes that *NONE* of RBI's shareholders took *ANY* steps to assure public service programming responsive to local needs and interests. Indeed, the *total* absence of *any* positive influence on the station's programming from RBI's claimed local residence, civic activities and broadcast experience can and should logically warrant a substantial comparative *DE*merit. In determining which of two competing applicants will better serve the public interest, the Commission cannot

ignore the fact that one of those two competing applicants has already had a chance to serve the public interest and has failed to do so. In this case, RBI's historical failure to serve the public has been confirmed throughout the evidentiary record herein. That being the case, RBI cannot be awarded *any* comparative preference on the basis of local residence, civic activities or broadcast experience, since we know from history that those factors will *not* favorably influence RBI's actual programming performance.

**D. *Renewal Expectancy***

10. The ALJ analyzed the performance of Station WTVE(TV) during the relevant license term and concluded that that performance was at most minimal and not entitled to any renewal expectancy. That was clearly correct.

11. RBI's ascertainment efforts were far from extensive and fell short of the types of efforts found to warrant some renewal expectancy in other comparative renewal cases. *ID* at 14-15, 57. RBI did not broadcast any nonentertainment programs in response to any interests or needs which might have been identified through the paltry ascertainment efforts RBI did undertake. *ID* at 14-22, 58-59.<sup>67</sup> Despite the Commission's express admonition that public service announcements ("PSA's") "should not be a broadcaster's primary method for responding to community needs," *Airing of Public Service Announcements by Broadcast Licensees*, 81 FCC2d 346, 369, 48 RR2d 563, 581 (1980), RBI's nonentertainment

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<sup>67</sup> In fact, the only "public affairs" programs broadcast by RBI did not appear until the last year of the license term. Those programs consisted of canned presentations produced by various state legislators and provided, free of charge, to any station which might choose to air them. As discussed above, RBI broadcast these programs erratically, with no fixed schedule. And, since RBI did not know the topics covered by the programs prior broadcasting them, RBI cannot be said to have presented those programs in response to any ascertained issue or need. *See Adams Proposed Findings* at 46-49.

programming consisted almost exclusively <sup>7/</sup> of PSA's.

12. To the extremely limited extent that RBI provided PSA's and some sparse, end-of-term, non-station-produced, non-issue-responsive programming, it did so in a haphazard, unscheduled manner which made it impossible for the audience to know when any particular programming might be broadcast. *See, e.g., Adams Proposed Findings at 47-49, 54-56.* Moreover, RBI broadcast no news and no station-produced programs. It even failed to provide any coverage at all, whether by programs or even emergency announcements, of the most powerful earthquake in Pennsylvania history, which happened to be centered *in Reading* in 1994! <sup>8/</sup>

13. By any measure -- including RBI's own inflated claims -- RBI's programming was at most minimal and not worthy of a renewal expectancy, particularly when that

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<sup>7/</sup> In his findings the ALJ seems to have treated many of RBI's PSA's as "programs" simply because RBI so characterized them at hearing. *ID* at 18-20. But the "programs" described at, *e.g.,* Paragraphs 63-70 of the *ID* were all specifically categorized as PSA's in the station's documentation (*e.g.,* program logs, affidavits of performance) prepared contemporaneously with the broadcast of those materials. At trial RBI offered no explanation as to why that earlier, contemporaneous categorization should be ignored. To the extent that the ALJ's quantitative analysis of RBI's programming is based on RBI's latterday recategorization, that analysis substantially *overstates* the quantity of nonentertainment programs broadcast during the license term. *See, e.g., Adams Proposed Findings at 32-41.* But even as so overstated, RBI's programming performance was *still* minimal, as the ALJ correctly concluded. Thus, while the ALJ was impermissibly generous to RBI in his preliminary evaluation of its programming, that error appears to have been inconsequential in his final analysis.

<sup>8/</sup> In another example of the ALJ's willingness to give RBI's programming the inappropriate and unwarranted benefit of the doubt, the ALJ stated that RBI broadcast "local weather reports several times a day." *ID* at 22. The record established, however, that RBI prepared a single weather-related 30-second PSA at approximately 5:00 a.m., and then rebroadcast that PSA at intervals of approximately one hour from 6:00 a.m.-9:00 a.m. Tr. 118-119; *e.g., Adams Exh. 6, pp. 80-81.* RBI did not update these weather PSA's, and RBI did not provide any up-to-the-minute coverage of extreme weather emergencies in the Reading area. *See Adams Proposed Findings at, e.g., 67.*

performance is compared to the performance of other renewal applicants in other comparative renewal proceedings. *See, e.g., Fox Television Stations, Inc.*, 8 FCC Rcd 2361 (Rev. Bd. 1993); *Video 44*, 5 FCC Rcd 6383 (1990).<sup>2/</sup>

14. The ALJ also correctly rejected any claim that RBI's anemic programming might be attributable in any way to the fact that RBI was in bankruptcy at the beginning of the license term. *ID* at 16-17. Here again the ALJ was too generous to RBI, stating

[t]here is no evidence offered by RBI to show that funds or resources were diverted from a profitable operation or from the compensation of Partel and its affiliates in favor of supporting public service broadcasting.

*Id.* The ALJ's observation about the lack of evidence proffered by RBI is accurate. But the ALJ failed to acknowledge proffered evidence showing payments to Partel (*i.e.*, Mr. Parker) aggregating more than \$500,000 during the license term, including more than \$325,000 during the last three years when, according to RBI's direct case (presumably presented in an effort to justify RBI's negligible programming effort), RBI incurred an aggregate "net loss" of approximately \$80,000. *See Adams Proposed Findings* at 114-120.

15. The ALJ also properly concluded that RBI's history of non-compliance with Commission rules undermined any claim to a renewal expectancy. RBI repeatedly failed to

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<sup>2/</sup> In *Fox*, the renewal applicant was awarded a renewal expectancy based in part on a schedule which included a live 30-minute newscast broadcast between one and three times daily, spot coverage of breaking news, sports and weather, daily and/or weekly 30- and 60-minute public affairs shows, and extended and on-going coverage of ascertained problems and needs. Here, RBI broadcast no newscasts, no coverage of breaking news, sports or weather (*see* Footnote 8, above), no locally-produced public affairs shows, and no program coverage of ascertained problems and needs.

In *Video 44*, the renewal applicant was *denied* a renewal expectancy because it broadcast only one hour per day of nonentertainment programs. Here, RBI's performance falls far short of even the low standard set in *Video 44*. *A fortiori*, then, RBI's performance does not warrant a renewal expectancy.

correctly disclose corporate information to the Commission as required. RBI had even undergone an unauthorized transfer of control, information which was withheld from the Commission for years. *See, e.g.*, Adams Proposed Findings at 99-114; Bureau Proposed Findings at 47-54. <sup>10/</sup>

16. RBI's unwillingness or inability to keep the Commission accurately and promptly informed has continued *to this date*. Although RBI was specifically admonished by the ALJ to keep him advised if "something significant happens, even if it's partially significant", relative to RBI's transmitter site situation, Tr. 1907, RBI failed to notify the ALJ that (a) a mediation process about which Mr. Parker testified in July, 2000, had been terminated prior to October, 2000, and (b) RBI's appeal of a trial court injunction against use of RBI's proposed site was rejected in March, 2001. *See* Attachment A hereto.

17. Additionally, in a "Section 1.65 Statement" filed with the Commission on April 20, 2001, RBI reported that certain directors, including Warren Chinn and Leonard Stevens, had been "re-elected" on March 21, 2001. But according to RBI's Annual Ownership Report filed April 4, 2000, neither of those individuals had theretofore been elected a director. If they were, in fact, "re-elected" in March, 2001, then RBI failed to report their initial election.

18. Additionally, RBI's April, 2000 Ownership Report included as an attachment a

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<sup>10/</sup> RBI affirmatively sought to mislead the ALJ about this transfer of control. In a July, 1999 pleading concerning the scope of the comparative issue, RBI explicitly stated that Mr. Parker had not become a shareholder until 1992, despite the fact that RBI corporate records which RBI was later forced to disclose clearly revealed that Mr. Parker had issued a large bloc of stock to Partel (*i.e.*, to himself) in October, 1991, *months before* any arguable Commission approval. The ALJ failed to include this specific misrepresentation in the litany of violations described in the *ID*.

copy of an "Option and Stock Purchase Agreement" entered into (according to the document itself) on November 1, 1999. That agreement included provisions for the possible future ownership of RBI stock by Philadelphia Television Network, Inc. That agreement was required to be disclosed to the Commission within 30 days of its execution. *See* Section 73.3613 of the Commission's rules. RBI conveniently ignored that rule for four months.

19. The ALJ ordered RBI to reimburse a third-party witness for costs incurred in connection with the witness's response to RBI discovery requests. *See Protective Order*, FCC 00M-48, released July 18, 2000. The record contains no indication that RBI has complied with that order.

20. Thus, the ALJ's findings and conclusions concerning RBI's repeated failures to comply with routine Commission requirements were correct. That correctness has been confirmed by RBI's *continued* and *continuing* failures in those regards. RBI's inability or unwillingness to comply with Commission rules and requirements precludes any claim of renewal expectancy.

#### **E. *Summary re Comparative Analysis***

21. As discussed below, no comparative analysis is necessary in this case, as RBI is not basically qualified to remain a licensee. If, *arguendo*, comparative analysis is deemed appropriate, Adams is unquestionably the superior applicant with respect to all aspects of that analysis.

## II. THE ALJ CORRECTLY DISQUALIFIED MR. PARKER, BUT INCORRECTLY FAILED TO DISQUALIFY RBI.

22. Mr. Parker is clearly not qualified to be a Commission licensee. His sorry record of fraud, deceit, and lack of candor before the Commission is described most recently in the *ID* at 30-45, 66-74. <sup>11/</sup> The ALJ correctly recognized that, far from having reformed himself, Mr. Parker continues to the present to play fast and loose with the truth. After observing Mr. Parker on the witness stand over the course of four days, the ALJ concluded that Mr. Parker gave "misleading written testimony and live hearing testimony", *ID* at 68, Mr. "Parker's self-interested disclosures are not to be trusted", *ID* at 72, and Mr. Parker "cannot be trusted to deal openly with this agency", *ID* at 73. <sup>12/</sup>

23. The ALJ concluded that Mr. Parker's disqualification should not be deemed to render RBI disqualified as long as "Parker leaves the scene". *ID* at 72-73. <sup>13/</sup> Adams, of

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<sup>11/</sup> Earlier reports concerning Mr. Parker may be found at, *e.g.*, *Mt. Baker Broadcasting Company, Inc.*, 3 FCC Rcd 4777 (1988), *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4090-4091 (Rev. Bd. 1988) and *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2255, 2257 (1997).

<sup>12/</sup> These adverse credibility determinations concerning Mr. Parker are entitled to special deference and cannot be rejected absent some irreconcilable conflict with other record evidence. *See, e.g.*, *Opal Chadwell*, 2 FCC Rcd 5502, 5504 (Rev. Bd. 1987), quoting *WEBR, Inc. v. FCC*, 420 F.2d 158, 162 (D.C. Cir. 1969); *Signal Ministries, Inc.*, 104 FCC2d 1481, 1486 (Rev. Bd. 1986). No such "irreconcilable conflict" exists with the record evidence here.

<sup>13/</sup> The ALJ's "expect[ation]" that Mr. Parker would simply go away was apparently based on Mr. Parker's gratuitous statement that

if there is to be a penalty imposed, it should be against me alone, not against RBI to the detriment of RBI's other stockholders.

*ID* at 72 quoting RBI Exh. 46 at 8. The quoted language is clearly not a commitment by Mr. Parker to resign. And even if it *were* a "commitment", how reliable could it be, coming from a person who "cannot be trusted to deal openly with this agency"? *ID* at 73. No other RBI principal offered *any* testimony which could be construed in any way to constitute a

(continued...)

course, has no quarrel with the notion that, if Mr. Parker remains involved in any way with RBI, then RBI is disqualified. But Adams disagrees with the ALJ's conclusion that, were Mr. Parker suddenly to "leave the scene" at this late date, RBI could be deemed qualified.

**A. *RBI has affirmed its on-going allegiance to Mr. Parker.***

24. As a preliminary matter, it is important to recognize that, far from "leaving the scene" (voluntarily or otherwise), Mr. Parker is still very much on board and in full control of RBI. In a "Section 1.65 Statement" filed on April 20, 2001, more than two weeks *after* the issuance of the *ID*, RBI reported that Mr. Parker had recently been re-elected a director and president of RBI. Thus, RBI has recently re-affirmed its willingness to stick with Mr. Parker, despite the serious allegations of misconduct which have been pending against him for almost two years in this proceeding alone. <sup>14/</sup>

25. As indicated above, at the hearing RBI offered no evidence concerning the position which other RBI principals might have concerning Mr. Parker's history of untruthfulness. RBI's failure in that regard can and should be interpreted as a clear indication that, as an institution, RBI is committed to remaining with Mr. Parker regardless of his problems. RBI's recent Section 1.65 Statement explicitly confirms what RBI's silence

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<sup>13/</sup>(...continued)

commitment to remove Mr. Parker under any circumstance. Indeed, Mr. Parker was the sole corporate representative witness. RBI's only other witnesses were presented to provide information about RBI's programming and operations; they did not offer any testimony at all concerning the effect of Mr. Parker's record of untruthfulness on RBI's historical or prospective qualifications.

<sup>14/</sup> The serious questions about Mr. Parker substantially pre-date this proceeding. For example, in January, 1997, the full Commission held that "serious character questions" existed with respect to Mr. Parker. *Two If By Sea Broadcasting, Inc., supra*. It is inconceivable that RBI was not aware of these questions at some point prior to the issuance of the *ID*.

at the hearing implied.

26. In view of RBI's recent pledge of continued allegiance to Mr. Parker as well as the totality of the record evidence, none of which suggests an imminent departure by Mr. Parker, any discussion of the effect of any possible departure of Mr. Parker is moot.

**B. *Commission precedent concerning removal of wrong-doers is inapposite here where RBI's other principals have long known of Mr. Parker's dishonesty, have acquiesced in and ratified his misconduct, and have not heretofore removed him.***

27. The ALJ's notion concerning the supposedly salutary effect of Mr. Parker's removal even at this late date is not supported by the three cases cited by the ALJ at page 73 of the *ID*. In each of those three cases -- *PCS 2000, L.P.*, 12 FCC Rcd 1681, 1688-1689 (1997), *Faulkner Radio, Inc.*, 88 FCC2d 612, 618 (1981) and *Teleprompter Cable Systems, Inc.*, 40 FCC2d 1027 (1973) -- the wrong-doing individual had been removed long before the Commission took action. And in each case the Commission specifically acknowledged and credited the licensee's *prompt* investigation after the allegations of wrong-doing surfaced, and the licensee's *prompt* remedial action following such investigation, as important factors supporting the conclusion that the corporate licensee should not be held accountable for the wrong-doing of the individual.

28. Those cases thus stand for the proposition that, where a licensee recognizes, *on its own*, the seriousness of apparent misconduct within its ranks and acts, promptly and *on its own*, to correct the situation, the Commission may consider such corrective conduct in deciding whether the licensee so cleansed is qualified to remain a licensee. The cases do *NOT* stand for the notion that the Commission can or should condition a licensee's qualifications on the licensee's future willingness to extirpate one or another Commission-

designated individual from its midst. This is especially so where the licensee has had ample opportunity to take such corrective measures and has failed to do so.

29. In the instant case there is no indication at all of *any* on-going licensee concern about Mr. Parker, despite the fact that the record plainly establishes that the other principals of RBI *knew* that Mr. Parker could *not* be trusted. *See, e.g.*, Adams Exh. 14, pp. 52-54, 60-61. <sup>15/</sup> In September, 1991, the RBI board had even terminated Mr. Parker's management agreement because of "intentional misfeasance" by Mr. Parker. Adams Exh. 13, pp.39-40, 71-73.

30. Mr. Parker responded to that termination in October, 1991 by staging a corporate coup d'état, issuing stock to himself and persons friendly to him and, through the voting rights associated with that stock, terminating the unfriendly board of directors and replacing it with himself and his allies. These events, which effectuated an unauthorized transfer of control, are recounted in some detail at, *e.g.*, pages 10-13, 63-64 of the *ID* and pages 99-114 of Adams's Proposed Findings.

31. Mr. Parker's coup was not accomplished without initial opposition. In October, 1991, and again at a February, 1992 meeting, some RBI principals spoke out against Mr. Parker's actions, to no avail. *See, e.g.*, Adams Exh. 13, pp. 39-40, 71-73, 78-81. But that opposition evaporated, and by the Fall, 1992, the enemies had become allies, as

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<sup>15/</sup> For example, Adams Exh. 14, pp. 51-66 consists of the minutes of a meeting of the RBI board of directors held on May 8, 1990, barely one year after Mr. Parker's arrival at the station. According to those minutes, other RBI directors stated that Mr. Parker had already engaged in "misrepresentation" or "lying" in RBI's business plan and "on other occasions." *id.* at pp. 53-54, 60-61. In an October, 1991 shareholders meeting, it was stated that one RBI director had expressed the view that Mr. Parker was a "path[o]logical liar. Adams Exh. 13, p. 64.

Mr. Parker's former opponents ceded control of the corporation to Mr. Parker through a "Settlement Agreement" in which all the parties acquiesced in and ratified Mr. Parker's coup. Adams Exh. 27.

32. The record therefore firmly establishes that RBI's other principals knew, very early on and from their own direct, personal observation, that serious questions existed about Mr. Parker's trustworthiness and honesty. Those same principals also observed first hand Mr. Parker's unauthorized seizure of corporate control. And those same principals all ultimately went along with Mr. Parker. Having voluntarily cast their lot with Mr. Parker and his *modus operandi*, those same principals cannot now escape the consequences of the alliance which they chose to embrace.

33. In support of his decision to condition RBI's qualification on Mr. Parker's departure, the ALJ also cited the *Policy Statement on Character Qualifications* ("*Character Qualifications*"), 102 FCC2d 1179, 1217-1218 (1986), for the proposition that "removal of a principal as the sole wrongdoer [may] suffice without sanctioning a corporate licensee". *ID* at 73. But the portion of the *Character Qualifications* policy statement cited by the ALJ relates to misconduct by corporate employees, not by controlling principals. The Commission was concerned that shareholders might be unduly harmed by unforeseeable and unpreventable misconduct by a rogue employee. But the Commission correctly recognized that no such concern was warranted where the wrongdoing employee was also the controlling stockholder. 102 FCC2d at 1218, 59 RR2d at 828, ¶78. In such cases, the wrongdoing is to be treated "as though the individuals involved were sole proprietors or partners." *Id.*

34. Here, Mr. Parker was at all relevant times the dominant and *de facto* controlling individual of RBI: he had "full managerial, operational and budgetary control" of

the station under the Partel management agreement dating back to 1989, *ID* at 64, and he "appointed and led" the RBI shareholders who acquired control of RBI in October, 1991, *id.* Thus, RBI is not entitled to the benefit of the policy cited by the ALJ.

35. The ALJ also suggested that the "jurisdiction of a bankruptcy court" had "limited the authority of the [RBI] directors" so as somehow to excuse those directors from riding herd on Mr. Parker. *ID* at 73. No evidence supports that suggestion. While the bankruptcy court did approve the management agreement by which Mr. Parker first insinuated himself into RBI, the fact is that the other RBI directors were the ones who presented both that agreement and Mr. Parker to the court for its approval. It was RBI's directors, not the court, who wanted Mr. Parker to run RBI; the court merely granted their wish.

**C. *Substantial misconduct occurred in connection with RBI's representations to the Commission.***

36. The ALJ also pointed out that many of Mr. Parker's misrepresentations did not involve RBI. *ID* at 73. That is true. But it is equally true that important elements of Mr. Parker's misconduct *did* occur in connection with RBI: misrepresentations in the 1991 RBI transfer of control application; misrepresentations in RBI's Ownership Reports from 1992-1994; the repeated failure to report important information (*e.g.*, the Partel management agreement, *See ID* at 27-28, 62; the unauthorized transfer of control in October, 1991; the Telemundo agreement, *see ID* at 28-29).<sup>16/</sup> Perhaps most importantly, Mr. Parker appeared

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<sup>16/</sup> A further matter which was never reported by RBI is the fact that, since 1995, Thomas Root has been actively involved in RBI's affairs, first as an "independent contractor", and, since 1996, as "special assistant" to Mr. Parker. *See* RBI Opposition, filed on

(continued...)

at the hearing in 2000 as RBI's primary witness and corporate representative. In that role he gave misleading and non-candid testimony on behalf of RBI. It cannot be said that RBI has been isolated from Mr. Parker's misrepresentations and lack of candor.

**D. *Removal of Mr. Parker would be ineffective.***

37. Nor can it be said that mere removal of Mr. Parker would disinfect RBI.

Since at least October, 1991, Mr. Parker has been in effective control of RBI. *See, e.g., ID* at 11, n. 8. In that capacity he has nominated the other directors, who in turn have repeatedly elected him president of the corporation. *See, e.g., Adams Exh. 13, pp. 45-47.* The other directors have also repeatedly elected Mr. Parker's protégés, Frank McCracken and George Mattmiller, as corporate officers, reaffirming those elections as recently as March, 2001. *See* RBI's Section 1.65 Statement, filed April 20, 2001. <sup>17/</sup> Two of RBI's current directors (Jack A. Linton and Irvin Cohen) were signatories to the Settlement Agreement ratifying Mr. Parker's unauthorized transfer of control of RBI. *See Adams*

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<sup>16/</sup>(...continued)

September 13, 1999, to Adams's "Threshold Showing of Unusually Poor Broadcast Record". Root is the former communications attorney who pled no contest to more than 200 counts of fraudulent activity in connection with his practice before the Commission. *See, e.g., U.S. v. Root*, 12 F.3d 1116, 1117 (D.C. Cir. 1994); *The Petroleum V. Nasby Corporation*, 8 FCC Rcd 4035, 4035-36 (1993); *Thomas L. Root, Esquire*, 5 FCC Rcd 4038 (1990). The Commission has made clear, with respect to Root, that his extensive misconduct can and should be considered "where [he] has the potential to influence or control the operations of a station." *The Petroleum V. Nasby Corporation*, 8 FCC Rcd 4035, 4036 (1993). The ALJ incorrectly declined to assign RBI a demerit because of Root's involvement with the station.

<sup>17/</sup> In October, 1991, Mr. Parker nominated Mr. McCracken to become an RBI director. *See Adams Exh. 13, p. 46.* Mr. McCracken had no former involvement with the station; his injection into RBI may thus be seen as attributable solely to Mr. Parker. Mr. Mattmiller has been closely associated with Mr. Parker in a variety of projects dating back to the 1980s. *See, e.g., Tr. 543-544.*

Exh. 27. <sup>18/</sup> To excise only Mr. Parker would be to pluck the dandelion's flower while leaving its stalk and roots, and only after it had gone to seed. <sup>19/</sup>

**E. Conclusion re RBI's basic qualifications**

38. Throughout the 1989-1994 license term at issue here, and consistently thereafter through the hearing and to the present day, Micheal Parker has been in charge of RBI and its station. Even before 1989 and extending to the present day, Mr. Parker has engaged in repeated fraud, misrepresentation and lack of candor before the Commission. His misconduct has involved Station WTVE(TV), as well as other stations. In addition to making affirmative misstatements to the agency, he has withheld from the Commission information which might have raised questions concerning him and his qualifications. He has ignored the Commission's rules.

39. The hearing gave Mr. Parker the opportunity to explain himself, to justify his actions and omissions, to satisfy the ALJ that Mr. Parker's record of misconduct, as reflected in, *e.g.*, the *Mt. Baker* and *Religious Broadcasting* decisions, is a closed book, a

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<sup>18/</sup> A third signatory to that agreement, Meyer C. Rose, resigned as a director only recently. Mr. Rose had been introduced into RBI by Mr. Parker. Tr. 662. According to the April, 2001 Section 1.65 Statement, Mr. Rose was replaced by a resident of Kenmore, Washington. Mr. Parker is a resident of Enumclaw, Washington. Both Kenmore and Enumclaw are in the Seattle area. There is no indication that the new director from Kenmore has any connection with RBI, a company located a continent away from Seattle, other than through Mr. Parker. Additionally, as noted above, the Section 1.65 Statement indicates that Warren Chinn is now an RBI director. Mr. Chinn has been a business associate of Mr. Parker in at least one other broadcast venture. See Adams Exh. 50, pp. 22, 24. Mr. Parker's continued imprint on the RBI board is unmistakable.

<sup>19/</sup> The record supports this observation. For example, Mr. McCracken withheld the filing of the Telemundo affiliation agreement for plainly bogus reasons. *ID* at 29. Mr. McCracken also incorrectly advised the Commission of the status of a transmitter site specified by RBI in a construction permit application. See RBI Exh. 12, Tab B (letter dated April 24, 1999 from Mr. McCracken to Magalie R. Salas, Secretary).

thing of the past, a factor having no bearing on his conduct today and in the future.

40. Mr. Parker appeared at the hearing as RBI's primary witness and corporate representative. But his testimony served only to demonstrate that the current Mr. Parker is the same as the old Mr. Parker. As the ALJ observed in assessing Mr. Parker's written and oral testimony, he "cannot be trusted to deal openly with this agency". *ID* at 73.

41. This conclusion cannot be a surprise to RBI's other principals, who have worked closely with Mr. Parker for more than a decade. They have observed and commented upon his dishonest tendencies, and they have chosen to look the other way, ratifying his misconduct both explicitly (*e.g.*, in the Fall, 1992 Settlement Agreement) and implicitly, by failing to object to his continued stewardship of the corporation even after his misconduct had come clearly into focus. They have thrown their lot in with Mr. Parker for good or bad, and now they must bear the consequences of that choice.

42. As the Commission has held,

The act of willful misrepresentation not only violates the Commission's rules; it also raises immediate concerns over the licensee's ability to be truthful in any future dealings with the Commission.

\* \* \*

[M]isrepresentation and lack of candor in an applicant's dealings with the Commission [are] serious breaches of trust. The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees.

*Character Qualifications*, 59 RR2d at 822, ¶57. This concern has been affirmed, consistently and repeatedly, for more than 50 years by the Courts. *E.g.*, *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000); *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000); *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980);

*FCC v. WOKO, Inc.*, 329 U.S. 223, 225-27 (1946).

43. The record of this proceeding clearly establishes that neither Mr. Parker nor RBI can be trusted by the Commission. Mr. Parker's transgressions may be more numerous, and may extend beyond RBI. But RBI is Mr. Parker's operation; to the extent that RBI has other officers, directors and shareholders, they have willingly embraced Mr. Parker and his dishonest *modus operandi*, and have been content to let him represent them before the FCC. Indeed, Mr. Parker was RBI's corporate representative at the hearing herein.

44. RBI cannot escape the consequences of Mr. Parker's misconduct by claiming struthiously that it was not aware of that misconduct. As the Commission has held,

[m]erely standing back and waiting for disaster to strike or for the Commission to become aware of it will not insulate corporate owners from the consequences of misconduct.

*Character Qualifications*, 59 RR2d at 827-828, ¶78. The ALJ correctly held that Mr. Parker is disqualified. The facts and circumstances of this case clearly require that RBI be deemed disqualified as well. To the extent that the ALJ held that RBI might still be qualified, that holding was error and should be reversed.

### III. CONCLUSION

45. There can be no legitimate dispute about the correctness of the ALJ's ultimate decision: by any measure Adams is the superior applicant, and its application must be granted. As set forth above, while the ALJ's comparative analysis was sound, it was unnecessary. The ALJ could and should have concluded that RBI is disqualified from remaining a licensee. Since Adams is basically qualified to be a licensee, as the ALJ correctly concluded, the disqualification of RBI would obviate the need for any comparative

evaluation. Regardless of that factor, however, the ALJ correctly granted Adams's application, and that grant should be affirmed.

Respectfully submitted,

  
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May 21, 2001

ATTACHMENT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EARL TOWNSHIP

v.

READING BROADCASTING, INC.,  
Appellant

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:  
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No. 802 C.D. 2000  
Argued: December 7, 2000

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE JIM FLAHERTY, Judge  
HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION BY  
SENIOR JUDGE MIRARCHI

FILED: March 29, 2001

Reading Broadcasting, Inc. (RBI) appeals from an order of the Court of Common Pleas of Berks County permanently enjoining RBI from constructing a 668-foot tower to be used for (1) television broadcasting and (2) paging and radiotelephone services unless and until RBI obtains a proper permit for the construction from Earl Township (Township).

After a bench trial held in this action in equity filed by the Township against RBI, the trial court made the following relevant factual findings. RBI, a private corporation, owns and operates a television broadcasting station WTVE in Reading, Berks County since 1976 under a television broadcast license issued by the Federal Communications Commission (FCC). RBI currently broadcasts television signals in the UHF band from a television tower located on Mt. Penn in Lower Alsace Township, Berks County.

On October 23, 1989, RBI entered into an agreement of sale to purchase a tract of land located in the Long Hill section of the Township (Long Hill property) to construct a new television broadcast tower thereon. In January 1991, RBI's counsel sought advice of the Township as to whether a building permit

would be required to construct the new tower on the Long Hill property. In a letter dated April 5, 1991, the Township solicitor advised RBI's counsel that it was his opinion that such "public utility structure" would be exempt from zoning regulations, and that he would recommend that the proposed construction be allowed without a building permit, if (1) a development plan is submitted for review and comment by the zoning officer and/or engineer, and (2) the facts, upon which he based his opinion, are certified to be correct. In a letter subsequently sent to RBI's counsel, the chairman of the Township Board of Supervisors stated that the Supervisors had accepted the Township solicitor's position expressed in the April 5, 1991 letter. Despite the execution of the agreement of sale, RBI did not acquire the Long Hill property.

On December 8, 1993, RBI entered into an agreement of sale to purchase a 10.1-acre tract of land located in the Fancy Hill section of the Township (Fancy Hill property) within the Woodland Agricultural Conservation zoning district. RBI thereafter obtained from the FCC a permit for construction of a new 668-foot tower on the Fancy Hill property. The new tower will increase RBI's television broadcasting market from 1.1 million to 2.8 million viewers. On December 5, 1995, RBI acquired a fee title to the Fancy Hill property. Thereafter in April 1996, RBI submitted a land development plan for the construction of the 668-foot tower to the Township Planning Commission. In June 1996, RBI withdrew the land development plan, asserting that it was not required to obtain a building permit.

In July 1996, the FCC enacted new regulations permitting the television broadcasters, such as RBI, to provide additional paging and radiotelephone services as "communications common carriers." To provide the

paging and radiotelephone services, the television broadcasters must transmit digital data into the vertical blanking interval of the video portion of television broadcasting signals within the radio frequency band already assigned by the FCC for the transmission of the television signals. Due to such manner of transmitting signals, the paging and radiotelephone signals cannot be transmitted without also transmitting the television signals from the same antenna. RBI filed an application for paging and radiotelephone services in September 1996, but was directed by the FCC to resubmit the application at a later date because the FCC was not yet prepared to process the application.

On October 18, 1996, the Township commenced the instant action in equity seeking to enjoin RBI from constructing the proposed tower on the Fancy Hill property unless and until it obtains a proper permit from the Township. In response, RBI alleged, *inter alia*, (1) that it was a public utility and therefore was exempt from complying with the Township's zoning regulations under Section 619 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §10619, and Section 1212.A of the Township Zoning Ordinance of 1996 (Ordinance), and (2) that the Township is equitably estopped from seeking injunctive relief because of its previous representations made to RBI.

Section 619 of the MPC sets forth exemptions for public utility facilities as follows:

This article [Article VI, Zoning] shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or

welfare of the public.

The Township adopted Section 619 of the MPC in verbatim in Section 1212.A of the Ordinance. The Ordinance defines a "public utility" as:

*Any governmental unit or agency or private enterprise that, under public franchise or ownership or under certificate of convenience and necessity, provides the public with electric, gas, heat, steam, communication, transportation, water, or other similar public service. If not regulated by and subject to the jurisdiction of the Pennsylvania Public Utilities Commission, before an entity will be considered a public utility, such entity must be a common carrier. The burden of proving that an entity is a public utility shall be upon the entity claiming such status.*

Section 302 of the Ordinance (emphasis added).<sup>1</sup>

After the Township filed the instant action, the FCC on April 4, 1997 approved RBI's resubmitted application and authorized RBI to provide the paging and radiotelephone services as a "communications common carrier" utilizing the proposed tower on the Fancy Hill property. The FCC later extended the permit for the construction of the tower to April 4, 2007.

The issues presented for the trial court's determination were: (1) whether RBI is exempt from the zoning regulations as "a common carrier" under

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<sup>1</sup> We note that providers of the wireless communication services regulated by the FCC are not "public utilities" under the jurisdiction of the Pennsylvania Public Utility Commission. Section 102 of the Public Utility Code specifically excludes, from the definition of a "public utility," "[a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications services." Consequently, private corporations providing wireless communication services in Pennsylvania are not generally considered "public utilities" for the purpose of the zoning regulations. (*Crown Communications v. Zoning Hearing Board of Borough of Glenfield*, 550 Pa. 266, 703 A.2d 427 (1997); *Pittsburgh Cellular Telephone Co. v. Board of Supervisors of Marshall Township*, 704 A.2d 192 (Pa. Cmwlth. 1997); *AWACS, Inc. v. Zoning Hearing Board of Newtown Township*, 702 A.2d 604 (Pa. Cmwlth. 1997), *aff'd*, 559 Pa. 104, 739 A.2d 159 (1999).

the definition of a public utility in Section 302 of the Ordinance; and (2) if not, whether the Township is nonetheless equitably estopped from seeking injunctive relief due to its previous representations that RBI was not required to obtain a permit from the Township to construct a new television broadcasting tower.

In its Adjudication issued after the trial, the trial court concluded that RBI is not a public utility under the Ordinance and is therefore subject to the zoning regulations. The trial court reasoned that RBI's principal business since 1976 is television broadcasting; RBI's ability to utilize its television broadcast signals for the additional paging and radiotelephone services is dependent upon RBI's status as the licensee of the television station WTVE; Section 3(h) of the Federal Communications Act of 1934, *as amended*, 47 U.S.C. §153(h), provides that "a person engaged in radio broadcasting shall not ... be deemed a common carrier"; under *Federal Communications Commission v. Midwest Video Corp.*, 440 U.S. 689 (1979), the FCC is precluded from compelling broadcasters to act as common carriers, even with respect to a portion of their total services; and, therefore, a television broadcaster cannot be considered a common carrier under the Ordinance, even when it provides the ancillary and secondary paging and radiotelephone services.

The trial court also rejected RBI's contention that the Township was equitably estopped from seeking injunctive relief. The trial court concluded that in stating previously that RBI was not required to obtain a permit for the construction of a new television broadcasting tower, the Township solicitor was merely expressing his legal opinion, which was incorrect under *Midwest Video* decided in 1979; that decision was available not only to the Township solicitor but also to RBI and its counsel; and such mutual mistake of law, as opposed to a mistake of

fact, does not support a claim of estoppel.

The trial court accordingly entered a decree nisi permanently enjoining RBI from constructing the proposed tower unless and until it obtains a proper permit from the Township. The trial court subsequently denied RBI's motion for post-trial relief and entered a final decree. RBI's appeal to this Court followed.

This Court's scope of review of the trial court's final decree entered in an action in equity is limited to determining whether the trial court committed an error of law or abused its discretion. *Hunter v. Bowman*, 633 A.2d 655 (Pa. Cmwlth. 1993), *appeal denied*, 537 Pa. 643, 644 A.2d 165 (1994). The decree in an equity action may not be disturbed unless it is not supported by the evidence or is demonstrably capricious. *Amerikohl Mining, Inc. v. Mount Pleasant Township*, 727 A.2d 1179 (Pa. Cmwlth. 1999). Further, this Court will not reverse the trial court's final decree in equity, "if apparently reasonable grounds exist for the relief ordered and no errors or inapplicable rules of law were relied on." *Jackson v. Hendrick*, 456 A.2d 229, 233 (Pa. Cmwlth. 1983).

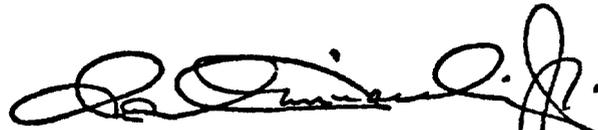
RBI first contends that the trial court's findings are not supported by substantial evidence and that the trial court drew "unwarranted inferences" from the evidence. RBI's Brief, p. 40.

Contrary to RBI's contention, however, the trial court's relevant factual findings are amply supported by the 13-page "Stipulated Facts" submitted by the parties, and the extensive testimony and exhibits presented at the trial. It was also within the exclusive province of the trial court, as a factfinder, to weigh the evidence, make credibility determinations and draw reasonable inferences from the evidence. *Commonwealth v. Fidelity Bank Accounts*, 631 A.2d 710 (Pa.

Cmwlth. 1993). Since the trial court's findings are supported by substantial evidence in the record, this Court may not disturb those findings on appeal.

RBI further contends that the trial court erred in failing to conclude (1) that RBI is exempt from the zoning regulations as a common carrier providing the paging and radiotelephone services, and (2) that the Township was estopped from seeking injunctive relief in this matter.

In its comprehensive, well-reasoned Adjudication, which was subsequently adopted as a memorandum opinion, the trial court ably and thoroughly addressed and disposed of these issues. Accordingly, we affirm the trial court's decision on the bases of the opinion of the Honorable Albert A. Stallone filed in *Earl Township v. Reading Broadcasting, Inc.*, \_\_\_ Pa. D. & C. 4th \_\_\_ (No. 96-11187, filed January 27, 2000).



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CHARLES P. MIRARCHI, JR., Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of May, 2001, I caused copies of the foregoing "Brief in Support of Initial Decision and Contingent Exceptions of Adams Communications Corporation" to be hand delivered (as indicated below), addressed to the following:

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