

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

MAY 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 On)
Channel 51, Reading,)
Pennsylvania)

MM Docket No. 99-153

File No. BRCT-940407KF

File No. BPCT-940630KG

To: The Commission

READING BROADCASTING, INC.'S
EXCEPTIONS TO INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE RICHARD SIPPEL

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May 21, 2001

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**READING BROADCASTING, INC.'S
EXCEPTIONS TO INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE RICHARD SIPPEL**

A. Statement of the Case/Summary

The Initial Decision of Administrative Law Judge Richard L. Sippel (“I.D.”) found Reading Broadcasting, Inc. (“RBI”), the licensee of WTVE(TV), Reading, Pennsylvania, to be qualified in connection with its license renewal application if Micheal L. Parker, the President, a director and stockholder of RBI, were removed from the company as an attributable stockholder. (This is being done, as reported in a concurrent Section 1.65 statement, subject to a final resolution of Parker’s qualifications.) Parker was disqualified based on misrepresentations and lack of candor in connection with disclosures in applications filed with the Commission in 1989-92. Adams Communications Corporation (“Adams”), which filed a competing application against RBI’s 1994 license renewal application, was found to be qualified under an abuse of process issue designated against Adams. In the comparative analysis between the two applicants, RBI was held not to be entitled to a renewal expectancy and Adams was deemed to be the superior applicant due to slight preferences for diversification and comparative coverage.

The I.D. fails to present a reliable rendition of the factual record and applicable precedent on any of the decisional issues in this case. The “Findings of Fact” section (§§ 8-186) omits material evidence and introduces various legal arguments or conclusions so as to slant the findings in a particular direction. The “Conclusions of Law” section (§§ 187-254) introduces additional factual findings amid a blizzard of legal misinterpretations. RBI urges the Commission to review the record in its entirety and correct the I.D.’s erroneous findings and conclusions.

With respect to issues of basic qualifications, the I.D. erred in not disqualifying Adams because its application was filed in violation of the Commission's abuse of process policy and because Adams misrepresented facts and lacked candor in testimony on the abuse of process issue. While the I.D. was correct in holding that RBI was qualified, it erred in holding that Micheal Parker's removal as an attributable stockholder is a prerequisite to such a conclusion.

Even if Adams were not disqualified, RBI is entitled to a dispositive renewal expectancy. Even without such an expectancy, however, RBI is the preferred applicant due to its advantages in terms of local ownership, civic participation, broadcast experience and proposed coverage.

B. Questions of Law Presented

1. Should Adams be disqualified because its application presents an abuse of the Commission's processes and because Adams misrepresented facts and lacked candor in testimony before the Commission?
2. Should Micheal Parker of RBI be disqualified due to disclosures made in applications in 1989-92 and his testimony in connection with those disclosures?
3. Is RBI entitled to a renewal expectancy based on its broadcasting record in 1989-94?
4. Is RBI the preferred comparative applicant even if it does not qualify for a renewal expectancy?

C. Adams Is Not Qualified.

Adams' misrepresentations and lack of candor occurred when Adams was attempting to defend itself on the abuse of process issue. Adams initially claimed that its application was filed as a public interest crusade against home shopping programming, even though Adams and its principals never participated in the Commission rulemaking establishing that home shopping

programming serves the public interest.¹ After the abuse of process issue was designated, Adams changed its position, apparently realizing that its "public interest crusade" defense was not credible and might itself be construed as an abuse of process.² Adams revised its explanation to claim that its motivation was to obtain a station cheaply and that it thought home shopping stations were vulnerable to a challenge.³

Adams' revised testimony is inconsistent not only with Adams' original testimony, but also with Adams' testimony that it never investigated purchasing a station because it would not set a precedent against home shopping stations.⁴ In addition, the revised testimony overlooks the fact that the principals of Adams had obtained a station when they won the Chicago comparative renewal proceeding, only to dismiss their application in return for an \$18 million payment.⁵ The

¹ Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 660 (1993)("Home Shopping Report and Order"); see Adams 11-22-99 Opposition at 8; RBI Ex. 24 at ¶¶ 7-11; Tr. 1057-58, 1114-15, 1118-19, 1124, 1131-32; Memorandum Opinion and Order, FCC 00M-07 (1-20-00).

² See Memorandum Opinion and Order, FCC 00M-19 (3-6-00) at ¶¶ 7-11 (filing an application for purposes of obtaining a legal precedent rather than to construct a station could be an abuse of process); Commercial Realty St. Pete, Inc., 15 FCC Rcd 7057, 7058 n. 10 (1999) (abuse of process is a broad concept that includes the use of a Commission process for a purpose other than the intended purpose).

³ Tr. 2467-69.

⁴ Tr. 1115-16. If Adams' goal were to own and operate a station, there is no plausible reason not even to look for a station for sale at a bargain price instead of committing significant resources to a comparative hearing. See Tr. 1042 (the "financial burden of filing one of these cases is extraordinary"). Rather, Adams' actions indicate that Adams saw a comparative renewal challenge as a "no-risk" proposition because Adams could, as indicated in its retainer agreement with Bechtel & Cole, expect to reach an "economically favorable" settlement that would, at least, reimburse Adams' expenses. See RBI Ex. 21; Tr. 1019-20.

⁵ See RBI Ex. 19, Ex. 22 and Ex. 24 (¶¶5-6); Tr. 1003-5, 1130-32, 2516-17. The I.D. (¶ 239) erroneously claims that the Commission's Order approving the Chicago settlement called for a continuation of the station's exemplary Spanish-language programming. However, the Order (RBI Ex. 22) does not do so, nor did the parties make such a request (RBI Ex. 19). Adams

(footnote cont.)

revised testimony is also inconsistent with Adams' testimony that the Chicago case was "highly successful from our point of view."⁶ If owning and operating a station were the goal, then the Chicago case could only be considered a failure. Not only do the inconsistencies in Adams' testimony require dismissal of the application for misrepresentation, but the testimony about the "highly successful" Chicago case is the closest thing imaginable to an outright admission that Adams' goal was to replicate the successful (i.e., profitable) outcome of the Chicago case.⁷

Adams also misrepresented facts and lacked candor in connection with its settlement discussions with Telemundo in April-July 1999, as described in the I.D. at ¶¶ 170-73. Adams obviously did not want to disclose those settlement negotiations in the comparative portion of the case, which occurred just a few months later. In discovery during the comparative case, Adams did not produce a copy of either the appraisal of WTVE or Adams' letter to Telemundo agreeing to pay part of the cost of the appraisal, even though those documents fell within the scope of RBI's document request.⁸ Moreover, in depositions, Adams denied any discussions with Telemundo representatives concerning settlement or programming.⁹ In its testimony in January 2000, after RBI had learned of the WTVE appraisal during litigation with Telemundo, Adams acknowledged its participation in the appraisal but claimed that it did not seek the appraisal for

claimed that its attorneys drafted the Order and that the reference in the Order to the station's programming was "as close as we could get" to an order requiring continuation of the programming. Tr. 1033-1037.

⁶ Tr. 116.

⁷ See Garden State Broadcasting, L.P., 996 F.2d 386, 392-93 (D.C. Cir. 1993).

⁸ See RBI's First Motion for Document Production, filed 8-23-99, category 4; Adams Ex. 75; RBI Ex. 57; Tr. 75-80. In fact, Adams did not produce a copy of the letter even in discovery on the abuse of process issue. Tr. 2544.

⁹ See Tr. 1099-1104, 1107; see also RBI Ex. 24 at ¶ 9.

purposes of a settlement and that it had no knowledge of a possible settlement opportunity with Telemundo.¹⁰ Likewise, in January 2000 Adams denied any discussions with Telemundo concerning programming, even though Adams had sought an affiliation agreement with Telemundo in July 1999. Tr. 1107. Adams' testimony is plainly inconsistent with the documentary evidence produced by Telemundo and the testimony of Telemundo's attorney.¹¹

Adams also misrepresented facts and lacked candor in testimony about its ascertainment of WTVE's programming. No Adams principal ever watched WTVE or reviewed WTVE's public file prior to filing the competing application.¹² Nor did Adams retain an expert consultant to assess WTVE's programming.¹³ Howard Gilbert of Adams claimed to have spoken to various people in Reading, Pennsylvania about the station, but he never produced any documentation of those trips or those discussions.¹⁴ Notwithstanding those deficiencies, the I.D. concludes that Gilbert's review of videotapes, not of WTVE but of a national cable home shopping network, constituted a "good faith assessment by Adams of the programming of Station

¹⁰ Tr. 1093-1106. See also Tr. 2547-49.

¹¹ See RBI Ex. 52, RBI Ex. 57, RBI Ex. 62, Adams Ex. 75; Tr. 2215-2231, 2261-74, 2284-85, 2302.

¹² Tr. 1011, 1064-65.

¹³ Tr. 2540; compare Garden State, 996 F.2d at 392-393.

¹⁴ The point of an ascertainment trip would be to document deficiencies in a station's programming, but Gilbert either ignored that point or made a concerted effort not to develop any documentation that would indicate dates, names, etc. See I.D., ¶ 160; Tr. 2538-39. If the ascertainment trips did occur, it is not clear that Gilbert knew enough about the station – even the call letters -- to ask any meaningful questions. See RBI Ex. 57 (letter from Gilbert describing WTVE as "Station WNET(T.V.) in Redding, Pennsylvania"), Tr. 2554. Gilbert claimed to have spoken to 30-40 persons, representing less than 1/1000th of a percent of the population that Adams proposed to serve. RBI Ex. 10 at 30; Tr. 2476-77, 2538. Gilbert testified that the people he spoke to were not familiar with the station, which had a specialty format, so it is obvious that they could not have provided a useful analysis of the Station's programming. Tr. 1046.

WTVE(TV) which was used by Adams to base a decision to file a competing application." I.D., ¶ 184. However, Gilbert's testimony as to the tapes is internally inconsistent, inconsistent with the testimony of Paul Sherwood (the person hired by Gilbert to do the taping), and inconsistent with the contents of the tapes.¹⁵

Gilbert initially stated that he was briefed on the tapes "regularly" by Sherwood and did not claim to have viewed the tapes.¹⁶ Then, in his January 2000 testimony, Gilbert claimed that he reviewed all eighteen days of the tapes personally, as well as speaking "daily" to Sherwood about the tapes.¹⁷ After reviewing Sherwood's deposition, which described only two phone calls during the taping process, Gilbert later modified his testimony to reduce the frequency of the calls. Tr. 2492-93, 2549.

Gilbert claimed that he thought the tapes were of WTVE because they included "Reading PSAs."¹⁸ In reality, the tapes included no references to Reading, no station identification (other than regular network identifications with voiceovers stating "Live from Tampa Bay, Florida, it's the Home Shopping Club") and no commercial advertising.¹⁹ Although Gilbert claimed that he

¹⁵ The review of the tapes also could not have been the basis of the decision to file the application, because Adams had already proceeded with the preparation of the application. Tr. 1089-93.

¹⁶ RBI Ex. 24, ¶ 12.

¹⁷ Tr. 1068-69, 1085-85, 1088-89. Gilbert claimed that he fast-forwarded through the home-shopping programming by "listening" to the audio for a change in programming. Tr. 1134-35, 2539-40. However, using a standard VHS video player/recorder, as Gilbert claims he did, the Commission will recognize that it is not possible to hear the audio during fast forward review.

¹⁸ Tr. 1070, 1083 ("The public service on it, Your Honor, was from Reading"), 1085.

¹⁹ RBI Ex. 47 (including Att. E and Att. F). The only PSAs on the tapes were announcements of missing children. Out of 392 hours of tapes, there were only 65.5 30-second PSAs identifying 40 missing children. Only 4 children were identified as missing from

(footnote cont.)

specifically confirmed Sherwood's ability to receive WTVE's signal and told Sherwood to tape WTVE (which wasn't even carried on Sherwood's cable system), Sherwood testified that he was merely instructed to tape the "home shopping channel."²⁰ Gilbert's testimony about the taping and his review of the tapes, presented to shore up Adams' deficient ascertainment efforts, is utterly lacking in credibility. The Commission need only review the analysis of the tapes in the record (RBI Ex. 47) to establish that it was not possible to watch the tapes without realizing that they are not recordings of WTVE or any other broadcast station.

Adams also presented conflicting testimony about its programming plans.²¹ If the principals of Adams had, as they claimed,²² lost the opportunity to operate the proposed station in Chicago because they were concerned about not having a source of Spanish-language programming, then it would be logical for them to have at least discussed their programming plans for the Reading station at the outset. After offering varying testimony, Adams ultimately claimed that it was an "assumption" that Adams would air Hispanic programming.²³

Pennsylvania, and none from Reading. After reviewing this Exhibit, Gilbert claimed that the three missing children from Pennsylvania (not from Reading) described on the first tape corresponded to his recollection about "Reading PSAs." Tr. 2487-88, 2496-97. However, on cross-examination, Gilbert conceded that he had no actual recollection of those PSAs. Tr. 2540.

²⁰ Adams Ex. at 5; Tr. 2137-50, 2157; compare RBI Ex. 24, ¶¶ 12-13; Tr. 1068-70, 1075-85, 1088-93, 1134-35, 2487-88, 2491-92, 2496-97, 2539-40.

²¹ See RBI Ex. 24, ¶¶ 5-6, RBI Ex. 10 at 19, RBI Ex. 45 at 8-11, RBI Ex. 44 at 18-19, Tr. 1107, 1125-27, 2443-45, 2504-05.

²² The testimony of Wayne Fickinger was inconsistent as to the motivation for settling the Chicago case. Tr. 2453-61.

²³ Tr. 2445. Adams also presented conflicting testimony as to how WTVE was selected as a target. Compare Tr. 1040, 1119-23 with Tr. 2453.

On the abuse of process itself, the I.D. applied an erroneous legal standard as to Adams' "primary motive" or "overriding motive" (I.D. ¶ 179, 240, 242), when the applicable standard is whether Adams' application was filed in whole or in part for an improper purpose.²⁴ Thus, a greenmail motive disqualifies the applicant even if it is a secondary motive or "fall-back" position. The I.D. also erred in concluding (I.D., ¶ 240) that Adams could not have filed for purposes of arranging a for-profit settlement because it was aware of the rule against such settlements. The best evidence of Adams' state of mind is its fee arrangement with its counsel, which provided for an equal bonus payment for a victory or for a "settlement which is economically favorable to Adams (including, for example, a resolution which entitles Adams to reimbursement of its reasonable and prudent expenses in preparing and prosecuting the application)".²⁵ The I.D. also erred in holding (I.D., ¶ 244) that Adams would not have selected WTVE as a target if its primary motive were to obtain a settlement payment rather than to construct and operate a new station. Not only does this analysis apply equally to either a greenmail motive or the proper motive of obtaining a valuable license cheaply, it overlooks the fact that the home shopping affiliate in the Boston market, which had not been in bankruptcy, was Adams' first target.²⁶

²⁴ See Millar v. FCC, 707 F.2d 1530, 1535 n.7 (D.C. Cir. 1983).

²⁵ See RBI Ex. 21; Tr. 1019-20.

²⁶ Adams Ex. 66 at 2; Tr. 1040-42, 2474-76, 2478, 2530. Adams did not file a competing application against the station in the Boston market because it could not find a tower site. WTVE was then selected simply because it was the next home shopping station coming up for license renewal. Tr. 1042, 1065-66, 1122-24, 2476, 2541-42.

D. Parker Is Qualified.

The ALJ erred in holding that Micheal Parker misrepresented facts and lacked candor in applications addressing Parker's prior dealings with the Commission and in his testimony in the proceeding. The ALJ's analysis (I.D., ¶¶ 122-51, 223-232) hinges largely on the erroneous conclusion that Question 4 in FCC Forms 314 and 315 addressed FCC proceedings, when in fact Question 4 requires "full disclosure" of any adverse finding, adverse final action or consent decree "in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination."²⁷ Parker's prior applications were in proceedings under the Communications Act, not in proceedings under the provisions of laws involving felonies, antitrust violations, fraud or employment discrimination. The ALJ himself agreed with this analysis during the hearing. Tr. 914-15.

The I.D. also errs in its analysis of the underlying applications that were the subject of Parker's disclosures (I.D., ¶¶ 122, 138, 141, 228-29). In the Mt. Baker case, the application was denied, but there was no hearing designated. Reading Ex. 46 at 2 and Att. A. Accordingly, for purposes of subsequent applications, this is not reportable as an issue left unresolved or resolved adversely, but simply as a denied application. In the Religious Broadcasting case, a real-party-

²⁷ See, e.g., RBI Ex. 46, Att. E at E22. These categories of laws were identified as areas of relevant non-FCC misconduct in Character Qualifications, 102 FCC 2d 1179, 1195-1208 (1986), modified, 1 FCC Rcd 421 (1986), 5 FCC Rcd 3252 (1990), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992). In contrast, Question 7, which deals with past FCC proceedings, does not require "full disclosure" but rather requests specific information if the applicant answers "Yes" to specific questions. The ALJ held that Parker had answered Question 7 correctly. I.D., ¶ 227; Memorandum Opinion and Order, FCC 99M-49 (9-3-99).

in-interest issue was designated and was the basis for denying integration credit but not for disqualifying the applicant.²⁸ Parker's applications correctly stated that outcome.

This interpretation is confirmed not only by the language of the Religious Broadcasting case itself, but also by the Review Board's decision a few months later in Doylan Forney, 3 FCC Rcd 6330, 6338 n.1 (Rev. Bd. 1988). In that decision, the Review Board stated that in Religious Broadcasting, "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit." If that was how the Review Board itself characterized its holding in Religious Broadcasting, how can Parker be criticized for providing the same description in subsequent applications? In addition, the Review Board's approval of an \$850,000 settlement payment to San Bernardino Broadcasting in 1990 confirms that the applicant was not disqualified. See Tr. 1822-23, 1829-30, 1854-55, 1932-36; Religious Broadcasting, 5 FCC Rcd 6362 (Rev. Bd. 1990) ; SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir. 1999) (affirming Commission decision rejecting proposed settlement involving a monetary payment to a party disqualified on real-party-in-interest grounds). Accordingly, the Religious Broadcasting case was properly reported as a dismissed application in which Parker was held to be a real-party-in-interest for comparative purposes.

A crucial fact to which the I.D. gave no weight is that applications which came after the Mt. Baker and Religious Broadcasting cases, including the RBI transfer of control application, did identify those cases as being dismissed or denied by the Commission. The Commission and any potentially adverse party was provided with a citation to each decision, which goes beyond

²⁸ See Religious Broadcasting, 3 FCC Rcd 4085, 4090, and 4103-04 (Rev. Bd. 1988).

what is required by the application form.²⁹ That being the case, a claim of attempted concealment or lack of candor is untenable.³⁰

The I.D. (§§ 136-41, 229-31) also errs in its analysis of the Dallas amendment, RBI Ex. 46, Att. J. Question 7(d) on the application form asked if any party to the application had any interest in or connection with an application "which left unresolved character issues against the applicant." RBI Ex. 46, Att. H at H10. The applicant correctly answered "No" to this question, but also correctly identified several dismissed and denied applications, including the Mt. Baker and San Bernardino Broadcasting applications. *Id.* at H10 and H22-H25. The identification of dismissed or denied applications prompted the Commission staff to request an amendment stating whether basic character issues had been requested or added when the applications were dismissed (*i.e.*, a clarification of Question 7(d) on the application form about unresolved character issues).³¹

²⁹ The I.D. (§ 130 n. 17) erred in claiming that the citations to the Mt. Baker and Religious Broadcasting decisions in Parker's applications were required to be citations to an official reporter pursuant to Section 1.14. Even though FCC Forms 314 and 315 have been amended many times since 1968, when that rule went into effect, neither form has ever been amended to require citations to relevant FCC decisions involving dismissed or denied applications, much less citations to official reporters rather than FCC document numbers. RBI is aware of no prior decision holding that Section 1.14 applies to information supplied in applications. The Order adopting Section 1.14 refers only to the filing of "papers." Amendment of Part I, 14 FCC 2d 276 (1968). The term "papers" is a colloquial term for pleadings. *See, e.g., WBBK Broadcasting, Inc.*, 15 FCC Rcd 5906, 5908 (2000).

³⁰ *See, e.g., California State University, Sacramento*, 13 FCC Rcd 17,960, 17,965 (1998); Viacom International, Inc., 12 FCC Rcd 8474, 8479-80 (MMB 1997); Seven Hills Television Co., 2 FCC Rcd 6867, 6889-90 (Rev. Bd. 1987), recon. denied, 3 FCC Rcd 826 (Rev. Bd. 1988), modified, 4 FCC Rcd 4062 (1989).

³¹ E.B. Ex. 2 at 2; Adams Ex. 57 at 7; RBI Ex. 46 at 8 and Att. J; Tr. 1975-77, 2354-55. The I.D. (§§ 140, 229-30) mischaracterizes the FCC's inquiry as an open-ended inquiry about Parker's past applications.

Parker requested a communications attorney, Eric Kravetz, to determine what the FCC staff wanted and to prepare a responsive amendment. Kravetz had previously represented Parker and the seller in prosecuting the Norwell application, which included a narrative about the Religious Broadcasting proceeding identical to the disclosure in the Dallas application. RBI Ex. 46 at 8 and Att. E; RBI Ex. 77; Tr. 1977, 2354-55, 2371-72. Parker believed that Kravetz was aware of the Religious Broadcasting case at the time. Tr. 1989-90. Based on advice he had previously received from Clark Wadlow of Sidley & Austin about his qualifications, Parker or his assistant confirmed that there were no unresolved qualifications issues pending when the applications to which he was a party were dismissed. RBI Ex. 46 at 3, 8 and Att. D; Tr. 1806, 1821-30, 1853-55, 1862. Kravetz then prepared the amendment, which Parker signed, and then Kravetz submitted the amendment to the Commission. RBI Ex. 46 at 8 and Att. J; Tr. 1991, 2354-56.³² Parker was justified in relying on the advice of Sidley & Austin that the Religious Broadcasting case did not affect his qualifications and believing that no disclosure was required other than the disclosure in the original application, which had been used in several previous applications without any question being raised.³³ Although a real-party-in-interest issue was

³² Kravetz testified that Parker did not discuss the Religious Broadcasting case with him and that he would not have drafted the amendment as he did had he known about the Religious Broadcasting case. Tr. 2372-73. However, Kravetz went on to state that had he known, he would have provided the type of information included in the original application. Tr. 2373-74. Given the disclosure in the original application, the amendment cannot be considered deceptive. See cases cited in n.30, supra.

The I.D. erroneously faults Parker for not advising Kravetz about the Religious Broadcasting case. It was reasonable to assume that Kravetz knew about the case from the Norwell application or that he would review the relevant exhibit in the underlying Dallas application before preparing an amendment to the application. Tr. 1989-90.

³³ See RBI Ex. 8 at 3-7, Att. E at E31-32, Att. F at F30, Att. G at G21; Tr. 1821-23, 1827-30, 1862; Roy M. Speer, 11 FCC Rcd 18,393, 18,422-23 (1996); Fox Television Stations, Inc., 10 FCC Rcd 8452, 8500-01 (1995).

designated in the Religious Broadcasting case, both Parker and Sidley & Austin reasonably concluded that the issue was resolved satisfactorily as a matter of basic qualifications.³⁴

The I.D. erred in holding that Parker contradicted himself as to the Dallas amendment (I.D., ¶138-41). Parker testified that the Dallas amendment referred to the San Bernardino application, as well as other applications, and the testimony quoted in Paragraph 139 does not contradict that testimony. See Tr. 1985-88, 2027-28, 2030-31, 2064-66. The I.D. (¶ 231) also erred in making a candor finding based on a non-existent transcript citation.

The I.D. (¶¶ 150-51, 232) erred in giving any weight to the disclosures made by Parker to Telemundo in 1998, after Adams and other parties had filed petitions addressing the issue of Parker's earlier disclosures and after the Commission's 1997 "by direction" letter. Bureau Ex. 1; Two If By Sea Broadcasting Corp., 12 FCC Rcd 2254, 2255 (1997) . Whereas the applications to which Parker was a party in 1989-92 (Reading Ex. 46, Att. E-J) were uncontested, by 1998 Parker had been subject to petitions to deny and a "by direction" letter challenging his qualifications. Given that change in circumstances, the disclosure made in 1998 does not provide meaningful evidence as to Parker's knowledge or state of mind in 1989-92.

The I.D. (¶ 227) also erred in faulting Parker for not disclosing the Religious Broadcasting case in applications filed in 1989, when the case was pending. Because the ruling in Religious Broadcasting was not final at that time, no disclosure was required. See Tr. 1941-

³⁴ The fact that Sidley & Austin's advice was provided for independent business purposes only adds to its credibility, rather than the reverse. See I.D., ¶ 144; Tr. 2024-25. Clearly, the letter provided the views of communications counsel on the legal impact of the Religious Broadcasting case on Parker's qualifications as an FCC licensee. ("[T]he sense that I was trying to convey [in the letter] is that, as ultimately disposed of, there was nothing in the [Religious Broadcasting] case that reflected adversely on Mr. Parker." Tr. 1822.) Reliance on advice of counsel is particularly appropriate in interpreting the holdings and legal implications of previous administrative decisions, as opposed to factual issues.

41, 1950. Even if disclosure was required, those applications were filed more than 10 years before the issue was designated in this case and are therefore beyond the proper scope of the issue in this case. See Character Qualifications, 102 FCC 2d at 1229.

E. RBI Is Entitled To A Renewal Expectancy.

The I.D. erred in every element of its analysis of WTVE's claim to a renewal expectancy.

1. Ascertainment.

The I.D. erroneously holds that RBI did not focus on issues affecting Reading, that RBI's ascertainment efforts were not sufficiently diligent and lacked direct contacts with local community leaders and that ascertained issues were only addressed through public service announcements ("PSAs"). I.D., ¶¶ 51, 194.35 The record shows that RBI conducted several forms of ascertainment, including interviews with community leaders (which were not found to be as helpful as other forms of ascertainment), but also discussions with local organizations, and developed responsive programming based on those ascertainment efforts. RBI Ex. 6 at 5-8; RBI Ex. 8, App. G at 2, App. H at 3, App. I at 2, App. P at 8-9, 13, 17, 21, 23, 26-31, App. Q at 225-34, App. R at 274, App. S at 219-20, App. T at 165-67, App. V at 58-70; Tr. 4, 453-71, 499, 572,

³⁵ The I.D. is unclear on the distinction between PSAs and programs. In its daily logs, RBI generally classified all short-form public service programming as a "PSA." E.g., RBI Ex. 8, App. B, log for March 16, 1993. That practice carried over to the pre-printed affidavit forms that RBI generally attached to its quarterly issues and programs lists. E.g., RBI Ex. 8, App. D at 39-131 (programming varying from 0:30 to 58:30 listed as "public service announcements"). However, in the narrative descriptions in the station's quarterly issues and program lists, public service programming of two minutes or more was generally described as "segments" or "features" or "programs" while one-minute or thirty-second public service programming was generally classified as a "PSA." E.g., RBI Ex. 8, App. P at 4-23. RBI maintained that distinction in its evidentiary showing. Tr. 392-93, 504-05. The I.D. appears to deem anything less than 30 minutes in length to be a PSA. I.D., ¶¶ 194-95.

576-80, 1697-1703, 1732-33, 1775. Because RBI conducted meaningful, ongoing ascertainment, the I.D. erred in rejecting RBI's ascertainment efforts.³⁶

2. Programming.

The I.D. erred by failing to give sufficient weight to WTVE's weak competitive position in the market and unbroken string of financial losses.³⁷ The I.D. also erred by failing to give sufficient weight to WTVE's substantially improved public service record in 1992-94 (6.5 hours per week of non-entertainment programming in 1992, 12.7 hours in 1993 and 18.8 hours in 1994), after emerging from bankruptcy.³⁸ The I.D. also fails to recognize the impact of

³⁶ Past cases have denied a renewal expectancy where no meaningful ascertainment was done, but not in cases where the ascertainment efforts were deemed relatively weak. See, e.g., Simon Geller, 90 FCC 2d 250, 264-65 (1982), aff'd sub nom. Committee for Community Access v. FCC, 737 F.2d 74 (D.C. Cir. 1984). Many of the seminal cases on renewal expectancy do not even address the nature or scope of the station's ascertainment efforts. See, e.g., Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), aff'd sub nom. Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982).

³⁷ See RBI Ex. 5 at 1-2, RBI Ex. 6 at 1-3, RBI Ex. 13; Hubbard Broadcasting, Inc., 41 RR 2d 979, 988 (1977) (limited public service programming is acceptable in case of money-losing UHF station competing against VHF stations).

³⁸ See RBI Ex. 8 at 1-10; Ex. 8, App. B at 1-9; Harriscope of Chicago, Inc., 5 FCC Rcd 6383 (1990) (Commission places the greatest weight on the performance considered to be the most probative of the station's likely future performance); compare Commercial Television Stations Serving Philadelphia, 5 FCC Rcd 3847 (1990), recon. denied, 6 FCC Rcd 4191 (1991) (alleged issue-responsive programming ranged from one to eight hours weekly), and Commercial Radio Stations Serving Philadelphia, 8 FCC Rcd 6400 (Audio Ser. Div. 1993) (alleged issue-responsive programming represents 0.3% - 1.8% of total air time). To the extent the I.D. relied on Adams' quantitative analysis (Adams Ex. 7), that analysis is fatally flawed because it excluded all programming that happened to be logged as a PSA, even if classified as a program or segment in WTVE's quarterly reports. See Note 35, supra; Tr. 1217-18. (E.g., compare Adams Ex. 7, p. 2 – 0 minutes of non-entertainment programming – with Adams Ex. 7, pp. 5-12 – log showing 47.5 minutes of 2-3 minute public service segments and 41 minutes of 30-second and 60-second PSAs.)

deregulation in eliminating prior standards of performance³⁹ and allowing licensee discretion in programming decisions.⁴⁰ RBI showed that program-length news on WTVE was financially impossible, but the station did provide short-form news programming, generally produced by WTVE (local weather, community calendars, crime-stopper PSAs, News to You, health reports, Elderly Report, local political reports, etc.). RBI Ex. 5 at 1-2; I.D., ¶ 62-74. RBI further showed that local news was available from multiple other sources. *Id.* RBI also showed that the home shopping audience was more receptive to short-form public service programming. Tr. 849-50. In the post-deregulation environment, the choice and format of issue-responsive programming is up to the licensee's discretion and thousands of broadcast stations, including most UPN and WB affiliates, do not air local news. Yet the I.D. (¶¶ 86, 196-201) treats a half-hour or hour daily local news program as virtually a sine qua non for a renewal expectancy.

The I.D. similarly failed to recognize the impact of the Commission's Home Shopping Report and Order, decision, which held that home shopping stations “provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner” and that presenting public service programming primarily in lengths shorter than 30 minutes is acceptable.⁴¹

³⁹ The I.D. (¶ 196) holds that no renewal expectancy credit can be given for PSAs, citing Public Service Announcements, 81 FCC 2d 346 (1980). However, that decision involved calculations of PSAs for purposes of annual programming reports, which were eliminated by Revision of Programming and Commercialization Policies, 98 FCC 2d 1076 (1984). Subsequent decisions have given credit for PSAs. See Fox Television Stations, Inc., 8 FCC Rcd 2361, 2376 (Rev. Bd. 1993)(subsequent history omitted).

⁴⁰ Revision of Programming and Commercialization Policies, 98 FCC 2d at 1087.

⁴¹ See Home Shopping Report and Order, 8 FCC Rcd at 5327 (1993); Radio Station WABZ, Inc., 90 FCC 2d 818 (1982) (renewal expectancy granted for station airing periodic short-form public interest programs).

The I.D. erred by claiming that RBI decreased public service broadcasting (I.D., ¶ 59), when it only implemented cost-saving measures such as decreasing production of public service programming outside of WTVE's studios, subject to appropriate exceptions.⁴²

The I.D. erroneously held that no credit is warranted for public service programming if viewers are not given advance notice (e.g., through newspaper listings). (I.D., ¶¶ 62, 199).⁴³ The I.D. also erred by finding that WTVE did not broadcast non-entertainment programming on a regularly-scheduled basis (I.D., ¶¶ 62, 199)⁴⁴. The I.D. also erred by finding that WTVE relied primarily on PSAs to satisfy its public service obligations (I.D., ¶ 61).⁴⁵

3. Community Reputation.

The I.D. erroneously dismissed uncontroverted evidence that WTVE's political programming provided important information on local issues (I.D., ¶¶ 198, 201).⁴⁶ The I.D. also erred by holding that WTVE's case was diminished because its public witnesses were not regular

⁴² Compare Tr. 1671-82 with Tr. 1764-70 and RBI Ex. 8 at 9-10.

⁴³ Thousands of broadcast stations, including virtually all radio stations, do not offer any such advance notice, but this has not prevented those stations from receiving a renewal expectancy. See, e.g., Radio Station WABZ, Inc., 90 FCC 2d 818 (1982).

⁴⁴ WTVE's short-form issue-responsive programming normally aired during regular hourly breaks from home shopping programming. Tr. 464. In addition, certain long-form programs aired at consistent times on a daily or weekly basis. See, e.g., Tr. 608-10, 1793; Adams Ex. 2, App. A, Att. 1. To the extent the I.D. finds (I.D., ¶ 62) that WTVE's public service programs were repeated too often, the underlying evidence (RBI Ex. 8, App. C-W) does not support that finding. Although PSAs were often repeated, this is consistent with bedrock practices in the advertising industry.

⁴⁵ The I.D. cites an erroneous transcript reference. In the correct section of the transcript, the context indicates that reference was being made to short-form programming (2-3 minutes) as well as 30-60 second PSAs. See Tr. 847-50. This is confirmed by RBI's programming analysis, which indicates that issue-responsive program minutes exceeded PSA minutes in the license term, particularly in the latter part of the license term. RBI Ex. 8 at 9-10 and App. B at 4-9.

⁴⁶ RBI Ex. 33 at 4, 7-8, 10-16, 20-21, 28-29, 45-83.

viewers of WTVE (I.D., ¶ 201). Public witnesses are not intended to serve as a quasi-Nielsen survey. Rather, they are supposed to testify as to their personal knowledge of a station's public service record, which RBI's public witnesses did.⁴⁷ The I.D. also ignored positive evidence of WTVE's reputation in the community (I.D., ¶ 201).⁴⁸

4. Compliance With FCC Regulations.

The I.D. erred in holding that RBI underwent an unauthorized transfer of control (I.D., ¶¶ 40-43, 209, 211-15). At the time the FCC had approved RBI's short-form transfer of control application to come out of bankruptcy, 52.4% of RBI stock was issued to previously-approved stockholders.⁴⁹ But for the need for FCC approval to come out of bankruptcy, no FCC approval would be needed for such a stock issuance.

Likewise, there was no de facto transfer of control of RBI. There were two competing factions in the company, but 69% of the outstanding votes in the company voted in favor of the

⁴⁷ See, e.g., Trinity Broadcasting of Florida, Inc., 10 FCC Rcd 12,020, 12,044-45 (ALJ 1995), aff'd in part, rev'd in part, 14 FCC Rcd 13,570 (1999), vacated, 211 F.3d 618 (D.C. Cir. 2000). On the other hand, Adams' witnesses generally lacked personal knowledge of RBI's public service record and their testimony added no meaningful information to the record. See Adams Ex. 44 at 21-23, 34; Adams Ex. 45 at 15-16, 19; Adams Ex. 46 at 6-8, 17; Adams Ex. 48 at 11-12.

⁴⁸ See, e.g., RBI Ex. 8, App. F at 9, H at 7-10, L at 11-12, N at 13-21, O at 17-18, P at 34-37, Q at 235-49, R at 275-76, S at 222-25, U at 164, 168-78, V at 48-57. The I.D. also minimized RBI's community involvement (e.g., compare I.D., ¶ 96 with RBI Ex. 34 at 4, 9-11, 27-32).

⁴⁹ See Adams Ex. 21, Adams Ex. 24 and Adams Ex. 28; Tr. 953-69; see also RBI Reply Findings at 18-25. The ALJ erroneously rejected RBI's Ex. 17, which is a compilation of information from those exhibits. He also erroneously rejected RBI's argument that the 4.9% stock interest (17,674 shares) in RBI issued to STV Reading, Inc. was attributable to Dr. Henry Aurandt, a previously-approved stockholder, pursuant to Section 73.3555 Note 2(d) because Dr. Aurandt owned 90% of the stock of STV Reading, Inc. See I.D., ¶40 and n.8; Tr. 636, 691, 803-04, 910, 970, 975, 977-78, 987-88; Adams Ex. 24 and Ex. 27. No authority exists for the principle that the issuance of a revocable proxy negates the attribution provision of Section 73.3555 Note 2(d).

directors proposed by Parker, who consisted of two existing directors, two new directors and an original stockholder in the company supported by both factions.⁵⁰ Thus, the 17,674 shares voted by Parker for STV Reading, Inc. were irrelevant to the ultimate outcome. Instead of a de facto transfer of control, the vote for the new board of directors was an exercise in "corporate democracy." Tr. 681. The reality here is that RBI, working with its counsel (Sidley & Austin), appropriately sought and obtained short-form approval to come out of bankruptcy, and then sought and obtained long-form approval to come out of bankruptcy when it appeared that the garnishment order for Dr. Aurandt's stock might send the company over the 50% threshold.⁵¹ Even if there were an unauthorized transfer, the I.D. engages in regulatory overkill by imposing the death penalty for conduct that normally results in a modest fine.⁵²

The I.D. also errs by erroneously applying a tort standard of recklessness or willful indifference to RBI's reporting failures.⁵³ The I.D. also concludes that Parker deliberately did not file the Management Services Agreement ("MSA") with the Commission (I.D., ¶¶ 22, 205-10), even though the uncontroverted evidence shows that Parker thought the MSA had been

⁵⁰ See Adams Ex. 13 at 76A (249, 311 or more votes out of 361,893); Tr. 677-86.

⁵¹ See Adams Ex. 21; RBI Ex. 15; Adams Ex. 28 at Ex. 4; RBI Ex. 11, Ownership Rep. dated 4-9-92 at p.3 and Ex. 2 and Ownership Rep. dated 3-29-94 at 15; Tr. 672, 697-703, 800-01, 803-04, 882-89.

⁵² See, e.g., Citicasters Co., 2001 FCC LEXIS 874 (Enf. Bur., Feb. 13, 2001). The I.D. errs in claiming that full regulatory compliance is a sine qua non for a renewal expectancy (I.D., ¶ 203). See Valley Broadcasting Co., 4 FCC Rcd 2611 (Rev. Bd. 1989), rev. denied, 5 FCC Rcd 499 (1990), aff'd sub nom. William H. Hernstadt v. FCC, 919 F.2d 182 (D.C. Cir. 1990).

⁵³ I.D., ¶¶ 207, 209-10. Compare Fox Television Stations, Inc.; Pinelands, Inc., 7 FCC Rcd 6058, 6063-68 (1992).

filed.⁵⁴ The I.D. also erroneously concludes that RBI misrepresented the number of outstanding shares in its long-form transfer of control application (I.D., ¶¶ 209, 215).⁵⁵

The I.D. erroneously concludes (I.D. ¶ 113, 209) that Parker withheld corporate information, such as the revised listing of RBI's officers and directors, from the Commission to hide the fact that he was gaining control of RBI. However, RBI's long-form transfer of control application identified Parker as the President, a director and 29.69% stockholder in RBI, with more than twice the voting power of any other stockholder. RBI Ex. 46, Att. F at F11, Adams Ex. 29. In fact, the Commission requested and received written confirmation of Parker's stock interest. Id. What motive could there have been to mis-report the identities of other officers and directors (see RBI Ex. 14), particularly after the Commission granted RBI's long-form transfer of control application? If the purpose of that application was to obtain Commission approval for changes

⁵⁴ Tr. 625-26. RBI recognizes that including a reference to the agreement in an amendment to RBI's long-form transfer of control application does not satisfy RBI's reporting obligations under Sections 73.3613 and 73.3615, but it does show that RBI did not deliberately withhold the existence of the agreement. See Reading Ex. 14.

⁵⁵ It is reasonable to interpret the phrase on Form 315 ("Licensee's Total Shares Outstanding/Before Transfer") (Adams Ex. 28 at 1) as requesting the applicant, in the context of seeking approval to come out of bankruptcy, to disclose the number of shares outstanding at the beginning of the process of coming out of bankruptcy. The I.D. also fails to note that the same application contained a contrary indication about the amount of outstanding stock. See Adams Ex. 28 at 7 ("Meridian Bank holds an option, which it may exercise at will, to purchase 26,190 shares (6.25%) of RBI's stock from Partel, Inc. for one dollar (\$1)." Clearly, if 50,000 shares were outstanding, 26,190 shares would not represent 6.25% of RBI's stock. (The Bureau was clearly aware of this option, because it asked for an amendment providing additional information about the option. See Adams Ex. 29.) Accordingly, the application is at best ambiguous on the issue of outstanding shares. In subsequent correspondence relating to the application, Sidley & Austin did suggest that stock had not been issued (Adams Ex. 29 at 1; Adams Ex. 30 at 1), but it is implausible that Sidley & Austin would knowingly mislead the Commission. The most logical explanation is that RBI relied on Sidley & Austin to prepare the application, but Sidley & Austin did not know the status of the stock and assumed that 50,000 shares remained outstanding, without delving into the contradictory information about the Meridian Bank option. Compare Tr. 922-23 with Adams Ex. 29 at 1, Adams Ex. 30 at 1.

that had already been made, then RBI presumably would have been sure to list all the parties correctly. The fact that the officers and directors listed in the transfer application were the same as those listed in RBI's prior ownership report (RBI Ex. 11, Ownership Rep. dated 3-28-91) suggests that the information was copied from the ownership report into the transfer application and the mistake was not caught when Parker reviewed and signed the application.⁵⁶

The I.D. also errs by including non-RBI conduct and post-license term conduct in assessing RBI's claim to a renewal expectancy.⁵⁷

F. The ALJ Erred In Finding Adams Comparatively Superior.

The comparative standard enunciated by the Commission in this case is so vague and open to manipulation that it fails to meet the constitutional due process standard of "ascertainable certainty."⁵⁸ Assuming that the comparative standard were to be applied notwithstanding that constitutional impediment, the I.D. erred by:

⁵⁶ See Tr. 807-12.

⁵⁷ See I.D., ¶¶ 114-17 (late filing of Telemundo affiliation agreement in 1999); compare Memorandum Opinion and Order, FCC 99M-47, (8-9-99) (relevant period for assessing renewal expectancy is August 1, 1989 - August 1, 1994). See also I.D., ¶ 211 ("an intentional failure to respond candidly to a staff inquiry" apparently refers to the Dallas amendment, which was not related to an RBI application).

⁵⁸ See Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618 (D.C. Cir. 2000); Memorandum Opinion and Order, FCC 99M-47 (ALJ, released August 9, 1999).

- (a) awarding a comparative coverage credit to Adams (I.D. ¶21), when RBI's construction permit site and its recent amendment to that construction permit provide superior coverage;⁵⁹
- (b) limiting RBI's local residence credit to stockholders who were residents within WTVE's Grade B contour during the 1989-94 renewal period;⁶⁰
- (c) limiting RBI's civic activities credit to stockholders who were civically active during the 1989-94 renewal period (I.D., ¶ 25 and n.4, ¶ 27);⁶¹
- (d) downgrading RBI's local residence and civic activities credits based on WTVE's 1989-94 broadcasting record (I.D., ¶¶ 219; 251);⁶²
- (e) rejecting RBI's showing of broadcast experience for Frank McCracken because he became a shareholder after the license renewal term (I.D., ¶ 32) and omitting any credit for RBI's broadcast experience from the conclusions of law (I.D., ¶¶ 217-19, 249-52);⁶³ and

⁵⁹ See RBI Section 1.65 Statement, filed 4-30-01. RBI's recent construction permit amendment specifies a power and height increase at WTVE's existing site, thereby eliminating the uncertainty over zoning approval at the site referenced in the I.D., ¶¶ 22-23.

⁶⁰ See RBI Ex. 2 at 1-4. Although this happens to be a license renewal case, past cases show that credit is awarded for all local residence, civic activities and broadcast experience prior to the "B" cut-off date, which in this case was April 30, 1999. See Report No. 24457A (released 3-26-99); see, e.g., Coastal Broadcasting Partners, 7 FCC Rcd 1432, 1435 (1992); see also Committee for Community Access v. FCC, 737 F.2d 74 (D.C. Cir. 1984); on remand, Simon Geller, 102 FCC 2d 1443 (1985) (absent a renewal expectancy preference, comparative standards to be applied in accordance with standard comparative cases).

⁶¹ See RBI Ex. 2 at 5-7; Committee for Community Access, *supra*.

⁶² The case cited by the I.D. -- Edward F. and Pamela J. Levine, 8 FCC Rcd 8401 (1993) -- does not support such a holding. In fact, the analysis of the ALJ has been rejected by the Court of Appeals. See Committee for Community Access v. FCC, *supra*. The ALJ's holding is also inconsistent with his prior ruling that Adams had not made the requisite threshold showing of an unusually bad broadcast record by RBI to support a comparative demerit. See Memorandum Opinion and Order, FCC 99M-60 (ALJ released 10-15-99).

(f) holding that Adams' "significant" (I.D., ¶ 217) or "slight" (¶ 249) diversification preference and "very slight" (¶ 218) or "slight" (¶ 250) coverage preference outweigh RBI's preferences for local residence, civic involvement and broadcast experience.⁶⁴ Application of a diversification demerit to RBI would be an arbitrary and capricious action because there is no nexus whatsoever between the service provided by WTVE and Parker's distant media interests.⁶⁵ As noted above, Adams' coverage preference is nullified by RBI's construction permit, as amended. Even if Adams' coverage were superior, the comparative advantage would be minimal.⁶⁶ Likewise, Adams' diversification preference, if held to be valid, would be minimal because Parker's media interests are distant, one station is an international broadcast station (not a full-power television station, as stated in the I.D., ¶ 217), which by definition has no domestic audience, and Parker is less than a 50% stockholder in RBI.⁶⁷

⁶³ See RBI Ex. 3. The ruling as to McCracken's experience is inconsistent with applicable case law as well as the ALJ's prior ruling. See Memorandum Opinion and Order, FCC 99M-54 (ALJ, released 9-23-99).

⁶⁴ The case cited in the I.D., Pueblo Radio Broadcasting Service, 5 FCC Rcd 4829 (Rev. Bd. 1990), actually supports a grant of RBI's application. See also Richard P. Bott, II, 4 FCC Rcd 4924, 4930 (Rev. Bd. 1989), rev. denied, 5 FCC Rcd 2508 (1990); Radio Jonesboro, Inc., 100 FCC 2d 941, 945 (1985) (local residence a "fundamental consideration in our licensing scheme").

⁶⁵ See Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) (integration criterion lacks evidentiary supports of benefits to the public). In addition, the diversification demerit is arbitrary because there is no mechanism barring future changes -- if awarded the permit for WTVE, Adams could immediately purchase other media interests with no adverse consequences. Id.

⁶⁶ See, e.g., Harry S. McMurray, 8 FCC Rcd 8554 (1993); Naguabo Broadcasting Co., 7 FCC Rcd 1696 (1992).

⁶⁷ See, e.g., Cascade Video of Oregon, Ltd., 99 FCC 2d 1001, 1006-8 (Rev. Bd. 1985).

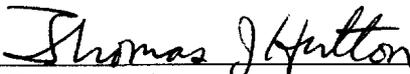
G. Conclusion

The I.D. must be vacated and reversed. With respect to basic qualifications, Adams must be disqualified because Adams' application violates the Commission's policy against abuse of process and Adams misrepresented facts and lacked candor in its testimony on the abuse of process issue. While the I.D. was correct in holding that RBI was qualified, it erred in holding that removal of Micheal Parker as an attributable stockholder was a prerequisite.

Even if Adams were not disqualified, RBI is entitled to or dispositive renewal expectancy. Even without such an expectancy, however, RBI is the preferred applicant due to its advantages in terms of local ownership, civil participation, broadcast experience and comparative coverage.

Respectfully submitted,

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May 21, 2001

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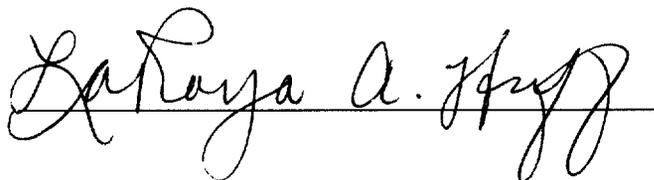
CERTIFICATE OF SERVICE

I, Laroya Huff, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on May 21, 2001, a copy of the foregoing EXCEPTIONS TO THE INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE was delivered by hand to the following:

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A handwritten signature in cursive script, reading "Laroya A. Huff", is written over a horizontal line.