

UNITED STATES ORIGINAL FEDERAL COMMUNICATIONS COMMISSION

In re applications of:) DOCKET No.: MM 99-153 /
)
 READING BROADCASTING, INC.) File No.: BRCT-940407KF
 for Renewal of License of)
 Station WTVE-TV Channel 51,)
 Reading, Pennsylvania)
)
 and)
)
 ADAMS COMMUNICATIONS CORP.) File No.: BPCT-940630KG
 for Construction Permit for a)
 new Television Station to)
 operate on Channel 51,)
 Reading, Pennsylvania)

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

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Reading, Pennsylvania)	

FCC
Room No. TW-A-363
445 12th Street, N.W.,
Washington, D.C.

Monday,
June 19, 2000

The parties met, pursuant to the notice of the
Court, at 10:04 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Judge

APPEARANCES:

For Reading Broadcasting, Inc.:

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I N D E X

VOIR

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>	<u>REDIRECT</u>	<u>DIRE</u>
Paul W. Sherwood	2137	2150	2164	2170	2183
Anne Swanson	2177	2298			

Hearing Began: 10:04 a.m.

Hearing Ended: 5:35 p.m.

Recess Began: 11:25 a.m.

Recess Ended: 1:32 p.m.

E X H I B I T SIDENTIFIEDRECEIVEDREJECTEDPaul Willis Sherwood:

Adams 77	2138	
Adams 76	2155	
Adams 87	2160	2171
Adams 88	2306	2310

Anne Swanson:

Reading 50	2178	2181
Reading 51	2181	2183
Reading 52	2184	2187
Reading 53	2187	2189
Reading 54	2187	2190
Reading 55	2190	2191
Reading 57	2230	2234
Reading 56	2234	
Reading 58	2242	2244
Reading 59	2246	2247
Reading 60	2248	2254
Reading 61	2260	
Reading 62	2265	2267
Reading 63	2276	2277
Reading 64	2283	
Reading 67	2287	2292
Reading 68	2292	2297

P R O C E E D I N G S

1

2

(10:04 a.m.)

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THE COURT: Okay. We're on the record. We're in our second week of hearings. We're in phase, today we're in phase III. And tomorrow we go back to phase II. I have a few preliminary remarks I want to make. First, with respect to last Friday, my order 00N-39, change the order of witnesses today, so we will start with Mr. Paul Sherwood. Is he here this morning?

10

11

MR. SOUTHARD: We haven't seen him yet this morning, Your Honor.

12

13

14

THE COURT: What's the, how's he, what are you expecting. I mean is he driving down this morning from some place in Pennsylvania?

15

16

MR. SOUTHARD: I believe he drove down last night and was going to take a cab over this morning.

17

18

19

THE COURT: Has anybody been in touch him at all?

20

21

MR. SOUTHARD: I spoke to him on Friday, after the conference but before I received your order.

22

23

THE COURT: Does he know he's on at 10 o'clock?

MR. SOUTHARD: Yes, he does.

THE COURT: Well, do you know what motel he's staying in?

24

25

MR. SOUTHARD: The Windham Bristol.

THE COURT: I don't need to know, but do you know.

1 MR. SOUTHARD: Yes we do.

2 THE COURT: Does anybody have a cell phone they
3 could call over there?

4 MR. HUTTON: I don't know. I have a phone if you
5 want to use it.

6 MR. SOUTHARD: We've got some preliminary, Your
7 Honor, we've got, I believe we've got some preliminary
8 matters to do.

9 THE COURT: All right, well let's see what
10 happens. But it's just a bit discomfiting that he's not
11 here and that there's been no contact with him this morning.
12 In any event, that will be Mr. Paul Sherwood when we see him
13 this morning, and then this afternoon at 1:30 it will be Ms.
14 Anne Swanson.

15 MR. SOUTHARD: That's correct.

16 THE COURT: Okay. And I wanted to note that I
17 contacted Mr. Cole's office last Friday and told him that,
18 on my own, I was requiring the sequestration of Mr. Gilbert,
19 so Mr. Gilbert will not be here at all today for any of this
20 testimony, although there can be somebody here, of course,
21 from the Adams club. A principal can be here if you so
22 desire. Mr. Cole's letter of June 16th, we briefly spoke
23 about that on the phone this morning. Do you have the
24 documents?

25 MR. COLE: I've been provided with a notebook,

1 Your Honor. Yes, I have them.

2 THE COURT: All right. Now I think, I just want
3 note for the record that I know that the thrust of your
4 letter in terms of the argument was that this is information
5 that should have been in the trial brief. And I agree with
6 that, with your observation to that effect, but there's been
7 a series of disclosures here, starting with the testimony of
8 Mr. Gilbert, in terms of what this issue is going to be
9 about and who is going to be needed to testify. In addition
10 to that, there was a detailed recounting of the relevant,
11 what would be the relevant ultimate facts, at least what
12 appeared in the record at that time, in the MONO-00M7 that
13 aired the issues.

14 Plus, the issues were very detailed. Plus, in the
15 course of discovery and the series of conferences that we've
16 had, particularly after Mr. Hutton's letter of May 24, I
17 think all of these circumstances amount to at least a
18 reasonable notice, although not as good as a trial brief.
19 But having said all that, and you having now the letters
20 that Ms. Swanson's going to be examined on, I think there's
21 been substantially fair notice to you, albeit maybe not in
22 the form that we would like to see. Do you want to say
23 anything to that?

24 MR. COLE: Yes, I would.

25 THE COURT: Please do.

1 MR. COLE: Your Honor, while I recognize that Your
2 Honor has issued orders adding the phase III issue and so
3 forth some time ago, the fact of the matter is that the mere
4 addition of the issue puts me on notice not a whit as to
5 what the other side intends to offer as evidence under that
6 issue in order to prove whatever, in order to meet the
7 burden that it has in that issue. My understanding of trial
8 practice has always been that each side is entitled to know
9 what the other side is going to put in, at least with some
10 reasonable notice in advance, in order to meet its burden.

11 And to receive a fax letter at 4 o'clock or 3
12 o'clock on Friday afternoon as to what the other party is
13 going to -- merely the -- a mere listing of documents, not
14 even copies of the documents, a listing of documents by
15 document number, without any discussion as to what each
16 document is or what it is purported to be, does not put me
17 on notice of anything. But that having been said, Your
18 Honor, I got the list. I do not disagree that I got the
19 list on Friday.

20 I spent a fair amount of time over the weekend
21 reviewing documents, since the Dow, Lohnes & Albertson
22 Telemundo production had been as we're all aware -- I don't
23 want to say piecemeal in a derogatory sense, because I
24 understand the constraints that all the parties in the Court
25 were under at the time -- it was certainly coming in in bits

1 and pieces. And so it was a matter of going to reassemble
2 through the identification numbers and, as it turns out, we
3 were missing a couple.

4 I called Mr. Hays this morning and got, I called
5 Mr. Hays late Friday afternoon, about 6 o'clock, and
6 actually got a couple copies then that I was missing. And I
7 called this morning and had him read me one extra page,
8 which I was still missing as of this morning. But I think I
9 have a complete set, so with all that, I think we're ready
10 to roll.

11 THE COURT: Does anybody want to respond to that?
12 Mr. Hutton or Mr. Southard?

13 MR. HUTTON: I think your ruling is appropriate,
14 and I don't think there's a need for further response.

15 THE COURT: It's pretty much moot by now. Mr.
16 Shook?

17 MR. SHOOK: I have nothing to add.

18 THE COURT: The record should reflect this though.
19 It's difficult to show the intensity in which this in camera
20 work was being done this week. And it really wasn't until,
21 I don't think it was until late Thursday, or maybe it was
22 mid-day Friday, where there was really the final resolution
23 of the final documents that were going to be produced, and
24 I, to put somebody to the burden of preparing a list of
25 documents at that stage, when I didn't -- well, for one

1 thing, because of the intensity of that review, I did
2 overlook the nifty requirements of the trial brief, and I
3 decided that there was no point in requiring somebody to go
4 through the formality of putting a list and a description of
5 the documents together on Friday afternoon when we were
6 going to be in here Monday morning.

7 What I did overlook doing is doing what I did this
8 morning after responding to your letter, I should have had
9 copies of the documents ordered to be delivered to you on
10 Friday. For that I apologize. But as I say, all this seems
11 to have been now rendered moot, and we're prepared to go
12 forward this morning. Mr. Southard.

13 MR. SOUTHARD: I will see if I can go locate Mr.
14 Sherwood.

15 THE COURT: Are there any other preliminary
16 matters that you all have?

17 MR. COLE: No, Your Honor.

18 THE COURT: That's it? Mr. Shook?

19 MR. SHOOK: There is, and I really don't have a
20 good feel for how this should work. One of the --

21 THE COURT: Do you want to do it off the record
22 first?

23 MR. SHOOK: No, no. I can do it on the record.
24 One of the documents that I had a chance to look at on
25 Friday was a letter that was addressed to a Telemundo

1 principal, and the letter indicates that it was signed by
2 Michael Parker. And I believe there are certain statements
3 within that letter that could have a bearing on the
4 testimony that he gave last week, and the thought comes to
5 mind whether there is some way for that letter to be used
6 perhaps as rebuttal. Now, I realize the letter cannot stand
7 alone. It needs some testimonial backing or some kind of
8 backing from Mr. Parker himself to reflect that he was
9 actually the signatory and/or author of that letter.

10 And it's just something that I want to put out on
11 the table. I don't know right now what, if anything, can be
12 done about it, whether there's -- in defense, also, in
13 defense of Reading, I can say that the letter did not come
14 within our document, the scope of our document request, so
15 it's not something that they should have turned over,
16 because it wasn't anything that we asked for. I haven't
17 looked closely at Adams's document request to see whether it
18 might have come within the scope of that, but it certainly
19 didn't come within the scope of ours.

20 However, now that I have the letter, I think right
21 now I'd like to have, you know, try to find some way to get
22 it into the record, and I just want to throw it out for
23 consideration right now, and then perhaps in a discussion
24 with the parties, can work something out.

25 THE COURT: Let me see what Mr. Cole has to say

1 and then Mr. Hutton.

2 MR. COLE: Your Honor --

3 THE COURT: You're aware of what he's talking
4 about.

5 MR. COLE: Yes. I'm please he's mentioned it,
6 because I'd seen it myself and had it here, as well. Let me
7 just describe it for the record. There is, I believe, well,
8 let me just ask Mr. Shook. I believe you're referring to a
9 document, which is three, four, five, six, a total of seven
10 pages in length, which came in through the Dow, Lohnes
11 discovery document production in response to RBI's discovery
12 request. And these documents, the document itself is
13 labeled TD00167 through TD00173.

14 The first page appears to be a brief memorandum
15 from Anne Swanson to an individual named Kevin, dated April
16 13, 1999, passing along, or transmitting to Kevin certain
17 notes about Telemundo, which she had had typed. There then
18 follow three pages of typed notes, the first page of which
19 is entitled MAS Notes Re Telemundo Questions, and I believe
20 when Ms. Swanson takes the stand, my guess is she will
21 identify MAS as M. Anne Swanson. On the third page for
22 Bates stamp TD00170, there is a roman numeral III section
23 entitled Michael Parker's quote "issues" close quote, which
24 in turn references a -- well, I'll read it into the record.
25 "The best discussion of Michael Parker's past problems with

1 the FCC is set forth in the attached excerpt from his own
2 letter of October 7, 1998, to Ann Gaulke."

3 The next three pages are then, then appear to be
4 an excerpt from a letter addressed to Anne Gaulke and the
5 third page of which bears Mr. Parker's, appears to bear Mr.
6 Parker's signature. And this includes a discussion, which
7 is entitled "FCC qualifications of Michael L. Parker." And
8 I believe that's what Mr. Shook is referring to. Am I
9 correct on that?

10 MR. SHOOK: It is. And my concern is with those
11 final three pages.

12 MR. COLE: Exactly. And --

13 MR. SHOOK: Which I believe, in terms of how they
14 are marked, are the final three pages of a much longer
15 letter. We only have in the documents that were given to
16 us, the final three pages. I have no idea what's in the
17 earlier part, whether it has any relevance whatsoever to our
18 proceedings. It's just those final three pages that are on
19 interest.

20 THE COURT: Well is it, I'm generally familiar
21 with the document you're referring to because I reviewed all
22 these *in camera*, but was that -- refresh my recollection of
23 what you said. Was that letter addressed to Ms. Swanson or
24 was it addressed to Ms. Gaulke.

25 MR. COLE: Gaulke. It appears to have been

1 addressed, we don't have the first page, which would have
2 the actual address.

3 THE COURT: Right.

4 MR. COLE: But it appears to be in standard
5 correspondence form, so it's pages nine, 10 and 11 in the
6 upper left hand corner shows "Ann Gaulke, October 7, 1998,
7 page nine," and then page 10, page 11, and so forth. So
8 I've assumed from looking at it, it appears to be a letter
9 addressed to Ann Gaulke.

10 THE COURT: And it was sent from, and these
11 enclosures were sent from Ann Gaulke to Ms. Swanson? As
12 best you can tell?

13 MR. COLE: It appears to have been in Ms.
14 Swanson's possession, but again, I was going to ask her
15 about this when she takes the stand. It appears to have
16 been in her possession, because she refers to it in her
17 "Notes Re Telemundo Questions," which she then transmitted
18 to Kevin, with the April 13, 1999, cover memo. So she, my
19 hunch is, and I don't know this. I've not spoken Ms.
20 Swanson, but my hunch is, from the document itself, it
21 appears that Mr. Parker's letter, or at least a portion of
22 Mr. Parker's letter was available in Ms. Swanson's file and
23 available to her to review and to comment on, and what I was
24 planning on doing, and it's not a big secret, I was going to
25 show this document to Ms. Swanson and ask her to confirm

1 that she was familiar with the document and that she
2 prepared the memorandum and the notes, and then offer the
3 whole thing into evidence.

4 THE COURT: All right. Let's hold that thought
5 for a minute. Mr. Hutton? Mr. Southard?

6 MR. HUTTON: Your Honor, I'm just working from
7 memory. I don't have the letter available here. I have
8 trouble understanding how it could be considered rebuttal
9 evidence with respect to Mr. Parker's state of mind, because
10 at the time -- as I understand it, at the time the letter
11 was written, Mr. Cole, on behalf of his clients had raised
12 the very allegations that are at issue here in various
13 proceedings where Mr. Parker was a party. And as I take it,
14 he was indicating his intent to fight those allegations on
15 the merits.

16 MR. COLE: Your Honor, if I may just interject. I
17 didn't say anything about rebuttal. I believe that was Mr.
18 Shook.

19 THE COURT: I know it was Mr. Shook. Well, how
20 would you entertain -- Mr. Cole, how would you entertain?
21 Well you said you wanted to introduce it through Ms.
22 Swanson.

23 MR. COLE: Through Ms. Swanson, and I view it as
24 in the nature of impeachment. It reflects Mr. Parker's,
25 another take by Mr. Parker on the San Bernardino and Anna

1 Cordismont (phonetic) Baker situations, and to the extent
2 that Mr. Parker testified at length about those and
3 provided, you know, at least one, my view is, my view of his
4 testimony is he offered at least two different, and not
5 necessarily consistent, views of the San Bernardino
6 situation. I believe this letter reflects, arguably, a
7 third view. Certainly there's enough there that I believe I
8 can make a reasonable argument.

9 And Mr. Hutton, of course, can argue to the
10 contrary, but I think there's, this reflects yet a third
11 view by Mr. Parker of what the San Bernardino situation
12 involved.

13 THE COURT: I'm addressing this question to
14 everybody, but more to Mr. Hutton than anybody else. It
15 appears from the way this document's been described and how
16 it got into Mr. Cole's hands and Mr. Shook's hands, there
17 does not appear to be any privilege involved with respect to
18 that document.

19 MR. HUTTON: No, I don't think it's privileged.

20 THE COURT: All right. So we don't have to worry
21 about that. The only question is really one of relevance.
22 Let me ask this question of Mr. Shook. If it came in, if
23 the document as constituted came in through Ms. Swanson or
24 if, at a minimum, the two pages that are ascribed to Mr.
25 Parker came in through Ms. Swanson, would that meet your

1 requirement as far as, or your desire as far as having this
2 evidence in the record?

3 MR. SHOOK: Your Honor, I'm troubled by having the
4 document, that portion of the seven-page document that I'm
5 most concerned with, come in without Mr. Parker being able
6 to, number one, verify that he is in fact the author of what
7 we're looking at, and then, number two, be given an
8 opportunity to explain what he said, what he meant, what he
9 was thinking and whether or not, in the end, we can all
10 argue whether it was consistent with what else we've heard
11 from him. I mean I just don't think that it should come in
12 without something from Mr. Parker himself to be able to
13 explain what it is we're looking at.

14 THE COURT: Well, I think what should be done, and
15 here's what I'm just about set to order, that I should take
16 a look at the whole letter *in camera*, and Mr. Parker should
17 be on notice that he may be recalled before the end of the
18 week, in order to give his version, to address all the
19 points that Mr. Shook has indicated. In the meantime, I'm
20 going to -- perhaps with a lunch break and time this
21 afternoon, perhaps counsel can get together and talk about
22 this -- but I think I'm inclined to agree with Mr. Shook. I
23 haven't -- I have seen the document but, as I said, I have
24 not focused on it for purposes of saying, well, does it or
25 does it not contradict or might it be interpreted as a

1 contradiction of what Mr. Parker has testified to.

2 But I don't want to put somebody through the
3 burden, either, of having to go through transcripts. And I
4 don't even know if we have the transcripts to do that with
5 anyway, to parcel that out. A simple solution might be to
6 just bring Mr. Parker -- let me take a look at the whole
7 letter. If the whole letter is relevant or if there's no
8 reason not to exclude the whole letter, let the whole letter
9 come in and let Mr. Parker explain it.

10 MR. HUTTON: Your Honor, one logistical issue. I
11 believe Mr. Parker is scheduled to be out of the country
12 from tomorrow through the end of the week. It may be that
13 he would only be available by speakerphone this week.

14 THE COURT: Well, he might be, when is he coming
15 back?

16 MR. HUTTON: I'm not sure, but I would, I can
17 check and find out.

18 THE COURT: Well, that's what we'll have to do.
19 If he's out of the country he's out of the country, but if
20 the letter's going to be used, he's going to have to -- I
21 mean, both from the standpoint of having the record complete
22 and from the standpoint, of course, of him having an
23 opportunity to explain anything that may be in the letter
24 that he would want to. We can always stipulate to its
25 authenticity, so we don't need, we shouldn't have to need

1 him for that. Find out when he's going to come back, and by
2 the end of the day, perhaps after the lunch break, if you
3 could get me a copy of the full letter, can you, well, I
4 don't know if you can do that.

5 MR. HUTTON: I don't have it.

6 THE COURT: You don't have it? There's no reason
7 why you necessarily should have it, but you'll have to
8 contact Reading. I'm not sure how to tell, well, you know
9 how to go about that better than I do. Let me have a report
10 by the end of the day or when we come back from the luncheon
11 break. An interim report. Just let me know what you can
12 find out about getting it.

13 MR. HUTTON: All right. What's the date of the
14 letter?

15 MR. COLE: October 7, '98. Addressed to Ann
16 Gaulke, it appears. And it's -- what Ms. Swanson's document
17 includes are pages nine, 10 and 11, and page 11 is the
18 signature page, so it appears to be an 11-page document.
19 Whether there are any attachments, there are no attachments
20 indicated, so I don't, all I know is what I'm seeing here is
21 nine, 10 and 11.

22 MR. HUTTON: Okay.

23 THE COURT: Is it signed by Mr. Parker as
24 president of Reading?

25 MR. COLE: Yes. Well, it's signed by Mr. Parker

1 as president.

2 THE COURT: It has all the earmarks of reliability
3 as a document that was prepared by Mr. Parker.

4 MR. COLE: And Mr. Hutton may also point out that
5 there's a, there are multiple fax lines on this thing. The
6 uppermost fax line shows a fax dated October 9, '98, from
7 Telemundo to a Washington, D.C. number, 776-2222, which I
8 believe to be Dow, Lohnes but I don't know that for sure.
9 Immediately below that is a fax line from Partel (phonetic),
10 Inc., dated October 8, 1998. And then down at the bottom,
11 there is a further fax line dated October 9, '98, at 8:46,
12 with a 212 number, so I'm not sure what to make of all
13 those, but if that's helpful.

14 THE COURT: Well, when you get the, I mean I know
15 you will eventually get the letter, but it's a question of
16 whether you can get it today or within the next couple of
17 days. If you think it would just be that looking at it *in*
18 *camera* would really not be a useful act, by all means, you
19 know, turn it over to the other side, meaning Mr. Shook and
20 Mr. Cole. But if you want me to, I will look at the letter
21 *in camera* to determine, I guess, the relevance. Certainly
22 if there's anything, any reason to protect anything that's
23 in the preliminary pages, I will be glad to do that. That's
24 about all we can cover on that one.

25 Now, what I want to do is ask, and I can see Mr.

1 Cole is probably going to perhaps use things that you're not
2 going to use, Mr. Southard. If that be the case, I caution
3 Mr. Southard and I caution you, Mr. Cole, that I don't want
4 any extraneous thoughts or comments of Ms. Swanson being
5 included in those documents, to the extent that, you know,
6 they're clearly not in the ballpark. I am not looking to
7 embarrass anybody.

8 MR. COLE: That's not a problem, Your Honor, from
9 my point of view.

10 THE COURT: Okay. I just want to caution you,
11 that's all. I wouldn't expect that it would be a problem.
12 All right. And now, so the only thing left to do is wait
13 for Mr. Sherwood. Let's go off the record for five minutes
14 and see what you can find, Mr. Southard.

15 (There was a brief recess.)

16 THE COURT: Mr. Southard, do you have a witness?

17 MR. SOUTHARD: Excuse me?

18 THE COURT: Do you have a witness?

19 MR. SOUTHARD: Yes, I do. Mr. Sherwood?

20 Whereupon,

21 PAUL WILLIS SHERWOOD,

22 having been first duly sworn, was called as a witness herein
23 and was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SOUTHARD:

Heritage Reporting Corporation
(202) 628-4888