

1 this witness was, I'm assuming is going to be a paid
2 consultant, and I expect you're going to bring that out in
3 cross-examination.

4 MR. SOUTHARD: I believe Mr. Cole brought it out
5 in direct examination.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. SOUTHARD:

9 Q Good afternoon, Mr. Cavell. My name's Dennis
10 Southard. I didn't introduce myself earlier. I represent
11 Reading Broadcasting in this case. Was Adams referred to
12 you by Bechtel & Cole?

13 A Yes.

14 Q Has Bechtel & Cole ever referred any other clients
15 to you?

16 A Yes.

17 Q I take it that you would like Bechtel & Cole to
18 continue to refer clients to you.

19 A I'd like every attorney to do that. That's a good
20 thing.

21 Q You weren't subpoenaed to be here today, were you?

22 A I may answer this awkwardly. I thought I was, and
23 apparently that was, I guess that was for a deposition and
24 that went upside down but, is that what you're referring to?

25 Q Did, my question is did you receive a subpoena?

1 A No. Nobody knocked on the door, no sheriff with a
2 big gun. Nothing like that. No.

3 Q Are you being compensated for your time to be here
4 today?

5 A I was intending on billing the client, yes.

6 Q What is your rate that you're going to be charging
7 them?

8 A \$180.00 an hour.

9 Q Is that your usual rate.

10 A That's the usual rate for the partner level people
11 at my firm.

12 Q And do I understand that you're going to bill
13 Adams, or are you billing Bechtel & Cole?

14 A Adams.

15 Q You didn't do any work for Adams in, with respect
16 to any applications in Massachusetts, did you?

17 A No.

18 Q The first time you met anyone representing Adams
19 was the early part of '94, I believe you said.

20 A Yes.

21 Q And I guess, just to clear this up, you were in
22 fact a consulting engineer with respect to Adams's
23 application for channel 51 in Reading, Pennsylvania.

24 A Yes.

25 Q And you were paid for that work?

1 A Yes.

2 Q Have you been paid in full up to this point?

3 A To the best of my knowledge, yes.

4 Q Is any part of --

5 A My partner hasn't drop-tackled me, so I assume
6 we're okay.

7 Q Is any part of your compensation tied in any
8 respect to the outcome of this proceeding?

9 A No.

10 Q Could you take a look at, it's Reading Exhibit 43.
11 Do you have it there? We'll get you a copy.

12 MR. SOUTHARD: Your Honor, if we could just have a
13 moment.

14 THE COURT: Yes. We'll go on the record.

15 (There was a brief recess.)

16 THE COURT: I think I have something here, and I
17 think it's your Exhibit 10. This is Reading's Exhibit 10,
18 and it must be in a volume that has to do with, just as you
19 said, Mr. Hutton, official notice documents. Does anybody
20 else have a count on that?

21 MR. SOUTHARD: A page count?

22 THE COURT: Well, no, it was the Exhibit number
23 count.

24 MR. SOUTHARD: Oh. Exhibit 10 appears to be
25 correct. Mr. Shook found it in his volume.

1 THE COURT: Fifty-four pages of the Adams
2 Communications application with construction permit. That's
3 got to be it then. Is one in front of the witness?

4 MR. SOUTHARD: Yes, the witness has a copy.

5 THE COURT: Because I have one too if you wanted
6 to use mind.

7 MR. SOUTHARD: No. I have a copy. Unfortunately,
8 for some reason, my copy's marked Exhibit 43, which is what
9 caused the confusion in the first place.

10 THE COURT: All right. Let's go.

11 BY MR. SOUTHARD:

12 Q Mr. Cavell, you have in front of you Adams --
13 Reading Exhibit 10, which is Adams's original application
14 for channel 51 in Reading, do you not?

15 A Apparently I do, yes.

16 Q Okay. Now, you prepared the engineering exhibit
17 for this application?

18 A Yes.

19 Q And you also prepared section Roman numeral five C
20 of this application?

21 A Yes.

22 Q If you could look at page one of section roman
23 numeral five C. It says, Purpose of Application.

24 A All right.

25 Q Do you see that right there at the top?

1 A Yes.

2 Q And it appears you've checked, did you put that
3 check there?

4 A Yes. My secretary did.

5 Q And it says, Purpose of Application to construct a
6 new open paren (main) closed paren facility. Is that right?

7 A Yes.

8 Q Now if you could take a look at, in the
9 engineering exhibit to statement C. Do you have it in front
10 of you?

11 A Yes.

12 Q Could you read the first sentence please?

13 A "Adams Communications Corporation, parentheses
14 (Adams) is proposing the construction of a new transmitting
15 facility in a relatively unpopulated area."

16 Q Thank you. If you could turn -- are you able to
17 hear me a little better now?

18 A Yes.

19 Q If you could turn to statement D of the
20 engineering exhibit. Do you have it in front of you?

21 A I'm working on it.

22 Q And if you could just read that first sentence
23 please.

24 A "This application proposes to side-mount an
25 omnidirectional channel 51 antenna on an existing tower in

1 an existing electronic site."

2 Q Now if you'll turn back to the last page of the
3 actual section D, Roman numeral five C four. It's the
4 signature page.

5 A Okay.

6 Q Is that your signature?

7 A Yes.

8 Q And by your signature you've certified that you
9 examined all the information that you provided in this
10 section and you found it to be accurate and true, to the
11 best of your knowledge and belief.

12 MR. COLE: Objection, Your Honor. This is well
13 beyond the scope of any direct that I can recall.

14 MR. SOUTHARD: It goes to credibility, Your Honor.

15 THE COURT: You went into quite some detail in
16 terms of his qualifications and what he does, and Mr.
17 Southard is just simply asking him what he did with respect
18 to a specific project.

19 MR. SOUTHARD: Thank you, Your Honor.

20 THE COURT: Overruled.

21 BY MR. SOUTHARD:

22 Q Is that what you certified by your signature?

23 A Yes.

24 Q How did you go about determining that the existing
25 tower could support the antenna you were proposing?

1 A I talked to, and this is going back some years,
2 you must remember, but I talked to the person who
3 represented the tower owner or the tower owner details.

4 Q Do you recall who that was?

5 A No I don't.

6 Q Do you recall what the company's name was?

7 A No, I don't, not sitting here. No.

8 Q Do you recall whether any wind load studies were
9 done on the existing tower?

10 A I don't remember.

11 Q Did you conduct any such studies?

12 A I'm not a structural engineer. No.

13 Q Did you contract for such studies to be done?

14 A No.

15 Q In the blue binder that you have, it Adams Phase
16 III Exhibits, and it's Exhibit 72, I believe. It's a letter
17 from American National Bank and Trust Company of Chicago.
18 Do you have it?

19 A Yes.

20 Q Did you have, did you see a copy of this letter?
21 Have you ever seen a copy of this letter?

22 A I don't recall seeing this ever.

23 Q Okay. Could you take some time now and just read
24 through it and familiarize yourself with the contents.

25 THE COURT: We'll go off the record.

1 MR. SOUTHARD: Thank you

2 (There was a brief recess.)

3 THE COURT: You may proceed, Mr. Southard.

4 BY MR. SOUTHARD:

5 Q In preparing your budget package, which you
6 transmitted under cover of June 29, 1994, were you aware of
7 the information that's contained in the American National
8 Bank letter?

9 MR. COLE: Objection. What information? It's a
10 two-page letter, Your Honor.

11 THE COURT: I'll overrule the objection. This is
12 cross. See if he can answer it. Please restate the
13 question.

14 BY MR. SOUTHARD:

15 Q When you were preparing your budget package, which
16 you transmitted to Adams under cover of June 29, 1994, were
17 you aware of any of the information that's contained in the
18 American National Bank letter of June 23, 1994?

19 A I don't believe I was.

20 Q Did Adams tell you that they had obtained a loan
21 commitment in the amount of five hundred dollars prior to
22 your preparing -- five, I'm sorry, five million dollars,
23 prior to your preparing your budget package?

24 A I don't remember hearing any such figures, or any
25 figure.

1 Q How did you come to know the location of the
2 antenna site that you put into the application?

3 A I have to recollect, and I'll do the best I can
4 for you. I believe it was we start out with that general
5 site area that we saw, and then I had detailed USDS
6 topographic maps. Then I started inspecting sites, mountain
7 sites, whatever you want to call that, to see if anything
8 would give a good look angle, and we did terrain profiles.
9 This was back in the days before computers being as frisky
10 as they are now. And we looked at different locations that
11 might work. And I believe what I did is I identified for
12 Adams, these are the mountain tops that would be, it might
13 have been two or three, I don't remember the quantity, that
14 would be suitable. And he went and established contact with
15 people, as I recall.

16 Q How did you find out that the antenna site that
17 you were going to use as part of the application was the
18 antenna site that you did use as part of the application?

19 A My recollection is that Adams, Mr. Gilbert came
20 back to me and said, okay, this is the guy that you contact
21 and there's a tower there and you can use it, et cetera.
22 That's my recollection of the events.

23 Q Do you recall when that was?

24 A No.

25 Q Do you recall how far in advance of completing the

1 application you learned that information?

2 A No, I don't. Sorry.

3 Q What did Mr. Gilbert tell you about Adams's rights
4 with respect to that site?

5 A I seem to recall that, I don't know the exact
6 mechanism of the rights, I just, I gathered that he had the
7 ability to do pretty much whatever he wanted to with the
8 site and could strengthen or whatever he wanted to do with
9 it, that would not be a problem. That's, I vaguely recall
10 that, but I don't know the details of the, whether it was a
11 lease or outright purchase. I believe it's a lease, but I'm
12 only speculating.

13 Q Did Mr. Gilbert tell you that at that time his
14 right to use the site was in any way contingent?

15 A No. I don't recall that at all.

16 Q Mr. Cavell, could you take a look in the blue
17 binder, Adams Phase III Exhibits, and I believe Exhibit 68.
18 It's a letter on Adams Communications Corporation
19 letterhead. Do you have it in front of you?

20 (The document referred to
21 was previously marked for
22 identification as Adams
23 Exhibit No. 68.)

24 A Yes.

25 Q Have you ever seen that letter before?

1 A I don't recall seeing it, no.

2 Q Did Mr. Gilbert indicate to you at the time you
3 prepared the application that there was a written option
4 agreement with the transmittal site owner?

5 A I don't recall that he used those words. He just
6 gave me an indication that we had a site we could use and it
7 satisfied the criteria, and that's all I can remember.

8 MR. SOUTHARD: Your Honor, if I could have this
9 marked as Adams -- or Reading Broadcasting Exhibit 70 for
10 identification.

11 (The document referred was
12 marked for identification as
13 Reading Exhibit No. 70.)

14 THE COURT: Explain for the record what it is.

15 MR. SOUTHARD: It's a letter from John Bent
16 (phonetic) executive vice president of Conestoga --
17 Conestoga Mobile Systems -- to Mr. Robert Hage (phonetic)
18 president of Adams Communications Corporation.

19 THE COURT: All right. The court reporter will
20 keep copies of this, and the document as you described it is
21 marked for identification as Reading Number 70 for
22 identification.

23 BY MR. SOUTHARD:

24 Q Mr. Cavell, I direct your attention to the second
25 paragraph of Reading Exhibit 70. Do you see that.

1 A Yes.

2 Q Did you see this, have you seen this letter at any
3 time before today?

4 A I don't recall seeing it, no.

5 Q If you'd been in aware in August 1994 that there
6 were contingencies attached to the use of the transmitter
7 site, would that have affected your -- anything that you put
8 into your application?

9 A It would depend on the nature of the contingency.

10 Q What, okay, do you see the letter here indicates
11 there was, that the, that the lease would be "contingent
12 upon an ability to obtain proper zoning and construction
13 permits." Do you see that?

14 A Yes.

15 Q Would the ability to obtain proper zoning and
16 construction permits have affected anything that you put
17 into the application?

18 A Not as far as preparing the application. That's
19 customary. People have to make proposals and go for zoning
20 usually far after the FCC request is made.

21 Q And at no time did anyone from Adams ever tell you
22 that a lease with Conestoga was contingent upon anything.

23 A I don't recall that, no.

24 MR. SOUTHARD: Your Honor, I'd move Exhibit 70
25 into evidence.

1 THE COURT: Any objection?

2 MR. COLE: Yes. Relevance, Your Honor.

3 THE COURT: Mr. Southard, do you want to respond
4 to that?

5 MR. SOUTHARD: It goes to the preparation of the
6 application. It goes to the work that was done by Mr.
7 Cavell. It goes to Readings' -- Adams's mindset with
8 respect to their diligence in preparing and, yes, in
9 preparing the application.

10 MR. COLE: Your Honor, this letter was prepared
11 approximately a month and a half after the application was
12 filed. No indication this had anything to with the
13 preparation of the application.

14 THE COURT: Well, it's close enough in time to
15 relate to the application at least the relevance to the
16 application process or the followup on the application
17 process. It seems for purposes of general relevancy, it
18 looks like it's in the ballpark.

19 MR. HUTTON: Well, as you say, there's a general
20 relevancy to the application, but frankly, I'm mystified as
21 to what relevance with respect to the issue.

22 THE COURT: Well, it's cross-examination, and I'm
23 going to permit it to come in for the weight that it may be
24 worth. I'm overruling the objection. Reading Exhibit 70 is
25 received in evidence.

1 (The document referred to,
2 having been previously marked
3 as Exhibit No. 70 was received
4 in evidence.)

5 BY MR. SOUTHARD:

6 Q Mr. Cavell, you stated that you've been involved,
7 I believe, if I recollect your testimony correctly, you've
8 been involved in the preparation of hundreds of FCC
9 applications?

10 A I'd have to go back and do the research to give
11 you an exact number. I've been involved in many, many, many
12 over 19 years.

13 Q And at one time I believe you actually owned, or
14 were an owner of, a radio, FM radio station?

15 A Yes.

16 Q With respect to that radio station, who was your
17 counsel?

18 A Harold McCombs.

19 Q Other than this proceeding, have you been involved
20 in any other competitive renewal application proceedings?

21 MR. COLE: Objection. Involved in what respect?

22 MR. SOUTHARD: In any respect.

23 MR. COLE: In what capacity?

24 THE WITNESS: Do you mean in a professional way or

25 --

1 BY MR. SOUTHARD:

2 Q In a professional way, I'm sorry. As a consulting
3 engineer.

4 A I don't remember. I might have been, but I don't
5 remember.

6 Q Are you generally familiar with the rules and
7 regulations relating to competitive applications?

8 A I'm only familiar with the engineering rules as
9 they relate. I don't know practice and procedure.

10 Q Are you aware that filing an application for a
11 purpose other than to own and operate the station would be
12 considered an improper purpose by the FCC?

13 A I presume so.

14 Q You wouldn't expect one of your clients to tell
15 you that they filed for an improper purpose, would you?

16 A No, I wouldn't, but occasionally people start down
17 that road and I back away.

18 Q Has anyone, has any of your clients in any of your
19 hundreds of applications ever told you that they filed, that
20 their intent in filing the application was to obtain a
21 settlement from the other side?

22 A No. Not that I recall.

23 MR. SOUTHARD: I have nothing further.

24 THE COURT: Mr. Shook?

25 MR. SHOOK: I have nothing to ask.

1 THE COURT: Anything on redirect?

2 MR. COLE: Just a minute, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. COLE:

5 Q Mr. Cavell, in response to questions from Mr.
6 Southard just a moment ago concerning whether any of your
7 other clients had ever indicated to you that they were
8 filing, that they were planning to file an application for
9 some improper purpose, I believe you testified that, in some
10 instances you had, and I believe your language was, "backed
11 away." Do you recall that testimony?

12 A Yes.

13 Q Could you explain what you meant by that?

14 A When I become aware that somebody is trying, and
15 again, I'm a layperson, not a lawyer, but if somebody seems
16 to be doing something that's adverse to the rules, I'd
17 rather not get involved. I don't know enough about the law
18 to know what's safe and what's not safe. I just don't want
19 to be a party to something that's untoward.

20 Q And have you, in fact, to use your term, "backed
21 away," in circumstances such as you just described in the
22 past.

23 A Yes.

24 Q Was Adams Communications Corporation's Reading
25 application such a situation?

1 A No.

2 Q Finally, in response to some questions by Mr.
3 Southard about how you learned about which tower site to
4 specify, I believe your testimony, the record, I think the
5 record will show that your testimony was, he went and
6 established contact with the tower site but there was no
7 identification of who the he was. Do you know who you were
8 referring to then?

9 A Mr. Gilbert.

10 MR. COLE: I have no further questions, Your
11 Honor.

12 MR. SOUTHARD: I have nothing.

13 THE COURT: I have no questions. Thank you very
14 much, Mr. Cavell. You're excused as a witness.

15 THE COURT: Let's go off the record a minute.

16 (There was a brief recess.)

17 THE COURT: Just to confirm, we're on the record
18 to confirm that at 9:30 tomorrow morning, we will start the
19 testimony with Mr. Feckenger (phonetic) and then pick up
20 after noon with Mr. Gilbert. Do you want Mr. Gilbert out of
21 the courtroom while Mr. Feckenger testifies too.

22 MR. SOUTHARD: I think so.

23 THE COURT: Well, we might just as well be
24 consistent about that. All right. That's it then. We're
25 in recess until 9:30 tomorrow morning. Thank you.

1 (Whereupon, at 2:36 p.m., the hearing in the
2 above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 99-153
CASE TITLE: In Re: READING BROADCAST, Inc.
HEARING DATE: June 20, 2000
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 6-20-00

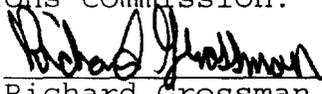


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TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 6-27-00



Richard Grossman
Official Transcriber
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PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 6-28-00



Glenn Arkin
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