TELEMUNDO

FAX COVER SHEET
TELEMUNDO NETWORK
AFFILIATE RELATIONS
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DATE:	July 16, 1999
TO:	**Alan Sokol**
COMPANY:	
FAX:	(310) 571-3960
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FROM:	Ann Gaulke
COMPANY:	Telemundo Group, Inc.
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 # OF PAGES (Including this page) 5

COMMENTS: Re: Philadelphia prehearing conference. Anne Swanson will also get a copy of Adams petition to enlarge which they did file. Anne felt that the two most meaningful outcomes of the hearing were that 1) Parker has no counsel and 2) the judge set an aggressive hearing date (October).

Also, Adams counsel called Anne and said that they fully expected to be successful in getting the license to the station and wanted to begin discussions with us immediately about an affiliation. Anne & I agreed that we should not begin discussions with them, as Parker may try to claim tortuous interference against us.

cc: Cary Meadow

Reading Exhibit 64
Page 1

Federal Communications Commission

Docket No. MM-94-153 Exhibit No. 64

Presented By Reading

Disposition: Identified ✓ Received ___ Rejected ___

Reporter John Del Pino

Date 6-19-00

No Exhibit offered.

Reading Broadcasting, Inc.

By: _____

Thomas J. Hutton
C. Dennis Southard IV
HOLLAND & KNIGHT LLP
2100 Pennsylvania Ave., NW
Suite 400
Washington, DC 20037

Its Attorneys

No Exhibit offered.

Reading Broadcasting, Inc.

By: _____

Thomas J. Hutton
C. Dennis Southard IV
HOLLAND & KNIGHT LLP
2100 Pennsylvania Ave., NW
Suite 400
Washington, DC 20037

Its Attorneys

No Exhibit offered.

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Its Attorneys

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FILE COPY

September 15, 1999

BY TELECOPY

Ms. Ann Gaulke
Telemundo Group, Inc.
1775 Broadway
New York, NY 10019

Re: Update on Reading Television Renewal Proceeding

Dear Ann:

Over the last several weeks, the judge in the Reading television renewal proceeding has issued five procedural and two substantive decisions, and, yesterday, counsel to Reading Broadcasting, Inc. ("RBI") and Adams Communications Corporation ("ACC") began taking depositions in Reading. This letter will review these developments.

I enclose copies of the two substantive decisions that the judge has issued. (Because the procedural items dealt with extensions of time and other less significant issues, I have not enclosed copies of them.) As you will see from the first decision I enclose, the judge has denied ACC's request for the addition of two qualifications issues against RBI -- one issue related to previous FCC adjudications of misconduct against Micheal Parker and a second issue related to the manner in which Mr. Parker reported the adjudications in subsequent applications. Because the adjudications themselves occurred over ten years ago, the judge determined that they were no longer relevant under the Commission's character policy, a position that the FCC's own hearing counsel had supported. On the question of inadequate disclosure, the judge ruled that he could not add a misrepresentation or lack of candor issue absent evidence of an intent to deceive. On this issue, the FCC's trial staff had argued that unless RBI offered an adequate explanation as to why its disclosures had been so cryptic, an issue should be added. I spoke to the FCC trial attorney about the ruling, and he said that RBI had not offered any such explanation, and he said he disagreed with the judge's ruling. Nonetheless, ACC can only appeal such an interlocutory decision with special permission of the judge, something ACC has not sought, or wait until the end of the hearing and note its objection in exceptions, a course that I suspect ACC will follow.

The second enclosed decision addresses the scope of the comparative criteria that the judge will apply in choosing between the applicants and the period to be explored in establishing whether RBI has any entitlement to a renewal expectancy. (As you may remember, following judicial invalidation of the integration criterion and adoption of auction procedures for all commercial licensing except the few remaining renewal hearings, the FCC had said it was

Federal Communications Commission

Docket No. MM-97-153 Exhibit No. 67

Presented by Reading

Disposition: Identified ✓ Received ✓ Rejected

Reporter John Del Pino

Date 6-19-00

leaving the comparative criteria up to judges and parties to establish in each case.) The enclosed decision states that the parties will be able to probe the following comparative factors in discovery: other media ownership (or "diversification"); efficient use of frequency (basically, comparative coverage proposals); residence and civic activities in the community of license; prior broadcast experience; and past broadcast record. The judge's decision indicates that this ruling governs the scope of discovery, and he will ask the parties to submit additional briefing at the conclusion of the discovery phase, addressing whether these same factors should apply in the hearing. The judge has also ruled that the relevant renewal period for evaluation of RBI's claim to renewal expectancy will run from August 1, 1989 to August 1, 1994.

As I noted above, RBI's and ACC's counsel began taking depositions yesterday in Reading. According to the FCC trial attorney, depositions have been noticed for the following RBI principals: Micheal Parker, Jack Linton, George Mattmiller, Robert Clymer, Robert Denby, Daniel Bendetti, and Kimberly Bradley. The following ACC principals will be deposed: Wayne Sickinger, Manfred Steinfeld, Howard Gilbert, and Robert Haag.

At a procedural hearing last week, the judge ruled that the hearing will be postponed until the second week of December, but he has not yet issued an order setting forth the new schedule. The parties' costs and expenses, for which I am sure they will seek reimbursement in any settlement, will mount quickly during the current discovery and pre-trial phases. I would encourage you to move promptly to resolve any impediments that may remain to your putting forth a serious settlement offer. Delay will become expensive. Let me know if there is anything I can do to help you in formulating settlement ideas.

Sincerely,

M. Anne Swanson

MAS/vll

Enclosures
cc w/enc. by telecopy:
Cary M. Meadow, Esquire
cc w/o enc.: Kevin F. Reed, Esquire

FCC 99M-49

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

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

MEMORANDUM OPINION AND ORDER

Issued: September 2, 1999 ; Released: September 3, 1999

Background

1. This is a ruling on a Motion To Enlarge Issues that was filed by Adams Communications Corporation ("Adams") on July 15, 1999. An Opposition was filed by Reading Broadcasting, Inc. ("Reading") on August 11, 1999.[1] The Mass Media Bureau ("Bureau") filed Comments on August 11, 1999. Adams filed a Reply on August 23, 1999. Reading filed a Reply To Mass Media Bureau's Comments on August 23, 1999.

2. Adams seeks to add two issues against Reading: (1) an issue to determine whether Reading is disqualified in light of adjudicated misconduct of Micheal Parker ("Parker"), Reading's president, a director and substantial shareholder and; (2) an issue to determine whether Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to fully advise the Commission of the actual nature and scope of such previously adjudicated misconduct.

[1] A short extension to file on August 11, 1999 was granted for cause. See Order FCC 99M-43, released July 27, 1999.

Facts

Micheal L. Parker

3. Mr. Parker is key to the issues sought by Adams. In its Diversification Statement, Reading discloses that Parker owns 39% of Reading's voting stock and votes an additional 8.9% through an irrevocable proxy. Parker also is president, chief executive officer and one of Reading's five directors.

4. Parker owns and controls Two If By Sea Broadcasting Corporation ("TIBS"), a Delaware corporation that holds Parker-controlled broadcast interests. Reading's Diversification Statement further discloses:

> TIBS is licensee of International Broadcast Station KAIJ, Dallas, Texas, and is the proposed assignee of the licenses and assets of commercial television station WHCT, Hartford, Connecticut, from Martin W. Hoffman, Esq., trustee in Bankruptcy [file omitted]. On April 9, 1993, TIBS was granted a construction permit for a new FM translator station to operate on Channel 221, Upland California [file omitted]. As of August 16, 1999, TIBS is operating WHCT for the Trustee in Bankruptcy pursuant to a local marketing agreement which expires on or about June 1, 2000. TIBS has been operating WHCT pursuant to such an agreement since February 8, 1997.

Parker also owns and controls Desert 31 Television, Inc. which holds the permit for a commercial television station in Twentynine Palms, California.

Issue I

Adjudicated Misconduct

The following issue concerns past adjudications of Parker:

> To determine whether, in view of the previously adjudicated misconduct of Micheal L. Parker, the controlling shareholder and dominant principal of Reading Broadcasting, Inc. is qualified to remain a licensee.

Mt. Baker Broadcasting

5. In 1988, Parker was determined to be responsible for failing to timely construct and activate a broadcast station and in ultimately constructing a facility which varied substantially from the proposed engineering that had been approved. As a result, the Commission approved the Bureau's cancellation of the permit. See Mt. Baker Broadcasting Co., Inc., 3 F.C.C. Rcd 4777, 4778 (1988) (because of aggravating circumstances of Parker's deception the Commission cancelled the construction permit and rejected forfeiture as an adequate alternate sanction). The legal significance of the proceeding was to deny a request for an extension on an application for a construction permit. Id. at Paras. 2, 10. Adams does not cite to any other rulings or decisions of the Commission or the Bureau which comment on

Parker's conduct in Mt. Baker, which was not a formally litigated case.

Religious Broadcasting Network

6. Also in 1988, after a formal adjudication, Parker was determined by the Review Board to have been responsible as an undisclosed real party in interest for a loss of integration credit of one of the applicants. See Religious Broadcasting Network, et al., 3 F.C.C. Rcd 4085, 4090-91 (Review Bd. 1988). The Review Board concluded that in the process of not disclosing his interest in the applicant, Parker had perpetrated "a travesty and a hoax" and an "attempted fraud" on the Commission.[2] Id. However, the disposition of the case only was to deny the application (along with several others in an omnibus ruling) rather than dismiss the application because of disqualification. The case was ultimately settled and the Parker sponsored party received a significant payoff in return for a voluntary dismissal of the unqualified application. Religious Broadcasting Network, 5 F.C.C. Rcd 6362 (1990).

Assignment of Hartford License

7. In 1997, the Commission considered the adverse findings in Religious Broadcasting Network to be significant in denying Parker an assignment of the license for Station WHCT-TV, Hartford, Connecticut. See By Direction Letter dated January 30, 1997, Two If By Sea, et al., 12 F.C.C. Rcd 2254, 2257 (1997) (serious questions remain regarding assignee Parker, the trustee Hoffman who was alleged to hold only a bare license and Astroline Communications Co. ("Astroline"), the trustee's assignor which was accused of having misrepresented itself as a minonty-controlled entity). The Commission noted as to Parker/TIBS:

> Serious character questions also remain regarding the assignee, Parker/TIBS. For example, in one instance an administrative law judge disqualified an applicant in a comparative hearing for a new television station after finding Parker to be an undisclosed principal in that applicant. See Religious Broadcasting Network, 2 F.C.C. Rcd 6561, 6566-67 (I.D. 1987). The Review Board upheld the disqualification, characterizing the application as a "travesty

[2] The Review Board observed in an unrelated case that while it was not clear that a person named "Parker" was the same Micheal Parker (it was), the "modus operandi" was similar to Religious Broadcasting, supra. See Doylan Forney, 3 F.C.C. Rcd 6330, 6338, n.1 (Rev. Bd. 1988). The Review Board repeated language of "travesty" and "hoax." Id. But since Parker was not a party to the case and the Review Board was not making a relevant finding or reaching a related conclusion, those references to Parker in a Doylan Forney footnote are given no weight in this ruling.

and a hoax." 3 F.C.C. Rcd 4085, 4090 (Review Bd. 1998), and the applicant as a "transpicuous sham" which had "attempted fraud" upon the Commission. Id. at 4091.

Commission Letter, supra, 12 F.C.C. Rcd at 2257. But, on analysis, it appears that the assignment was denied because of the "numerous allegations against the parties involved in this assignment." Id. Therefore, there were issues in addition to but unrelated to Parker that resulted in the denial of the Hartford assignment.

8. On April 28, 1997, the Commission designated for hearing the renewal application of the trustee-in-bankruptcy who was attempting to assign the license of Station WHC-TV, Hartford Connecticut, to TIBS. In re Applications of Martin W. Hoffman Trustee-in-Bankruptcy for Astroline Communications Co., Limited Partnership, 12 F.C.C. Rcd 5224 (1997). Issues were set to determine whether Astroline had misrepresented facts to the Commission concerning its status as a minority-controlled entity. The designation order noted that Schurberg Broadcasting of Hartford ("Schurberg"), the party objecting to the Astroline license renewal, had alleged that TIBS also lacked the basic qualifications to hold a license. The Commission concluded in the Astroline HDO that in light of its action in setting the renewal hearing, "we need not address these allegations [against TIBS]." Id. Thereafter, there was no proceeding brought in which the Commission (or the Bureau By Direction) set an issue with respect to Parker's basic qualifications.

Assignment of Norwell License

9. The question of Parker's adjudicated conduct arose again one month later. By letter dated May 22, 1997, the Bureau consented to an assignment by Parker of the license for Station WHRC(TV) Norwell, Massachusetts. In that letter, the Bureau described the renewal hearing of Station WHCT-TV, Hartford, Connecticut. The Bureau also cited the By Direction Letter, supra., wherein "the Commission determined that there were substantial questions of material fact with respect to Parker's qualifications to be the licensee of the Hartford facility." But there was no hearing designated to determine Parker's basic qualifications because "the misconduct alleged in the Hartford proceeding does not appear to have involved the day-to-day operation of the Norwell station" and "neither the HDO nor the Commission's By Direction Letter limited the transferability of any stations commonly held by Parker." The Bureau concluded that "we do not find the outstanding matter relating to Mr. Parker is an impediment to a grant of the subject license assignment application." Id.

Issue II

Misrepresentation/Lack of Candor

The following issue alleges deceptive disclosures:

To determine whether Micheal L. Parker engaged in a pattern of misrepresenation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of

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such misrepresentation and/or lack of candor on RBI's [Reading's] qualifications to remain a licensee.

10. After the adverse findings in Religious Broadcasting Network and Mt. Baker, Parker was party to several unrelated applications for assignments. Adams alleges that there were intentional failures by Parker to fully disclose in the assignment applications the import of the aforementioned adverse cases and that those failures to fully disclose were an attempt to convince the Commission staff that Parker's qualification problems were insignificant. But while those same adverse adjudications were known to the Commission staff, Parker was found to be qualified to acquire stations in Reading, Pennsylvania (assigned in bankruptcy reorganization); Twentynine Palms, California; and Dallas, Texas. Therefore, when the adverse findings and conclusions were bought to the Commission's attention by Parker concerning the proposed assignment of Hartford Station WHCT-TV in late 1996 and early 1997, Parker argued that there should be no concern since the Commission earlier had found Parker qualified to participate in assignments. In each assignment, Parker utilized substantially the same exhibit to disclose his version to the Commission. That exhibit reported that there had been a denial of an application for an extension of time in the Mt. Baker case. The exhibit also reported that a person that Parker was consulting in the Religious Broadcasting Network case was not the real party in interest and that for the comparative analysis, Parker was deemed to be the real party. There was no disclosure of the fact that in Mt. Baker there had been a cancellation of a permit for failure to construct and that because of aggravating factors involving deception, a forfeiture in lieu of cancellation would not be accepted by the Commission. Nor was there a disclosure of the adverse findings of the Review Board in Religious Broadcasting Network that Parker had engaged in a "hoax" or "attempted fraud" on the Commission.

Discussion

11. This hearing was initiated by Hearing Designation Order DA 99-866, published in the Federal Register on June 15, 1999. See 64 FR 32046. The Commission's rule for adding post designation issues requires that in comparative renewal cases the request be filed within 30 days of the designation order's Federal Register publication. 47 C.F.R. §1.229(b). Adams Motion To Enlarge Issues was timely filed. The motion also must contain specific allegations of fact sufficient to support the adding of the issues.[3] Adams' motion has not met this standard as to both issues.

First Issue

12. The first requested issue would involve an adjudication of the basic qualifying effect of findings and conclusions against Parker in two prior proceedings, one of which (Religious Broadcasting) was heard before an Administrative Law Judge and further adjudicated by the Review Board, and the second (Mt. Baker) holding no hearing but concluding by Commission approval of a Bureau action

[3] The Rule requires that facts be established by affidavit based on personal knowledge. 47 C.F.R. §1.229(d). Adams did not submit affidavits. Since the issues depend on Commission documents on which Adams' arguments are based, there is no need for affidavits. The absence of any need for affidavits indicates that there is no direct evidence known to Adams of an intent to deceive. Therefore, such intent would need to be inferred solely from the lack of detail in the filed documents.

denying an extension of time and cancelling a permit. Both proceedings were concluded in 1986. As a general rule, the Commission applies a time limitation on adding character issues based on ten-year old information that is within the Commission's control and that should have been discovered, even where the alleged misconduct indicates a "flagrant disregard of the Commission's regulations and policies." See Character Qualifications, 102 F.C.C. 2d 1179, 1229 (1986). The Commission is concerned about the "inherent inequity" and "practical difficulties" involved in responding to old facts. See Kay-Smith Enterprises, 71 F.C.C. 2d 1402, 1406-1407 (1979) (to require response to allegations of events occurring years ago, movant must provide both factual support and some rationale to support conclusion that old violation currently raises a substantial and material question of fact bearing on license renewal).

13. As evidenced by the Bureau's letter dated May 22, 1997, authorizing the Parker assignment of the Norwell license, the adverse findings in Religious Broadcasting Network and Mt. Baker which do indicate a disregard of Commission regulations and policies in connection with those cases, were known to the Bureau before the Bureau's issuance of the designation order in this case. There has been no suggestion in the Bureau's Comment pleading of any unawareness of the questions of record of Parker's past conduct that have been addressed by the Commission in the Hartford and the Norwell assignments. The fact of such predesignation knowledge at the Bureau's highest levels is established by the commentary in the By Direction Letter, supra which refers to "serious character questions" concerning Parker that could not be resolved without a hearing. But there was no statement or inference in either the By Direction Letter or the Norwell Letter that there would be or should be a hearing on those serious questions at the next available opportunity. The next opportunity to address those serious "character questions" occurred in designating Reading's license renewal for hearing in this proceeding. But the issues were never set in the Reading HDO.

14. In light of the Bureau acknowledgements in 1997 of the serious findings that had been made against Parker, the absence of any discussion in the Reading designation order would suggest that the Bureau specifically decided not to set the issues for formal adjudication. In fact, the Reading HDO concludes in part that "[both of] the applicants appear qualified to construct and/or operate as proposed." There was no suggestion in the designation order that the Presiding Judge should or might consider adding issues relating to those "serious questions." Cf. Atlantic Broadcasting, 5 F.C.C. 2d 717 (1965); Ft. Collins Telecasters, 103 F.C.C. 2d 978 (Review Bd. 1986); Frank H. Yemm, 39 Radio Reg. 2d 1657 (1977) (there is no authority for a presiding judge to add issues on matters that have been considered by the Commission or a delegated Bureau). Because of the lack of any specific discussion in the designation order, the Presiding Judge believes that he is not precluded from adding the issue. Id. However, the absence of the issue in the HDO is taken seriously. The Norwell letter reasonably leads to a conclusion that the Bureau made a decision not to set the Religious Broadcasting or Mt. Baker adverse conclusions for formal adjudication. That decision would be consistent with the Commission policy against setting issues that do not effect the operation of the station in issue. Cf. Straus Communications, Inc., 64 Radio Reg. 2d 556-557 (1987) (assignments of station licenses will be made even where character qualifications of common owner are being adjudicated in other unrelated proceeding). See also Character Qualifications, 102 F.C.C. 2d at 1223-24 (conduct at one station not necessarily predictive of other station operations unless conduct is fundamental to a licensee's holding a station license). Therefore, it is concluded that the adjudicated conduct of Parker was not considered by the Commission or the Bureau to have been sufficiently egregious to warrant holding up license assignments in order to formally adjudicate the questions within the ten year limitation. Similarly, the matters were not considered by the Bureau to be sufficiently egregious to set the qualifying issue in the Reading HDO or, alternatively, the Bureau considered the issue to be now blocked by the ten year limitation.

15. In a related concern, Reading represents through verified statements that the Commission's files of the Mt. Baker and Religious Broadcasting proceedings have either been destroyed or archived which would present obstacles to further adjudication. While no doubt counsel would be diligent in recreating files, it can reasonably be anticipated that there would be issues to be litigated of authenticity and evidentiary completeness that would cause additional delay and haunt the case through the appeal process.[4] It is concluded that there has not been a sufficient showing to warrant an exception to the Commission's ten year limitation, particularly in light of the apparent incompleteness of Commission file records of the adverse Parker adjudications. The Presiding Judge has discretion to control the scope of the litigation. Martin Broadcasting of Central Florida, Inc., 2 F.C.C. Rcd 2025 (Review Bd. 1987) (wide latitude of presiding judges recognized to deal with exigencies of hearings). Here, due to the passage of time, sound and serious reasons have been presented by the Bureau and Reading for not adding the first issue.

Second Issue

16. The second issue involves disclosures in various assignment applications in which Parker was a principal and where disclosures concerning the two cases, Religious Broadcasting Network and Mt. Baker, were material and relevant to obtaining Commission approval for the transactions. There are no allegations and no showing is made that Parker failed to disclose that in fact he was involved in those proceedings or that he lost on the ultimate issues that were adjudicated or determined. Adams contends that the disclosures of fact were deliberately narrow and vague and therefore materially misleading. Adams also contends that in furtherance of keeping relevant information from being reviewed, the decisions were cited to the Commission staff using only the Commission's reference numbering system instead of citing the published decisions in the FCC Record or the FCC Reports.

[4] The use of official notice would be questionable, particularly in the litigation of the first issue because of the reported incompleteness of related official files. See Reading Opposition at Exh. F. Official notice can be used to dispense with conventional proof only when the document is in the agency's file. See Newton Television, Ltd., 4 F.C.C. Rcd 2561 (1989).

17. While an applicant must be "fully forthcoming as to all facts and information relevant," the Commission will not find a party to be disqualified by omissions due solely to negligence or oversight. Swan Creek Communications, Inc. v. F.C.C., 670 F.2d 1217, 1222 (D.C. Cir. 1994). Rather, substantial evidence of an intent to deceive is the sine qua non of a misrepresentation or lack of candor finding. Id. An issue may be added on intentional misrepresentation or lack of candor only where the "totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." Citizens for Jazz on WRVR, Inc. v. F.C.C., 775 F.2d 392, 395 (D.C. Cir. 1985). The second issue is sought based on allegations that Parker did not go far enough in describing the contents of adjudicatory documents that were known to the Bureau staff to exist at a time when Parker was seeking a license or a transfer of a license to another party. In considering the disclosures that are cited by Adams in supporting exhibits as alleged misrepresentations or disclosures lacking in candor, it does not appear that the standards are met for adding the second issue.

18. In all instances of alleged misrepresentation or lack of candor cited by Adams, there were references to Commission documents which were not falsified or denied by Parker. Rather, the documents were described by him with an apparent incompleteness which Adams argues amounted to misrepresentation or lack of candor. No party is contesting the fact that the documents were sufficiently identified to have been timely located and considered by the Bureau before any licenses were transferred. Thus, in a significant document submitted as Adams' Attachment B, Reading is shown to have submitted a narrative description of Parker's Commission actions in connection with Reading's bankruptcy reorganization.[5] Reading truthfully disclosed that Parker had been denied an application to modify a construction permit for Station KPRR-TV in Hawaii; that an application for a new TV station at Sacramento, California was dismissed with prejudice at the request of Parker; that there had been a denial of a request for an extension of time in Mt. Baker; and that the application that Parker had sponsored in Religious Broadcasting Network was denied because Parker was declared the real party in interest. None of those representations are shown to be affirmatively false.[6]

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[5] See Memorandum Opinion and Order, FCC 99M-47, released August 9, 1999.

[6] Adams submitted in its Attachment C an application as assignee for consent to assignment for Station KCBI, Dallas, Texas which enumerated in abbreviated descriptive language the status of seven consent assignment requests: Commission granted involuntary assignment of Station WHRC(TV), Norwell, MA to court appointed receiver; Parker has application pending for transfer of control of Station KVMD(TV) at Twentynine Palms; TIBS has pending application for translator or FM booster station on Channel 201 at Upland, CA; Parker has application for consent to assign license of Station KZIA(TV), Las Cruces, New Mexico; Parker has application pending for new low power TV Station at Los Angeles, CA; Parker has an application pending for new low power TV Station in San Francisco, CA; Parker has an application pending for construction permit modification of Station KPRR-TV, Honolulu, Hawaii, which application was dismissed with prejudice at the request of Parker; Parker has application pending for new commercial TV Station in Sacramento, CA which was dismissed with prejudice at Parker's request. In addition to those actions, Reading made what became standard disclosure about Mt. Baker (denied extension)and Religious Broadcasting Network (Parker held to be real party in interest and case settled with Parker receiving no interest in the station). The same or similar disclosures were shown in Adams Attachments D and E. In all instances of these filings, there were only references to Commission file numbers. There were no citations provided for locating the documents in FCC Record, FCC Reports, or even in the unofficial Pike & Fisher Radio Regulation.

Effect Of Settlement

19. Ultimately, the Religious Broadcasting case was terminated by a settlement that was accepted by the Review Board in which Parker and his group received a payoff in the amount of $850,000 in exchange for Parker voluntarily dismissing the application. Religious Broadcasting Network, et al., 5 F.C.C. Rcd 6362, 6363 (Review Bd. 1990). The effect of that settlement was to render moot all of the adverse conclusions reached by the Review Board and by the Administrative Law Judge with respect to Parker and the dismissed applicant. However, the litigated findings of the Administrative Law Judge in the I.D. would be retained for possible use in another proceeding involving Parker. A.S.D. Answer Service, et al., 1 F.C.C. Rcd 763 (1986), recon. denied, 3 F.C.C. Rcd 4213 (1988). See also Velo Broadcasting, et al., Order FCC 88I-132, August 31, 1988 at n. 2 (by approving a settlement agreement the question of basic qualifications of one of the settling parties need not be resolved and adverse conclusions regarding qualifications may be vacated while underlying findings are preserved which may be relevant to future proceeding). The adverse conclusions in Religious Broadcasting Network became moot after the settlement. And after the passage of ten years, under the Commission policy set in Character Qualifications, supra, the preserved findings in Religious Broadcasting Network are no longer deemed relevant or reliable for determining the basic qualifications of Parker in this proceeding.

Failure To Give Citations

20. The Commission rules require that Commission documents must be cited in accordance with the FCC Record or the FCC Reports, depending on the age of the document. See 47 C.F.R. §1.14. Adams contends that it was an act of deception for Reading to have cited only to Commission file numbers and not to cite readily accessible sources such as the FCC Record or FCC Reports, depending on the date of the document. Adams argues that without the prescribed official FCC citations it is considerably more difficult to locate a particular decision with the result that the Commission staff was so discouraged from tracking down the decisional documents that were referred to in Parker's filings that there was no realization of the serious adverse conclusions against Parker. While recognizing that the task to locate decisions without being provided official citations would be slightly more difficult, it is speculative to conclude that the reviewing staff would be discouraged from researching and finding the documents that were material to the important matters under consideration.[7] It is equally reasonable to infer in light of the detail given to the Hartford and Norwell letters, supra, that the Bureau staff were aware of the serious adverse findings. Only "concealment of information, evasion of FCC requirements or other deliberate failures to produce information can result in disqualification for lack of candor." Garden State Broadcasting v. F.C.C., 996 F. 2d 386, 393 (D.C. Cir. 1993) (emphasis in original), citing with approval RKO Gen. Inc., 4 F.C.C. Rcd 4072, 4073 (1989). And the

[7] If it was considered too great an imposition, the filings could have been returned to Parker's counsel with instructions to follow Rule 1.14.

Commission will not permit issues to be added which are based on speculation. See Folkways Broadcasting Co., Inc., 33 F.C.C. 2d 806, 811 (Review Bd. 1972); and West Central Ohio Broadcasters, Inc., 1 F.C.C. 2d 1178 (Review Bd. 1965).

Conclusion

21. The Commission will not make adverse findings on misrepresentation or candor simply because there is a failure to provide sufficient information. There must be an accompanying intent to deceive. Fox River Broadcasting, Inc., 93 F.C.C. 2d 127 (1983). See also Garret, Andrews & Letizia, Inc., 86 F.C.C. 2d 1172 (Review Bd. 1981) (no exception or improper motive inferred from series of errors, omissions and inconsistencies). Ultimate negative events were disclosed in the assignment applications and, as revealed in the 1997 Norwell assignment letter, the Bureau was aware of prior misconduct. The Bureau also was in a position to get further information from the agency's files and/or from the parties to any of the assignment transactions. The disclosures of Parker having been found to be an undisclosed real party-in-interest would alone be sufficient to raise a serious question about his basic qualifications. The Bureau contends that a lack of candor may occur through a concealment, evasion or "some other failure to be fully informative" provided there is an accompanying intent to deceive. Joseph Bahr, 10 F.C.C. Rcd 32, 33 (Review Bd. 1994). An argument was made in Bahr similar to the one here that an applicant was not "fully forthcoming" about interests held by family members. The Review Board found the argument to be speculative. There must be something more found in the record other than a speculation that there might have been some deception. Id. In this case, in view of Parker's basically accurate disclosures and the Bureau's actual knowledge in 1997 of prior adverse conclusions on Parker's character, there was no reasonable ability for Parker or Reading to deceive the Bureau.

Order

22. Accordingly, for the reasons stated above, IT IS ORDERED that the Motion To Enlarge Issues filed by Adams Broadcasting Corporation on July 15, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FCC 99M-47

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

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

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MEMORANDUM OPINION AND ORDER

Issued: August 6, 1999 ; Released: August 9, 1999

1. This renewal case was set for hearing under the post Bechtel II comparative criteria.[1] Hearing Designation Order (DA 99-865), 14 FCC Rcd 7176, released May 6, 1999 ("HDO").

2. Briefs were required concerning (1) the Commission's post Bechtel II comparative criteria and (2) the relevant renewal expectancy time period. Order FCC 99M-42, released July 15, 1999. Accordingly, on July 23, 1999, the parties submitted the following: Reading Broadcasting, Inc. ("Reading") filed its Prehearing Brief On Scope Of Issues and Adams Communications Corporation ("Adams") filed its Preliminary Motion Of Adams Communications Corporation. On July 29, 1999, Reading and Adams filed respective Reply Briefs and the Mass Media Bureau ("Bureau") filed Comments. Id.

I

STANDARD COMPARATIVE CRITERIA

3. The applicable comparative criteria are determined by the holdings in Bechtel II.[2] The Commission addressed post Bechtel II comparative renewal criteria in its Reexamination of the Policy Statement on Comparative Broadcast Hearings, First Report and Order, 13 FCC Rcd 15920, 16004-

[1] Bechtel v. F.C.C., 10 F. 3d 875 (D.C. Cir. 1993) (comparative criterion of integration of ownership and management declared arbitrary and capricious).

[2] The holding in Bechtel II did not specifically invalidate any of the standard comparative "enhancement factors". Only the preference awarded for integration of ownership into management was declared arbitrary and capricious.

16006 (1998) ("First Report and Order"). The Commission's approach "would be simply to permit the renewal applicants and their challengers, within the confines of the generally phrased standard comparative issue, to present the factors and evidence they believe most appropriate." Id. at 16006. Implicit in that Commission ruling is the recognition that there are comparative criteria surviving after Bechtel II. The Court had left it for the Commission to adopt comparative standards that might include the "enhancements" of local residence, civic involvement, broadcast experience as stand alone comparative factors. But in light of the dearth of cases that would be effected, the Commission decided not to adopt any new comparative factors. Id.

4. All parties concur that the applicants are authorized to present proof on diversification of media ownership and efficient use of frequency (comparative signal coverage). Reading would also offer evidence on the enhancements. While not objecting to Reading's position with respect to enhancements, the Bureau contends that "Bechtel's disavowal of the integration criterion necessarily renders questionable reliance on local residence and civic involvement as relevant factors." Bureau Comments at 4. In its initial Brief, Adams opposed enhancements because they are predicated on the rejected standard of integration of ownership and management. But in its Reply Brief, Adams reversed its field and conceded that after seeing Reading's arguments, Adams now agrees that Reading should be allowed to present evidence on the enhancements.

Enhancements As Stand Alone Factors

5. Adams initially contended that since local residence, broadcast experience and civic involvement are traditionally treated as integration enhancements, those factors are now irrelevant after Bechtel II. Adams now is supporting the introduction of such evidence because it is verifiable and would be useful in determining through actual practice the likelihood of implementing programming that is in the public interest. See Adams Reply Brief at 3-4.

6. Reading and ultimately Adams have acknowledged that local residence, civic involvement and broadcast experience are objective criteria that describe past and present qualifications of an applicant. These factors are not used to predict the future and it was only the futurity of integration that was found to be unreliable by the Bechtel II Court. The Court did not reject the objective enhancements as arbitrary and actually treated them favorably as objective criteria. See Bechtel II, 10 F. 3d at 881-882. The Court recognized the fact that "familiarity with a community seems much more likely than station visits or correspondence to make one aware of community needs." Bechtel II at 885. Reading's position, concurred in by Adams, was summed up, without objection, by the Bureau as follows:

> Moreover, according to RBI [Reading], all three factors tend to foster an awareness of community needs and/or place an owner in a position to better serve community needs. RBI also contends none of the enhancement factors are "predictive in nature" but are verifiable.

See Bureau Comments at 2, Reading Brief at 4-6, and Adams Reply at 3-4. In its Comments the Bureau stated that it believes that the holding of Bechtel II "renders questionable" reliance on the enhancement factors in this case. See Bureau Comments at 4.[3]

7. Finally, it is significant that the Bechtel II Court referred to a 1947 Commission decision which illustrates that prior to the 1965 Policy Statement, the Commission had credited local residence and broadcast experience before there was any policy linkage to integration. In re Homer Rodeheaver, et al., 12 F.C.C. 301, 308 (1947). The Policy Statement also cites the pre-1965 case of Johnston Broadcasting Co. v. F.C.C., USCA DC, May 4, 1949 (Commission must take into account all the characteristics of competing applicants which indicate differences and reach an overall relative determination upon an evaluation of all factors). Policy Statement at 401. Thus, there is pre-Policy Statement precedent for considering enhancements sans integration as stand alone comparative factors in a post Bechtel II comparative hearing and the "questionable" aspects of Bechtel II seem sufficiently satisfied to permit discovery of evidence on the "enhancement" factors.

Broadcast Experience And Past Record

8. The Bureau asserts that both broadcast experience and past broadcast record demonstrate performance in broadcasting that can be relevant to determining whether an applicant will serve the public interest, with past broadcast record serving as the better indicator. See Bureau Comments at 3.[4] The Bureau suggests that evidence of past broadcast experience should only be received as to Adams' principals. The reason for limiting such evidence to Adams would be the recognition that evidence of Reading's immediate past record will be presented on the issue of Reading's entitlement to a renewal expectancy. But both applicants must be treated equally on evidence sought to be introduced no matter what ultimately might be the weight accorded. Cf. Melody Music, Inc. v. F.C.C., 345 F2d 730 (D.C. Cir. 1966).

9. The Commission's Policy Statement on Comparative Broadcast Hearings ("Policy Statement"), 1 F.C.C. 2d 393 (1965) makes the distinction between the two: Broadcasting experience includes activities which would not qualify for past broadcast record. Past broadcast record must be shown to be particularly poor or particularly good in order to qualify for a significant demerit or merit. Policy Statement at 396. To receive credit, the record must show "unusual attention to the public's needs and interest such as special sensitivity to an area's changing needs through flexibility of local programs designed to meet those needs." For a demerit, there must be a "failure to carry out

[3] It is noted that the Bureau did not have the benefit of Reply Briefs when it filed Comments.

[4] The Bureau analogizes to the focus on character to determine the likelihood for future truthfulness in dealings with the Commission. Cf. Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C. 2d 1179, 1183 (1986). The Bureau's rationale is accepted that with respect to broadcasting, a focused past broadcast record is a stronger predictor than is a general review of broadcast experience.

representations made to the Commission." Policy Statement at 398. Any specialized programming issue, including past broadcast record that is not related to renewal expectancy, must be sought by a particular showing such as Reading's Motion To Enlarge Issues filed on July 15, 1999.[5]

II

RENEWAL EXPECTANCY

10. Reading will have the burden of proceeding and the burden of proof on its entitlement to a renewal expectancy. 47 U.S.C.A. §309(e). There is no denial in the pleadings that the license term is August 1, 1989, to August 1, 1994. But the applicant parties have not agreed on the applicable dates for the renewal period in which to measure Reading's non-commercial broadcast record. Reading seeks a period from March 12, 1992, to August 1, 1994, and Adams seeks a period from August 1, 1989, to August 1, 1994.

11. In 1986, Reading was put into Chapter 11 bankruptcy by creditors. On April 29, 1988, the Commission granted Reading's application for involuntary transfer of control to Reading as debtor-in-possession. In that connection, Reading disclosed to the Commission that it remained in control and in possession of its business throughout the reorganization:

> The change in the status of Reading to that of a debtor-in-possession resulted in no change in the ownership or control of Reading.

See Adams Brief, Appendix B, Exh. 2.

12. In an application for transfer of control dated November 12, 1991, Reading Broadcasting, Inc., as debtor-in-possession and in the course of removal from Chapter 11, requested a transfer of control to Reading Broadcasting, Inc. Disclosure was made of other broadcast interests inasmuch as Reading's president, Michael Parker, was identified as a 10% stockholder of Reading holding other media interests. See Adams Brief, Appendix B, Exh. 3. The application was signed by Parker as president of both the transferor and the transferee which is persuasive proof that Parker was and is continuing as Reading's chief operating officer.

13. Reading contends that due to its condition as bankrupt under court supervision, the renewal term should begin on March 12, 1992, the date on which Reading emerged from Chapter 11. Reading relies on the principal that when there is a transfer of ownership during a license period, the station under new ownership is assessed for entitlement to renewal expectancy from the date of transfer to the end of the term. Fox Television Stations, Inc., 7 FCC Rcd 3801, Para. 15, (Admin. L. J.

[5] On July 23, 1999, Reading filed a Motion To Enlarge Issues to determine whether its station's Spanish-language television programming merits a comparative preference. That question will be addressed in a ruling after completion of the prescribed pleading cycle as effected by any extension of time. 47 C.F.R. §1.294(c). See Order FCC 99M-46, released August 6, 1999.

1992) (date of sale of Station KTTV set the start of renewal period). Cf. Scripps Howard Broadcasting Company, 10 FCC Rcd 5461. Para 6, (Admin.-L. J. 1995) (four month renewal term resulting from new ownership by sale of Station WMAR-TV). Those were clear cut cases involving new ownership and transfer of control with no carryover of prior management. In this situation, while there was a "transfer" from Reading as debtor-in-possession to Reading Broadcasting, Inc., there was no showing by Reading of an actual change of control to a degree that would justify a shortened renewal period.

Management Services Agreement

14. In March 1990, while Reading was still in Chapter 11, the bankruptcy court authorized a pre-existing Management Services Agreement ("MSA") that since June 1989, had existed between Reading and Partel, Inc. ("Partel"), a company that is owned and operated by Reading's president, Michael Parker ("Parker"). See Adams Brief at Appendix D. Under the MSA, Partel provides "managerial, operational, consulting, and other services as Reading may reasonably consider necessary in order to manage and operate the Station." The MSA provides that "Reading shall elect Parker as Executive Vice-President and Chief Operating Officer of Reading with full authority necessary to conduct the day-to-day operations of the Station." The MSA also provides for Partel to receive 25% of the voting stock of Reading when the company would come out of bankruptcy. Id. Parker was Chief Operating Officer and a director of Reading before the transfer in 1991, and Parker remained the Chief Operating Officer and a director after the transfer in December 1991. Parker presently holds those positions at Reading. Incident to the reorganization, Partel, the managing consultant that is owned by Parker, received almost 30% of Reading's voting stock. Parker, through Partel and as Reading's president, continues to operate the day to day broadcast business of Reading.

15. Reading had first considered using a short form to complete the transfer out of bankruptcy. On August 14, 1991, Reading filed a Form 316 requesting transfer of control to Reading which was granted on August 27, 1991. The short form transfer was not consummated due to a court garnishment of a 14% stock position held by a director that occurred on July 31, 1991. The garnished stock was to be distributed to four new stockholders. It appears that the decision to use the long form was prompted by the situation arising with the four new shareholders because prior to that event, the Commission had received and approved a short form transfer by letter dated November 13, 1991. See Adams Brief at Appendix B, Exh. 5. There is no argument advanced that use of the long form alone would be dispositive of the question of a shortened renewal term.

16. Reading represents that there was "greater than 50% change in ownership" which required the use of the long form. But there is no showing or argument made by Reading that there were different principals or personalities gaining control over programming decisions. Reading only represented to the Commission that a difference in stock ownership of the transferee vis a vis the Reading corporation prior to bankruptcy justified use of the long form. There was no mention by Reading of a transfer of actual control to entirely different officers or directors. Rather, Reading argues for a shortened period primarily on the equitable ground that "[d]ue to the station's financial limitations while in Chapter 11, this [full license] period cannot be deemed a reliable indicator of future performance." After reviewing the respective positions of the applicant parties, on a "close call", the Bureau sides with Reading's position. The Bureau argues, as does Reading, that however valid may

be the arguments of continuing control by Parker and Partel, until Reading as debtor-in-possession was discharged from bankruptcy, "[Reading] was constrained to heed the directives of the bankruptcy court." See Bureau Comments at 5. But that position does not answer the question of decisions being made by Parker, Partel and Reading during the prescribed renewal period [6] regarding programming that would meet the community's needs.[7] The bankruptcy court would be concerned with overseeing expenditures, not programming. To the extent that Reading may have been restricted on expenditures for programming, a circumstance to be established and not assumed, such evidence may be introduced by Reading and it will be fully considered by the Presiding Judge as qualifying or mitigating factors. Reading also may argue in proposed findings and conclusions that the evidence of record, including the testimony of Reading's principals, shows a shorter renewal period.

III

ORDER

IT IS ORDERED that the applicant parties ARE AUTHORIZED to present evidence that they deem appropriate with respect to proof of diversification of media outlet, efficient use of frequency (comparative signal coverage) and the "enhancement" factors (local residence, civic involvement, broadcast experience).[8]

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[6] The previous license term expired on August 1, 1989, and the license term under consideration here began on that date. Approval of the prior renewal application had been deferred until Reading's reorganization was complete. As a result, renewal for the prior period was not granted until February 10, 1992. However, that date does not control the prescribed license period starting on August 1, 1989.

[7] Parker and Partel did not have authority to make "final programming decisions" under the MSA. See Adams Brief at Appendix D, p. 3 ([e]xcluding final programming decisions, the Company [Partel] shall have the full authority necessary to conduct the day-to-day operations of the Station). But Parker was an officer and director of Reading with comprehensive day-to-day authority. He would have made significant input into program discussions and decisions.

[8] This is a preliminary ruling on the scope of the comparative factors (which were specified by the applicant parties) on which the parties may obtain discovery and seek to introduce evidence. No party is being required to state a position at this time on what is a definitively valid comparative standard for deciding this case if the renewal expectancy is not dispositive. See position stated in Reading's Brief at 3. The parties' ultimate legal positions on comparative criteria will be submitted in trial briefs after discovery and exchange of cases. If there is any proof sought to be offered at the hearing on any comparative factor(s) other than those specified in the trial briefs, there will need to be a strong showing of excusable inadvertence or surprise and an equally strong showing of need for the evidence. There also will need to be sufficient advance notice given so as not to cause any significant delay.

IT IS FURTHER ORDERED that the applicant parties are authorized to seek leave to introduce evidence of past broadcast record.[9]

IT IS FURTHER ORDERED that the relevant renewal period for proof of a renewal expectancy for Reading is coextensive with the applicable five year license period, **August 1, 1989 to August 1, 1994**.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel

Richard L. Sippel
Administrative Law Judge

[9] At the time that the HDO was released in this case, the parties were unsure of the scope of post Bechtel II comparative factors. Therefore, there will be a reasonable time allowance for the applicant parties to make a threshold showing and to seek leave to present evidence of past broadcast record of its principals. Motions should be filed by **September 3, 1999**.

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