

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BPCT-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)	

**INITIAL DECISION
OF
ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL**

Adopted: April 2, 2001

Released: April 5, 2001

APPEARANCES

Thomas J. Hutton, Esquire and *C. Dennis Southard, IV, Esquire* on behalf of Reading Broadcasting, Inc.; *Gene Bechtel, Esquire* and *Harry F. Cole, Esquire* on behalf of Adams Communications Corporation; and *James W. Shook, Esquire* on behalf of Enforcement Bureau.

INTRODUCTION

1. Reading Broadcasting, Inc. ("RBI") seeks renewal of its license to operate Station WTVE(TV), Channel 51, in Reading, Pennsylvania. Adams Communications Corporation ("Adams") has filed a mutually exclusive application for a construction permit for a new facility to operate on the same channel presently occupied by WTVE(TV). The Enforcement Bureau ("Bureau") participated as a party in all phases of the case.

2. The proceeding was designated for hearing by Mass Media Bureau Order released on May 6, 1999. Hearing Designation Order, DA 99-865 (Vid. Ser. Div., released May 6, 1999) ("HDO").

3. Assignment for the undersigned to hear this case as Presiding Judge was pursuant to Order FCC 99M-32, released May 14, 1999.

ISSUES

Phase I

4. The standard comparative renewal issue designated in the HDO, as further explicated in Memorandum Opinion and Order FCC 99M-47, supra, was heard in Phase I. The issue was:

To determine which of the proposals would, on a comparative basis, better serve the public interest; and

To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

Phase II

5. By Memorandum Opinion and Order released on October 15, 1999, a Phase II issue was added as to Reading's basic qualifications:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation 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 such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Memorandum Opinion and Order FCC 99M-61, released October 15, 1999.

Phase III

6. By Memorandum Opinion and Order released on January 20, 2000, a Phase III issues was added as to Adams' basic qualifications:

To determine whether Adams Communications Corporation has abused the Commission's comparative renewal processes by the filing of a broadcast application for speculative and/or other improper purposes.

Memorandum Opinion and Order FCC 00M-07, released January 20, 2000.

For further clarification, Phase III issues were restated for the hearing as follows:

- A. To determine whether the principals of Adams Communications Corporation ("Adams") filed, or caused to be filed, an application for construction permit in the hope or expectation of achieving through litigation and settlement, a "precedent" or other recognition that the home shopping television broadcasting format does not serve the public interest.
- B. To determine in light of findings and conclusions as to issue A above, whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television broadcasting station at Reading, Pennsylvania.
- C. To determine in light of findings and conclusions as to issues A and B above, whether Adams Communications Corporation has engaged and/or is engaging in an abuse of process, i.e., an abuse of the Commission's comparative renewal litigation and settlement process.
- D. If issues A and/or B and/or C are true, to determine whether Adams Communications Corporation is qualified to receive a Commission license, even if Adams would be willing to accept a settlement payment that is limited to legitimate and prudent expenses in return for dismissing its application.

Memorandum Opinion and Order FCC 00M-19, released March 6, 2000, modifying Memorandum Opinion and Order FCC 00M-07, released January 20, 2000. The ultimate issue of fact and law is whether Adams filed for the purpose of settlement.

Hearing Sessions

7. Hearing sessions on the Phase I standard and renewal comparative issues were held on January 6, 7, 10-13, 2000. Hearing sessions on the qualifying issues in Phase II and Phase III were held on June 12-13, 2000 and July 25, 2000.

FINDINGS OF FACT

Phase I

Comparative Renewal Issue

8. Factors to be adjudicated under the standard comparative issue are (a) diversification of media ownership; (b) efficient use of the assigned frequency or the comparative signal coverage; and (c) local residence and related civic involvement of ownership and any broadcast experience. Memorandum Opinion and Order FCC 99M-47, released August 9, 1999. It also must be determined whether RBI qualifies for a renewal preference. Id.

Renewal Period

9. The relevant renewal period was determined to be August 1, 1989, to August 1, 1994. Memorandum Opinion and Order FCC 99M-47, released August 9, 1999.¹ At the beginning of the renewal period, RBI was in bankruptcy and held the license for Station WTVE(TV) as a debtor-in-possession. (RBI Exhs. 5 and 11.)

Diversification

10. The preponderance of the evidence shows that Adams is the more diversified of the two applicants.

Adams

11. Adams is a Massachusetts for profit corporation that neither holds nor plans to hold any interest in any medium of mass communications other than the license to operate a new TV station on Channel 51 in Reading, PA. (Adams Exh. 1.) There is no dispute as to this fact, except for RBI's contention that Adams filed for settlement, a purpose other than owning a station and broadcasting on Channel 51.

¹ Once a competing application is filed, the renewal applicant cannot upgrade its programming to meet the challenge. RBI's application was filed on April 7, 1994, and Adams filed its competing application on June 30, 1994. This leaves only the month of July as a possible opportunity to upgrade. But Adams contends that RBI had no meritorious programming in the month of July. Therefore, Adams could not be prejudiced by the inclusion of that one month. The renewal period begins and ends on the same dates as the expiration date of a license term and conforms with the standards for adjudicating renewal preferences. Memorandum Opinion and Order FCC 99M-47, at 4-6, n.6. Relevance was measured by the renewal dates.

12. Adams has eleven principals, none of whom resides or has a business or investment interest in Pennsylvania. Its officers and directors are Robert L. Haag, president and director; Howard N. Gilbert, vice president, secretary and director; Wayne J. Fickinger, vice president, treasurer and director; Manfred Steinfeld, director; and A. R. Umans, vice president and director. (Adams Exh. 1.)

13. Mr. Umans, an 8.7% shareholder of Adams, holds a 4.04% interest in JMP Media, L.L.C., licensee of Stations WPBG – FM and WMBD, Peoria, Illinois. Mr. Umans has committed to divest that media interest at or before commencement of broadcast operations by Adams on Channel 51. (Adams Exh. 1.)

RBI

14. RBI is the current licensee of Station WTVE(TV), a UHF television facility that is located on the fringe of the Philadelphia television market, broadcasting on Channel 51. RBI holds auxiliary radio authorizations in connection with the operation of the Station. (RBI Exh. 4.) RBI also holds an authorization to operate paging and radiotelephone service on a subcarrier of Channel 51. (Id.)

15. RBI has thirty five shareholders. (RBI Exh. 2.) RBI's officers and directors are Micheal L. Parker, president, director and shareholder; Jack A. Linton, director and shareholder; and Frank D. McCracken, executive vice president, director and shareholder. (RBI Exh. 3.)

16. None of RBI's officers, directors or shareholders has any interest in a broadcast or radio common carrier license or applications, or newspaper, magazine, periodical, cable television system, or other media of mass communications, with the exception of Mr. Parker.

17. Mr. Parker's other media interests consist of his ownership of multiple broadcast outlets that include Two If By Sea Broadcasting Corporation ("TIBS"), licensee of International Broadcast Station KAIJ, Dallas, TX; translator station on Channel 221 at Upland, CA; Desert 31 Television, Inc., licensee of Station KVMD(TV) at Twenty Nine Palms, CA, and the one-time intended assignee of and time-brokerage operator of Station WHCT(TV), at Hartford, CN.² (Id.), Mr. Parker has made no pledge to divest these other broadcast interests.

² After the record was closed, a "white knight" was awarded the license to the Hartford Station by assignment incident to a settlement under which TIBS is to receive approximately \$7 million. See Martin W. Hoffman, Trustee in Bankruptcy, et al., MM Docket No. 97-128, Memorandum Opinion and Order FCC 00-387, released November 8, 2000. (Official Notice.) That settlement is being challenged.

Comparative Coverage

18. Station WTVE(TV) operates on Channel 51 with an effective radiated power of 1450 kilowatts from an antenna height above average terrain of 229 meters. The predicted Grade B contour of WTVE's signal covers a land area of 14,128 square kilometers with a population of 3,119,889 persons. (RBI Exh. 48, Jt. Engineering.) The Station has received a construction permit to move its site which would permit an increase in its power to 5,000 kilowatts, increase antenna height to 229 meters above average terrain, and increase population coverage to 21,602 square kilometers serving 7,362,938 people. (Id.) However, RBI has shown no reasonable assurance of moving to the new site.

19. Adams proposes to operate under a construction permit that allows for an effective radiated power of 5,000 kilowatts and an antenna height of 153 meters above average terrain. Adams' predicted Grade B contour for its proposed signal would cover a land area of 14,942 square kilometers with a population of 4,260,920 persons. (Id.)

20. There are six other authorized broadcast TV services within the Grade B contours of WTVE(TV)'s current and proposed operations. The same finding applies to Adams. (Id. at 4-5.) The areas and populations contained in each of these two Grade B service areas are neither unserved nor underserved inasmuch as all of the areas and populations to be served by whoever wins already receive more than five services. (Id.)

21. The weight of the evidence shows that Adams has reasonable assurance of the stronger signal as well as the greater signal coverage in terms of population.

	<u>Population</u>	<u>Land Area</u>
RBI	3,119, 889	14,128 sq. km.
Adams	4,260,920	14,942 sq. mi.

(Jt. Engineering RBI Exh. 48 at 3.) Adams proposes to serve 33% more people than RBI presently serves.

RBI's Proposed Site

22. RBI received a construction permit in 1990, authorizing a move to another site. But RBI never moved. In 1995, RBI received another authorization to move to yet a different site and to construct a new tower that would increase its power so that the predicted Grade B coverage would serve 75% more people than could Adams. However, under Commission policy, RBI could not construct on its designated site because of the lapse of more than three years since the grant of the license. Streamlining of Applications, Rules and Procedures, 13 F.C.C. Rcd 23056, 23090 (1998). The Commission has not responded to a request from RBI for an exception from that policy. (RBI Exh. 12, Tab B.) RBI has failed to show a reasonable likelihood that it will increase its signal coverage within the foreseeable future. Therefore, RBI's

proffered engineering (RBI Exh. 48) that would increase its signal coverage beyond Adams' coverage is rejected for failing to meet the burdens of persuasion and proof of reliability by a preponderance of the evidence.

23. There are reliable facts in the record that support this negative finding. Mr. Parker testified that the permit to construct was last extended in 1995, and that an ongoing zoning dispute was delaying construction. (Tr. 816 –822, 854-873.) RBI correspondence with a township was not probative because it was shown to relate to a cellular telephone tower. (Adams Exh. 41.) RBI could only “hope” that construction would proceed. But a local court issued an adverse decision on January 27, 2000, and the question was assigned for mediation. (Tr. 1905.) As of the closure of this record, there has been no report received on the status of that mediation that would be responsive to an instruction to be kept informed of developments.³ (Tr. 1907.) RBI offered nothing further on the status of its tower relocation in its Reply pleading. Therefore, there is no reliable predictive evidence in this record to support a conclusion that RBI has a reasonable assurance that it will be able to increase its signal coverage.

Local Residence, Civic Involvement And Broadcast Experience

Adams

24. There are no Adams principals who reside in the Reading area, none have been active in local civic affairs in the Reading area, and none have qualifying broadcast experience. The evidence presented by Adams does reflect that there are five principals who have demonstrated civic interests and activities primarily in and around Chicago, Illinois. While there is no credit awarded from their recorded past civic involvements in Chicago, it is reasonable to assume that principals of Adams would become sufficiently interested in Reading's civic affairs for making good faith ascertainment should Adams ultimately receive and accept an award of the license. (Adams Exh. 1.) However, Adams claims no credit for local residence, civic involvement or past broadcast experience, and none is awarded.

RBI

25. RBI identifies thirty five shareholders who have resided and who presently reside within WTVE(TV)'s predicted Grade B contour. (RBI Exh. 2.) However, it appears from ownership reports that during the renewal period eight of the thirty five were not RBI

³ See Order FCC 00M-52, released August 18, 2000 (record closed).

shareholders. (RBI Exh. 11.)⁴ Therefore, RBI is credited with local residence for only twenty seven of its thirty five shareholders, which still reflects a significant local presence.

26. There are eleven shareholders of RBI identified as having significant civic involvement. (RBI Exh. 2.)

27. Because of a failure of proof, there will be credit awarded for the civic activities of only three RBI shareholders: Mr. Jack Linton (“Linton”) for his activities as treasurer and section chair of a local bar association, for his service as president and member of the board of directors of the Reading Jewish Community Center, treasurer of Reading Soccer, president of an Estate Planning Council, membership on the Berks County Mental Health Retardation Board, and president and a member of the board of directors of the Berks County Chamber of Commerce; Dr. Paul H. Tietbohl for his activities as organizer of a group of physicians called “Choice” who provide weekend and holiday coverage for emergencies in the Reading area; and Mr. Parker for being a member of the Reading Chamber of Commerce. (RBI Exh. 2.)

28. Two RBI shareholders had recognizable broadcast experience during the relevant period: Mr. Parker and Mr. Linton.

29. Mr. Parker became executive vice president and a director of RBI in 1989. He became a shareholder and was voted RBI’s president in 1991, under stormy and highly questionable circumstances. (See discussion below at Paras. 39-44.) He served in the capacity of RBI’s president to August 1997, and from November 1997, to the present. He was the general manager of Station WTVE(TV) from 1991 to 1996. He played a key role in bringing RBI out of bankruptcy. (RBI Exh. 3.)

30. Mr. Parker also was a principal of licensees of the following additional broadcast stations:

Station	City	Dates of Involvement
KYBY(TV)	Anchorage, AK	1982 – 1984
KWBB(TV)	San Francisco CA	1986 – 1993
WHRC(TV)	Norwell, MA	1992 – 1997
KVMD(TV)	Twentynine Palms, CA	1992 – Present
KAIJ	Dallas, TX	1992 – Present

(RBI Exh. 3.) He was involved with these stations during their construction and initial operation.

⁴ RBI Exh. 2 does not identify which of the shareholders have owned an interest in RBI during the renewal period. Nor does RBI rebut or explain in its Reply the noted deficiency. The unanswered criticism includes the failure to show that all of the civically active shareholders were such during 1989-1994; a failure to show that the claimed activities all occurred in that period; and a failure to show that the activities occurred within or were related to any community or organization within the Grade B contour.

But the record is silent with respect to Mr. Parker's activities with each station for which credit for broadcast experience is claimed. And there is no credit claimed for his related broadcast activities with respect to periods after the stations went on the air. Based on this record, RBI is entitled to some credit for Mr. Parker's past broadcast experience.

31. Mr. Linton was house counsel for a television production company in New York City from 1963 to 1966. He served as a part-time sports announcer for RBI in 1980. (RBI Exh. 3.) Mr. Linton served as officer, director and corporate counsel for RBI for over ten years and he is credited with related broadcast experience.

32. Mr. McCracken is responsible for the day to day broadcast activities of RBI. He has had full-time management responsibilities since 1996. He has been producer of the program "Air Gospel" which, since 1996, has broadcast weekly from Station WTVE(TV). (RBI Exh. 3.) However, he was not an RBI shareholder during the renewal period and therefore no credit is awarded for his broadcast experience.

Corporate Control

33. RBI's 1988 Ownership Report reflected that there were 50,000 shares of stock issued and outstanding, divided among 18 shareholders. Dr. Henry Aurandt and his wife held 18,000 shares representing the largest portion. The Report also identified RBI's officers as Dr. Aurandt (president), Dr. Robert Denby (vice resident/treasurer), Dr. Sergio Proserpi (vice president) and Mr. Jack Linton (secretary). (RBI Exh. 11.) The report did not identify directors.

34. In a corporate business judgment, RBI decided to hire the experienced Mr. Parker and his controlled company, Partel Inc. ("Partel"), to remove RBI from bankruptcy and run the Station's business. On May 28, 1989, RBI and Parker/Partel entered into and executed a Management Services Agreement ("MSA"). (Adams Exh. 13 at 3; Adams Exh. 19; Tr. 632.) On August 1, 1989, RBI shareholders met and elected a new slate of directors. The five directors included Dr. Aurandt and Mr. Linton as well as Mr. Parker, Dr. Clymer and Dr. Fischer. At the board of directors meeting which immediately followed, two officers were elected: Mr. Parker, president⁵ and Mr. Linton, secretary. (Adams Exhs. 13, 14.)

35. The minutes reflect shareholders approval of the MSA which gave Partel and Parker full authority to conduct the operations of WTVE(TV). (RBI Exh. 18 at 2.) The MSA also provided for Partel to receive an equity interest in RBI and a certain percentage of its monthly net revenues. (*Id.*) On September 13, 1989, RBI's directors "ratified" the MSA and directed bankruptcy counsel to submit it to the bankruptcy court for approval. (Adams Exh. 14 at

10.) Bankruptcy counsel did so on June 19, 1990, and court approval followed on August 28,

⁵ Various documents identify Mr. Parker as RBI's executive vice-president. (E.g., RBI Exh. 3 and Adams Exh. 18.) Irrespective of his corporate title, Mr. Parker functioned as RBI's chief operating officer throughout the renewal period. (Tr. 824.)

1990. (RBI Exh. 18 at 5; Tr. 626.) RBI did not file the MSA with the Commission or list it on an ownership report until 1997. (RBI Exhs. 11, 14.)

36. On January 20, 1991, RBI's reorganization plan became final and nonappealable. (Adams Exh. 20 at 2; Tr. 786-87.) The plan was to become effective on September 17, 1991, thereby effectively canceling outstanding stock. (Tr. 796.) (Adams Exh. 20 at 2; Tr. 641, 796-97.) In anticipation, on August 14, 1991, RBI filed a short form application seeking Commission approval to assign WTVE(TV)'s license from RBI, as debtor-in-possession, to RBI. (Adams Exh. 21.) RBI used Form 316 because new shareholders were to be added and shareholders' interests were going to change in conjunction with RBI's emergence from bankruptcy. The short form was used because it was thought that RBI's former shareholders would still hold more than 50% of RBI's stock following consummation. Mr. Parker signed the application as RBI's president, both as transferor and as transferee. Commission approval occurred on August 27, 1991. (Adams Exhs. 21, 22; Tr. 789-791.)

37. The shareholder and director disclosure that was reported in the August 1991 short form application was consistent with the information that was reported in RBI's Ownership Report dated and executed by Mr. Parker on March 28, 1991. (Adams Exh. 21 and RBI Exh. 11.) Mr. Parker was president and a director while executing both filings. The other directors were Dr. Aurandt, Mr. Linton, Dr. Clymer and Dr. Fischer. RBI was still capitalized with 50,000 shares of common stock that was held by 18 shareholders, with Dr. Aurandt and his wife owning 18,000 shares. As of August 1991, Mr. Parker and Partel legally owned no shares of RBI stock. Partel was to receive 118,467 shares out of 399,044 to be issued which would make Partel the largest RBI shareholder. (Adams Exhs. 11, 21.) This set the stage for a struggle for control of RBI.

Parker's Taking Of Control

38. That struggle began in earnest one month later when on September 14, 1991, three days before the reorganization plan became final, Dr. Aurandt called shareholders' and directors' meetings to recommend his wife replacing Dr. Fischer who had resigned as a director. Mr. Parker testified that "a very volatile dispute [was] going on between shareholders." (Tr. 669.) Mr. Parker attended and contested the legality of actions taken at the meeting. (Tr. 668-69, 677, 679, 791-93.) The shareholders and the directors terminated the MSA based on alleged "malfeasance" by Mr. Parker, removed Mr. Parker as a board member, and replaced him with Mrs. Aurandt.⁶ (Adams Exh. 13 at 39-40, 53, 71-72; Tr. 669-70, 677.) After effectively overriding the board actions taken on September 14, Mr. Parker issued new RBI

⁶ Dr. Aurandt and Mr. Parker had been at odds for some time and Dr. Aurandt had attempted on more than one occasion to remove Mr. Parker as RBI's president. (Adams Exh. 13 at 52.)

shares to its former and new shareholders on October 15, 1991.⁷ (Adams Exh. 24; Tr. 797.) Mr. Parker signed the certificates himself that had been prepared by Marvin Mercer, RBI's bankruptcy counsel. (Adams Exh. 24; Tr. 797-800, 810.) Mr. Parker contends that this action was in accord with the Commission's prior grant of the short-form application which occurred on August 27, 1991. (Tr. 672, 795-97.)

39. In at least two instances, the number of shares issued by Parker did not match the number approved by the Commission. First, the Commission had approved issuance of 118,467 shares to Partel, but the number actually issued was 124,401. (Adams Exh. 24.) According to Mr. Parker, the nearly 6,000 extra shares were issued with an option to Meridian Bank, an RBI lender, that allowed the bank to purchase shares for \$1 (one dollar), in exchange for forgiving a \$500,000 overdue payment. (Tr. 800-01.) Second, the Commission had approved issuance of 74,678 shares to Dr. Aurandt, but Parker actually issued only 23,868 shares for Dr. Aurandt. (Tr. 799, 803; Adams Exh. 13 at 84-86.) Mr. Parker explained that RBI chose not to issue the additional shares to Dr. Aurandt because of questions concerning a court judgment and garnishment proceedings which Mr. Parker may not have known about while the short form application was pending. (Adams Exh. 13 at 83-84; Tr. 701-02, 803-04, 810.) Mr. Parker testified that he received a writ of execution incident to the Aurandt garnishment on October 11, 1991. (Tr. 888-89, 916.) Mr. Parker understood that if garnishment should occur, the RBI shares destined for Dr. Aurandt ultimately would go to the judgment holders and that would result in a greater than 50% transfer of stock control of RBI. (Adams Exh. 28; Tr. 685, 701.)

40. Mr. Parker showed that he had the power to withhold shares from Dr. Aurandt while causing the issuance of 17,674 shares to an entity called STV Reading, Inc. ("STVR"). (Adams Exh. 24; Tr. 809-10, 975.) Dr. Aurandt was the holder of record of some 90% of STVR voting shares.⁸ But Mr. Parker did not transmit the RBI shares reserved for STVR to

⁷ RBI stock was reissued to all shareholders on December 31, 1991, at the insistence of the Meridian Bank in order to reflect the bank's status as a secured creditor. (Tr. 798.)

⁸ STV Reading, Inc. was a corporation initially controlled by Dr. Aurandt. RBI and Parker contend that Dr. Aurandt was "previously approved" by the Commission which would mean that STVR's 4.8% interest in RBI would incrementally bring the total of ownership shares issued to "previously-approved" shareholders to 51.6% which mathematically negates a transfer of control. (Tr. 954-55; RBI Exh. 17 for ID but not received into evidence.) This theory of shareholders being "previously approved" was not substantiated or accepted. (Tr. 1189.) However, full attention was paid to RBI's arguments for its Exh. 17 and it is clear that counsel worked hard to prepare and present the evidence. A detailed explanation for the exclusion ruling is set forth in Order FCC 00M-36, released May 30, 2000, following a round of pleadings. The most significant problem found with Exh. 17 was one of reliability. Dr. Aurandt's declaration was conclusory, did not account for an "original issue" of 1,000 shares, and lacked reliable proof that he owned more than 50% of STV stock prior to October 15, 1991. As stated in the Order: "Reading has failed to show that Exhibit 17 accounts for 17,640 shares of Reading stock --- and no resolution of the question can be made without the testimony of Dr. Aurandt and/or more definitive business records." *Id.* But regardless of how RBI's stock register showed the issuance of stock, Mr. Parker demonstrated that he was in control before the Commission had approved any assignment application. In his sworn testimony, Mr. Parker admitted that as of October 30, 1991, he thought that he held effective voting control. (Tr. 977-78, 987.)

Dr. Aurandt. Rather, Mr. Parker issued the RBI stock destined for STVR to himself. Mr. Parker justified this self-help action on proxies that he had previously received and which he used for his election as STVR's president. (Tr. 970, 977.) But all of the STVR proxies relied upon by Mr. Parker came from four persons who had not previously held an ownership interest in RBI. In fact, they were the same four individuals who had secured the Aurandt garnishment. (Adams Exh. 28; Tr. 972, 975-76.) The RBI shareholders who opposed Mr. Parker found that the new shares "were allocated by Mr. Parker in a fashion to skew the voting power of the shareholders of [RBI] in favor of Partel, Inc. and against the former shareholders of [RBI]." (Adams Exh. 13 at 72-73.) On cross examination, Adams counsel confronted Parker with the list of shareholders who had received stock certificates including Partel, and Mr. Parker admitted that those certificates were issued by him before he had filed the application. (Tr. 703-904.)

41. Following issuance of the new stock, Mr. Parker retained an attorney to seek an extension of time from the Commission in order to allow RBI to consummate the transfer authorized by the Commission on August 27, 1991. (Tr. 804-06.) By letter dated October 22, 1991, Sidley & Austin requested an additional 60 days until December 27, 1991. (Adams Exh. 22.) The reason cited to the Commission was that RBI needed additional time "to coordinate the transaction, including implementing the bankruptcy reorganization plan approved by the bankruptcy court in Pennsylvania." (Adams Exh. 22; Tr. 883-84.) Mr. Parker contends that more than just the issuance of stock had to occur before RBI could move from the protection of the bankruptcy court. It was also necessary to satisfy the Meridian Bank. (Tr. 804-06.) The Mass Media Bureau granted an extension to December 27, 1991. (Adams Exhs. 22, 23.) Mr. Parker then filed a Form 315 long form application to effect a "legitimate" transfer of control. (Adams Exh. 28; Tr. 693.)

42. In the meantime, on October 25, 1991, during the period of extension granted by the Commission, Mr. Parker sent a notice of special meeting of shareholders on only five days notice. (Tr. 806.) The meeting's purpose was to remove existing directors, elect new ones, and resolve disputes concerning Dr. Aurandt. Mr. Parker advised the shareholders that they could attend either in person or by proxy. (Adams Exh. 25.) On October 30, 1991, RBI's shareholders met. This meeting resulted in the election of a new board of directors consisting of Mr. Parker and Dr. Clymer and new board members Irvin Cohen, Reverend Frank McCracken and Judge C. Meyer Rose. (Adams Exh. 13 at 70; Tr. 678-79, 806-07; RBI Exh. 11.) Mr. Parker knew and understood at the time that Dr. Fischer was no longer going to be a director. (Tr. 807.) The newly constituted board met on October 30, 1991, and on December 30, 1991. (Adams Exh. 15 at 77, 85; Tr. 682.)

43. On November 13, 1991, RBI filed the long Form 315 that removed RBI as debtor-in-possession and transferred control of the license to the newly constituted RBI. (Adams Exh. 28; Tr. 693.) The Commission was informed that corporate shares would increase from 50,000 to 419,038 and that the directors would include Dr. Aurandt, Mr. Linton and a totally passive Dr. Fischer. The application showed that the previous short form assignment would not be consummated because of questions concerning the ultimate ownership of 13.98% (more than 58,000) of RBI's proposed shares. Notwithstanding the Parker-dictated events of October 15 (the issuance of RBI stock) and October 30 (the shareholders meeting), Mr. Parker denied that a transfer of control had occurred prematurely. (Tr. 811.) The Commission approved the long form transfer on February 14, 1992, and Parker believed that a final accounting with creditors

and consummation of new ownership were concluded in March, 1992. (Adams Exh. 31; Tr. 812-813.) But no stock was issued following the Commission's grant of the long-form transfer application. (Tr. 703-04, 813.) Convinced of his existing authority and control, Mr. Parker had signed the application on behalf of the transferor and the transferee. (Adams Exh. 28; Tr. 694, 807-09.) Commission approval was granted on February 14, 1992. (Adams Exh. 31.) Amidst these mix-ups, corporate governance of RBI was in full control of Mr. Parker and he knew that to be the fact.

Erroneous Ownership Reports

44. RBI's November 1991 transfer application was prepared by one of Parker's communications counsel (Ms. Friedman) in cooperation with RBI's bankruptcy counsel (Mr. Mercer). Mr. Parker denied that he had any role in computing the transferee share percentages that appeared in the application. (Tr. 807-08.) He also did not recall discussing or thinking about whether RBI needed to report that stock as already issued. (Tr. 922-23.) He believed the overriding fact was that during the pendency of the November 1991 transfer application, RBI remained a debtor in possession and would continue as such until creditors were satisfied. (Tr. 882-84, 923.) Ms. Friedman compiled the information and exhibits and made certain the form was prepared correctly. Ms. Friedman normally received filing information from the client. (Tr. 2107.) Mr. Parker provided or was responsible for the stock ownership data relied on by Ms. Friedman for reporting to the Commission.

45. The long form application filed in November 1991, incorrectly listed and incorrectly omitted directors. Thereafter, on April 16, 1992, RBI filed its 1992 ownership report. (RBI Exh. 11.) RBI listed its directors as Mr. Parker, Dr. Aurandt, Mr. Linton, Dr. Clymer and Dr. Fischer. RBI reported that it had not issued 50,812 shares to Dr. Aurandt because of the garnishment issue. Mr. Parker signed the report as RBI's president. (RBI Exh. 11; Tr. 814.) RBI failed to list the MSA in a contemporaneous ownership report. It merely was referenced in a document filed on February 7, 1992, which transmitted an amendment to the pending application to transfer control of WTVE(TV).

46. RBI acknowledges that its 1992 ownership report repeated the same errors relative to directors. (RBI Exh. 14.) In April 1993, Parker certified that the 1992 Ownership Report was accurate even though the slate of directors selected by Parker in 1991 continued to control RBI, a significant fact never reported to the Commission. (RBI Exh. 11.) According to Mr. Parker, the errors acknowledged by RBI occurred because of unexplained inadvertences on his part. (Tr. 812, 814-15.) The evidence establishes that from 1992 to 1997, the Commission was deprived of sufficient information concerning the corporate control of RBI. And as indicated above, such confusion in corporate control worked to the advantage of Mr. Parker.

Renewal Expectancy

47. A renewal expectancy is awarded only for substantial service throughout the renewal period. The relevant time period for considering RBI's entitlement to a renewal expectancy began August 1, 1989, and ended August 1, 1994.

Minimal Public Service Programming

48. RBI devoted 2.2% of its air time to issue responsive programming in the third quarter of 1989. (RBI Exh. 8, App. A at 2.) By the end of the renewal period, that percentage had increased to approximately 7.6%. (*Id.*) RBI's exhibit reflects that 35% of such programming consisted of PSAs. Using different composite weeks and not including PSAs, Adams calculates that WTVE(TV) devoted 1.5% of its air time to non-entertainment programming during the 1989-90 period and 2.2% to such programming during the 1993-94 period. (Adams Exhs. 3 at 1; 7 at 2.) These statistics show that RBI's quantity of noncommercial programming was minimal.

Ascertainment

49. George Mattmiller was the Station's general manager from August 1989 until February 1992. (RBI Exh. 6.) He was previously employed by Mr. Parker in Seattle, Washington. (Tr. 542 - 43.) He did not have ties with the Reading community when he joined RBI. Mr. Mattmiller was responsible for ascertaining community problems, needs and interests. The Station's methodology that was in place when Mr. Mattmiller arrived, involved receiving reports of staff contacts with members of the community. (Tr. 571.) Station personnel also used a local newspaper, the Reading Eagle, and WTVE(TV) staff made a review of undefined "material that was sent to the station." (Tr. 572.) Newspaper local stories accounted for about 90% of WTVE(TV)'s ascertainment on a range of topics. (RBI Exh. 6 at 4.) Another source that Mr. Mattmiller mentioned was a broadcast segment entitled "Man on the Street" which provided local input while on-the-air. (Tr. 572.)

50. In mid-1992 and through the remainder of the renewal period, RBI expanded its ascertainment efforts by sending questionnaires to business leaders and schools and by contacting charitable organizations such as the United Way, Easter Seals, American Cancer Society and the American Red Cross. (RBI Exh. 6 at 5; Tr. 453-55, 577.) Station staff also questioned guests who appeared for program taping at the Station's studio and students during classroom visits. (Tr. 1698.) Mr. Daniel Bendetti, another station manager during the renewal period, testified that they collected these ascertainment results quarterly. (Tr. 1732.) Ralph Tobias, another station employee responsible for ascertainment, determined which issues were significant. He then used such issues to pose questions to local residents in conjunction with the taping of "Streetwise," a two-minute program that aired twice daily. (RBI Exh. 8, Apps. C at 17 and D at 14; Tr. 457, 576, 588-89.) Ms. Kimberley Bradley collected information for program material and potential guests who could discuss community concerns on WTVE's "In Touch." Program. (Tr. 460-71, 581-82.)

51. Mr. Bendetti testified that the ascertainment at WTV(TV) did not provide input into the Station's "public service" programming. (Tr. 1666-67, 1732-33.) RBI relied more on material taken from satellite feeds which station personnel deemed pertinent to the station's viewing area. RBI also relied on material supplied by eleemosynary organizations such as the March of Dimes. (Tr. 461-65, 1734.) Mr. Parker served as WTVE(TV)'s general manager throughout the renewal period. But he did not tabulate ascertained needs; nor did he direct anyone to do so. Mr. Parker could not recall whether station personnel ever produced for his

review a document that indicated what were the community's significant problems. (Tr. 830-31.) A comparison of headlines from the Reading Eagle (Adams Exhs. 3-7) with WTVE(TV)'s "Issues and Programs Report[s]" (RBI Exh. 8, Apps. C through W) shows that RBI did not focus attention on issues affecting Reading and the surrounding area. Ascertained community problems either merited a public service announcement or nothing at all. When asked to identify a programmatic response to ascertained community problems, Mr. Parker could either not identify any such program or could point only to public service announcements. (Tr. 832-47).

Home Shopping

52. The majority of RBI's programming is "home shopping," a format which passed the public interest test under a formal assessment. In re Home Shopping Station Issues, 8 F.C.C. Rcd 5321 (1993) (home shopping stations serve the public interest, the programming does not adversely effect a renewal expectance, and home shopping stations are eligible for must carry cable carriage). Id. While not unanimous choices, those were the policy determinations made by the Commission. And Section 4 (g)(2) of the 1992 Cable Act specifically directs that the Commission not use home shopping format as a basis to deny a renewal expectancy.

53. The Commission otherwise decided to forego guidelines regarding specified quantities of types of various non-entertainment programming. See Commercial TV Stations, 98 F.C.C. 2d 1076, 1090- 92 (1984). However, the renewal standard requires that a licensee address community issues with responsive programming. The licensee is free to choose the programming that meets the needs. But it must not be a nominal effort that effectively defaults on its obligation to contribute to the discussion of issues facing the community. Commercial TV Stations, supra; Office of Communications of the United Church of Christ v. F.C.C., 707 F.2d 1414, 1431 (D.C. Cir. 1983). A challenger must show that the licensee failed to address community issues in overall programming, not just with respect to specific issues that are not being addressed.

Must Carry

54. Station WTVE(TV) operated as an affiliate of the Home Shopping Network during the 1989-94 license term. (RBI Exh. 8.) It was classified by Arbitron, Inc. as a station in the Philadelphia Designated Market Area or "DMA". (RBI Exh. 6 at 2.) Reading is geographically situated between the Philadelphia metropolitan area and the Harrisburg-Lancaster-Lebanon-York DMA. Id. WTVE(TV) was the only television station licensed to Reading and serving Berks, Lebanon, Chester, Lancaster, Schuylkill and Lehigh counties. WTVE(TV) was competing with stations from Philadelphia, including the major network stations and independent stations. (RBI Exh. 13.) In 1992, "must carry" was enacted, which significantly upgraded WTVE's(TV) household reach when cable systems serving the western portions of Philadelphia were required to begin carrying WTVE(TV)'s signal. (RBI Exh. 6 at 3.) But the advent of "must carry" did not provide a total solution for the Station's financial plight. WTVE(TV) also shared the Philadelphia DMA with WHSP-TV, Vineland, New Jersey, another Home Shopping Network affiliate. (Id. at 2.) Both stations provided the same home shopping programming. Cable

systems were required only to carry the signal of the station closest to their respective headends. As a result, WTVE(TV) lost cable carriage in the eastern portion of the Philadelphia DMA which is joined with adjoining portions of New Jersey and Delaware. (Id.)

55. It is found that RBI relied on must carry cable carriage to meet much of its non-commercial programming responsibilities without incurring costs of producing the programming. This permitted some non-home shopping programming to be introduced in Station WTVE(TV)'s signal area. It was a business decision having no impact on this decision. This predominance of "home shopping" on WTVE(TV) was not shown to have impeded responsive non-commercial programming. RBI's failure to sufficiently identify and address local issues was a failure separate and apart from providing a "home shopping" format.

Bankruptcy As Programming Factor

56. RBI was in Chapter 11 from 1986 until March 12, 1992. Memorandum Opinion and Order, FCC 99M-47, supra at ¶¶ 11-13. The condition of bankruptcy is not conducive to the operation of a TV broadcast station. But there is no evidence that RBI's voluntary bankruptcy so impeded RBI that it should be excused from meeting its public interest duties to the Reading community. RBI received Commission approval to operate as debtor-in-possession in 1988, and also received Commission approval for a reorganization plan to emerge from bankruptcy in 1992. (Id.)

57. Mr. Parker succeeded in bringing RBI out of bankruptcy. But he was not able to operate the company in the black during the renewal period. Station WTVE(TV) was not operated in a profitable manner at any time before and during the renewal period. The Station operated at a loss during each year of the 1989-94 license term. A station manager testified that RBI's financial condition "was always unstable." (Tr. 1711 and RBI Exh. 5.)

58. As a result of its adverse financial condition, the Station's equipment became outdated and "antiquated" to such an extent that critical equipment, such as the Station transmitter, had repeated outages. (Tr. 1153-1172.) Evidence introduced by Adams also shows that the Station was understaffed during the renewal term. (Adams Exh. 16 at 5; Tr. 562-563.)⁹ The small size of the staff adversely effected the Station's ability to produce and broadcast public

⁹ Adams sought to introduce bulky records on employment levels which were rejected. (See Adams Exhs. 33-38, rejected January 10, 2000.) Rejected exhibits included a ream of documents that would add over an inch of data to the record on a fact that was adequately established by Adams Exhibit 16 and an RBI admission. Argument was heard when the Adams evidence was rejected. (Tr. 725-726.) This was a routine evidentiary call that was within the discretion of the Presiding Judge that need not be revisited. See 47 C.F.R. §1.243 (Authority of presiding officer.)

service programming. (Tr. 1666, 1691.) There is no evidence offered by RBI to show that funds or resources were diverted from a profitable operation or from the compensation of Partel and its affiliates in favor of supporting public service broadcasting.¹⁰

59. In written testimony, Mr. Parker promised to “focus more energy and resources on the station’s public service initiatives.” (RBI Exh. 5 at 1.) The evidence indicates to the contrary. Mr. Bendetti, a station manager during the renewal period, testified that RBI, through Mr. Parker, decided to cut operating costs. He instructed the staff to limit efforts to produce public service programming and to avoid out-of studio productions and studio productions that would require a “crew.” (Tr. 1674-1679.) This policy of holding back from public service broadcasting prevailed from 1990 to 1993. (Tr. 1680.) To meet this decrease in public oriented programming, in 1993, the staff at the Station took it upon themselves to increase the production of PSAs. (Tr. 1681.) While that was a commendable partial stopgap effort, it did not fill the serious programming gap created by the Parker initiated cut-backs.

Programming Methodology

60. WTVE(TV) broadcast “home shopping” fare over 53 minutes to 55 minutes per hour. The remaining five to seven minutes were dedicated to a mixture of public service offerings, public service announcements, commercials, promotional announcements (“PSAs”), and required station identifications. (RBI Exh. 8 at 1.) At times, non-entertainment programs were aired that exceeded 15 minutes in length. These included religious programs, children's programs, political programs, and special or seasonal programs. (Id.)

61. WTVE(TV) did not broadcast non-entertainment programming on a regularly-scheduled basis. Public service programming usually appeared during five to seven minute windows. No particular program aired during the same time slots on a daily or weekly basis, and each particular program was often repeated fifteen or more times during its run. (RBI Exh. 8, App. S at 66-68, 74 (“News to You”); Tr. 471-73.) When WTVE(TV) began to broadcast the program, it did not appear at any regular time. (RBI Exh. 8, App. W at 149-50.) Therefore, it would be extremely difficult for a member of the public to anticipate and plan for RBI’s non-commercial fare. Neither the Reading Eagle nor any TV guide publication advised viewers when any particular WTVE(TV) program would be broadcast. (Adams Exh. 11; Adams Exh. 12; Tr. 591-93, 1795.) Mr. Parker acknowledged that the station primarily addressed community problems through the airing of PSAs which aired only when time was available during the daily schedule. (Tr. 472-73.) Mr. Parker asserted that RBI was justified in relying on PSAs because of the demands of home shopping and the station's negative financial condition. (Tr. 847-49.) It is concluded from this evidence that throughout the renewal period, interested viewers had great

¹⁰ There was an evident economic incentive to increase air time for home shopping programming in order to make the Station more attractive to cable systems. This posed a tension since those systems might have chosen to carry satellite-feed home shopping programming rather than RBI’s public service signal. (Tr. 1681-82, 1711.)

difficulty in ascertaining the time when a particular non-commercial program would appear on WTVE(TV). (Tr. 473, 476, 591-93, 598, 1794.) RBI did not meet its duty to make available public issue programming.

Noncommercial Programming

62. In reviewing the expanse of evidence in this case, it was found that during the renewal period, WTVE(TV) did broadcast some locally produced programs in response to ascertained needs. Such other public service "programs" identified as PSAs in RBI's issues and programs reports were: "Streetwise," "In Touch," "News to You Healthbeat Elderly Report," "Community Outreach Take 3," and "Kids Korner." (See RBI Exh. 8, passim.)

63. "Streetwise" was a two-minute interview program produced by RBI in which members of the public were asked to expound on local issues. (RBI Exh. 8 at 2; 588-89.) The program was aired between August 1, 1989 and November 27, 1989. (RBI Exh. 8, App. C at 17, App. D at 14.) In the third quarter of 1989, the questions ranged from flag burning to literacy, from the virtue of freedom to prison inmates working for their keep. (RBI, Exh. 8, App. C at 16.) In the fourth quarter of 1989, the "questions ranged from hostages in Beirut to rights Americans take for granted. (RBI Exh. 8, App. D at 14.) "Streetwise" aired twice a day, generally around 9:20 in the morning and 6:20 in the evening. (RBI Exh. 8, App. C (third quarter 1989) at 16, App. D (fourth quarter 1989) at 14.)

64. "In Touch" was a three-minute program that featured a host and a guest discussing RBI's selected community topics (health, welfare). (RBI Exh. 8 at 2; Tr. 463, 581-83.) Each program focused on one topic that was determined to be an issue of public concern based on local mail and faxes recommending topics. . (Tr. 458, 582.) The topic could appear on more than one segment as part of a series. (RBI Exh. 8 at 2.) In 1989, "In Touch" was broadcast twice a day in the late morning or early afternoon and again in the early evening. In 1993, it aired three times during any given day. (RBI Exh. 8, App. B, C, D, Q, R.) Topics included local concerns for consumer protection (RBI Exh. 8, App. C at 13); foster parenting; pet care; drunk driving; speech and hearing ailments and treatments; a youth exchange program; making marriage work; AIDS and other health-care topics. Participants included a speech therapist, a midwife, a dietician, a gastroenterologist, the deputy attorney general of Pennsylvania's Bureau of Consumer Protection, the director of the Berks County Humane Society, a neurologist, a laboratory medical director, and a chiropractor. (RBI Exh. 8, App. C at 7-8,13-14, App. D at 5, App. Q at 29-30.)

65. "News to You" aired in two to three-minute segments. It treated issues such as health, family concerns, consumer issues and crime/safety - - - ." (RBI Exh. 8 at 2.) Material for the program was downloaded from satellite feeds. RBI inserted "News to You" segments into available time slots, usually twice a day. (Tr. 460-64, 472-73.)

66. "Healthbeat 'or "Health Report" began airing in the fourth quarter of 1992. (RBI Exh. 8, Apps. C through O.) It ran for three minutes. Station staff obtained "stock footage" from a newsfeed company and localized the features with "wraparound information" about socially directed charitable groups and organizations such as the American Cancer Society, Community Hospital, Reading Hospital, and the American Red Cross. (RBI Exh. 8, App. P at 17.)

67. "Elderly Report" also began airing in the fourth quarter of 1992. (RBI Exh. 8, Apps. C through P.) It usually ran for three minutes. RBI utilized "stock footage" from a newsfeed company and localized the features with "wraparound information" about the area senior groups" such as the Berks County Office of Aging, the Berks County Senior Citizens Council, and the Temple Association for Retired Persons. (RBI Exh. 8, App. P at 8-9.)

68. "Community Outreach" began airing in the second quarter of 1993. (RBI Exh. 8, Apps. C through R.) RBI produced this three-minute program featuring a host and guests who would discuss a topic of local interest. Topics included local volunteer efforts and organizations; cooking tips; wedding preparations; taking a cruise; reducing driving while under the influence of alcohol; other issues related to alcohol; child abuse; recycling/community clean-up; home safety; and the importance of dietary calcium. (RBI Exh. 8, App. R, S, T, U, V; Tr. 477.)

69. "Take 3" was a three-minute program that local youths produced with assistance from WTVE(TV). It dealt with issues of interest to young viewers. (Tr. 465-66.) "Take 3" began airing in the second quarter of 1993. Examples of topics include results of driving under the influence of alcohol, musical instruments in high school bands, selecting a college, keeping food safe while camping, and a presentation of the inner workings of the Reading Planetarium. (RBI Exh. 8, App. R, S, T at 19.)

70. "Kids Korner" presented programming that was 90 seconds to three and one-half minutes in duration. The program was produced by RBI and dealt with issues that were of interest to children. (RBI Exh. 8 at 3, App. B, App. R, App. V.) WRVE(TV) began broadcasting "Kids Korner" in the second quarter of 1993. (RBI Exh. 8, App. Q, App. R.) Examples of issues covered include pet care, dinosaurs, recycling, the life of Milton Hershey, and an elementary school science curriculum. When "Kids Korner" aired, it could appear as many as three times per day. RBI's "Children's Issues and Program Report" identifies "Kids Korner" as a public service segment. (RBI Exh. 8, App. X, at 169, 219-22.) From the description provided by RBI, it will be counted towards RBI's locally produced programming.

71. In the second quarter of 1993, RBI began broadcasting politically oriented programs that were produced at the Pennsylvania state house. The programs were designed to keep "viewers apprised of various government topics." (RBI Exh. 8, App. R at 22.) RBI would alternate between programs produced by the Democrats and the Republicans. (Tr. 1694.) The programs featured state legislators who represented Reading and/or the surrounding area. (RBI Exh. 8 at 7.) Programs were approximately 30 minutes in length and were aired on Sundays between 9:30 a.m. and 11:30 a.m. On occasion, WTVE(TV) would broadcast two programs on the same Sunday. (RBI Exh. 8, App. B at 6.) But such political programming was not broadcast during election campaigns. (Tr. 1694.)

72. "The Informative Moment" was a Spanish-language program produced by RBI to address issues of interest to the Hispanic community. (RBI Exh. 9 at 3; Tr. 470.) It appeared in April 1994 and ran on three minute segments. (RBI Exh. 8, App.) In a significant segment, a host and guest discussed the latter's struggle to free himself from drugs. The program was broadcast at approximately 8:20 in the morning and again at 8:20 in the evening. (RBI Exh. 8 at 5, 11.)

73. "For the People" was a three-minute program produced by RBI to focus on state and local political issues. (RBI Exh. 8 at 3; Tr. 470.) "For the People" appeared at various times during the days on which it aired. The program appeared in June 1994, shortly before the end of the renewal period. (RBI Exh. 8, App. B.)

74. RBI listed "Around Our Town" as a locally-produced program which focused on topics related to the local environment and community events. (RBI Exh. 8 at 3.)

Public Service Announcements

75. RBI broadcast PSAs throughout the renewal period and averaged between 30 to 50 PSAs throughout the day. (Adams Exh. 7 at 5-12, 22-32.) Some of the PSAs were produced in-house. Others were obtained from local, regional or national organizations. RBI also would work with local chapters of national organizations to localize PSAs. Two such PSAs won awards from the Pennsylvania Association of Broadcasters. (RBI Exh. 8 at 3-4.)

76. PSAs broadcast by WTVE(TV) covered such topics as local events; pet adoption; missing children; apprehension of suspected criminals; health and safety; education; civic and social concerns; the environment; persons with disabilities; the elderly; children; the armed forces; and religious groups. (RBI Exh. 8 at 4-6.) The timing and quality of the PSAs were attested to by community witnesses and in letters from listeners that were received by RBI throughout the license term. (RBI Exh. 8, App. H; App. L, App. N, App. O, and App. P.)

Children's Programming

77. In the fourth quarter of 1992, RBI broadcast several children's programs. (RBI Exh. 8, App. P, App. X.) WTVE(TV)'s earlier broadcasts for children were limited to PSAs. (RBI Exh. 8, App. X.) None of the programs were locally produced. RBI would air its children's fare on Saturday and/or on Sunday mornings.

78. From October 31, 1992 to December 5, 1992, RBI produced and broadcast "Go For It," a 30 minute program which aired at 9:30 a.m. on Saturdays. (RBI Exh. 8, App. X at 18-19, 23.) Guests included current or former professional athletes who stressed the importance of fitness and who provided advice about developing various sports skills.

79. From November 1, 1992 through December 13, 1992, RBI broadcast a half-hour program called "Candid Kids Club." (RBI Exh. 8, App. X at 24.) Topics covered by the program included learning to fly, health tips on warm-up exercises, the life of a sea mammal, Magic Johnson's life with the HIV virus, a book review, and a movie review.

80. On December 19, 1992, RBI began broadcasting "Adventure Pals," a 30-minute program produced by Christian Children's Associates. The program contained no product advertisements or commercial breaks. The program presented a mix of stories, music, clowns, puppets and special guests to address issues of interest to children. Other topics included self-

esteem, parent/child relationships and concern for others. (RBI Exh. 8, App. X at 18, 22.) It cannot be determined from this record whether "Adventure Pals" aired weekly through the end of the renewal period.¹¹ Station records indicate that it usually appeared on Sundays at 8 a.m. (RBI Exh. 8; App. X at 22; RBI Exh. 9; Adams Exh. 7 at 81.)

81. On January 24, 1993, RBI began broadcasting "Widget." (RBI Exh. 8, App. X at 141.) "Widget" was a 30-minute program that covered topics relating to protection of the environment. RBI usually broadcast the program on Sundays at 8:30 a.m. (Adams Exhs. 6, 7 at 81; RBI Exh. 8, App. B.)

82. During the first quarter of 1993, RBI broadcast three other children's programs during the renewal period: "Kids International," "Nation of Winners," and "How Do You Zoo?" "Kids International" appeared on February 27, 1993, between 8:40 and 9:10 a.m. That program presents scripture texts taken from educational Bible videos. RBI aired "Nation of Winners" on March 7, 1993, between 6:30 and 7:00 a.m. It contained "interviews and segments with children explaining how everyone needs to keep fit." "How Do You Zoo?" appeared on February 27, 1993, between 9:47 and 10:00 a.m.¹² It presented animal facts and included a question and answer segment involving children.

83. In 1993, RBI began broadcasting "The Children's Room" and "Twinkle." The former focused on children's literature and was designed to instill an appreciation for reading in children ages four through eight. The latter was an animated program featuring a magical character with the power to make dreams a reality. The character's adventures were intended to teach integrity, responsibility and means to save the environment. The programs ran for approximately 30 minutes and aired from 6:00 to 7:00 a.m. on Sundays. (RBI Exh. 8, App. S, T, U, V; RBI Exh. 9; Adams Exh. 7 at 80.)

Special Programming

84. RBI also broadcast "special long-form programming" during the renewal period which included inspirational and religious programming (often aired during the Christmas season), documentaries, and miscellaneous specials. Examples of such specials appear in the station's Programs/Issues Reports. (RBI Exh. 8, App. C at 23-27; App. L at 13; App. P at 15-16.)

¹¹ RBI's Children's Issues and Program Reports do not list "Adventure Pals" after the first quarter of 1993. (RBI Exh. 8, App. X.) Nonetheless, WTVE(TV)'s logs and its Programs/Issues Reports continue to mention the program as well as other children's shows aired by WTVE(TV) during the renewal period. (RBI Exh. 8, App. R; Adams Exhs. 6, 7; RBI Exh. 8, App. B, U, V.) Despite the conflict, the program receives credit.

¹² "How Do You Zoo?" was rebroadcast in the fourth quarter of 1993. (RBI Exh. 8, App. T at 10.)

85. RBI broadcast local weather reports several times a day. (Tr. 478; RBI Exh. 8, App. 0; Adams Exh. 6 at 23-24, 80-81; Adams Exh. 7 at 25-26, 31.) RBI also provided for broadcasting a variety of religious shows throughout the license term. (RBI Exh. 8 at 6.)

Lack Of Local News

86. Mr. Parker defended the lack of local news with a rationalization that the market served simply could not support program-length local newscasts. (Tr. 1746, 1749-51.) The Station's service-area received news from Philadelphia's major network stations and from other media sources, both electronic and print. (RBI Exh. 5, Appendix A.) But that was a totally unacceptable justification for depriving the community of local news. News about Reading would occasionally be broadcast by the Lancaster, Pennsylvania station and would more rarely appear on the Lebanon or Philadelphia stations. (Tr. 1746, 1786.) RBI saved money by relying on others. But this business practice of using someone else to furnish the news only made RBI a "free rider" while creating a local news void that was never filled. As would be expected, the Station received complaints about the absence of regularly scheduled newscasts. By knowingly depriving the community of local news coverage, RBI breached its duty to serve the needs of the community.

Public Witnesses

87. RBI submitted depositions from persons representing organizations in the local Reading area. The deponents expressed their views on how RBI addressed areas of concern. In rebuttal, Adams submitted depositions from persons who were not satisfied with the way RBI addressed concerns. The conflicting views are summarized below.

Witnesses Sponsored By RBI

88. Warren Haggerty, a life-long resident of Reading, was its mayor from 1987 through 1995. He recalled appearing on a show called the "The Minute with the Mayor." A host would ask a question and Mr. Haggerty would talk for a minute or so in response. Mr. Haggerty does not know when the program was actually aired.¹³ Mr. Haggerty also recalled a community promotion campaign called "Working for a Greater Reading," which aired on WTVE(TV) as a PSA from the spring of 1992 through the end of 1993. (RBI Exh. 25, at 11, 25, 27-30, 32-35, 37-40, 42-45, 47-48, 50.)

¹³ Although presentation of the program occurred after the renewal period ended, it is accepted that the idea for the program occurred before the renewal period expired. RBI gets some credit.

89. Sandra Kissinger, life-long resident of Reading, worked with the Berks County Chapter of the American Red Cross and used media sources to promote the Red Cross in the community. (RBI Exh. 26 at 5.) She recalled an RBI promotion for the Red Cross following a major fire which destroyed an entire city block. WTVE(TV) also aired Red Cross PSAs about water safety during the second and third quarters of 1991 and the second quarter of 1992. (*Id.* at 14-15, 42, 44, 46-48.) The Station assisted the local chapter of the Red Cross with a lupus support group in the third quarter of 1992. (*Id.* at 16, 50.) WTVE(TV) worked with the local chapter of the Red Cross in connection with the program, "Health Beat." (*Id.* at 17-18, 52.) The Station worked with the Red Cross in assisting hurricane victims. (*Id.* at 18-20, 53, 55.) The Station also sponsored a ham radio club to supply emergency relay communications and when there was no emergency, to promote a flea market to fund youth services programs. (*Id.* at 20-22, 57, 60, 62.) WTVE(TV) aired PSAs regarding an open house at the Red Cross to aid flood victims.¹⁴ (*Id.* at 23-24, 63, 65.) RBI helped raise funds for the Red Cross and aired PSAs warning about the dangers of heat stroke and informing about health and safety classes. (*Id.* at 25-30, 67.) Station WTVE(TV) was "always there" whenever the Red Cross needed it to promote anything. (*Id.* at 30.)

90. Linda Witman, a life-long resident of the Reading area, is the executive director of the Berks County Chapter of the March of Dimes. (RBI Exh. 27 at 4-5.) WTVE(TV) made a three-minute promotional tape of a fundraising event sponsored by the local chapter of the March of Dimes. (*Id.* at 7-9, 34.) The Station also aired the March of Dimes PSA, which was produced annually and served as the agency's primary fundraiser. (*Id.* at 8, 35-37, 4041.) WTVE(TV) also dealt with issues related to pregnancy. (*Id.* at 12, 28-29, 31-32, 39.) Ms. Witman believed that the relationship with WTVE(TV) raised public awareness of the mission of the March of Dimes while encouraging donations. (*Id.* at 15.)

91. Phyllis Watts is the administrator of Children's Rights of Pennsylvania, Inc. Her organization provided pictures of missing children for the Station to show, which RBI would convert into one-minute spots. She found WTVE(TV)'s airings to be extremely helpful." (RBI Exh. 28 at 7.) Ms. Watts affirmed that WTVE(TV) broadcasts occurred throughout the license term and she believed that WTVE(TV)'s efforts were "very good" in comparison with those of other area television stations. (RBI Exh. 28 at 5, 80, 103-105.)

92. Ralph Trainer was executive director of "Abilities in Motion," which provided services throughout Berks County to people with disabilities. (RBI Exh. 29 at 5.) He was coordinator for Americans with Disabilities Act and a peer counselor. (*Id.* at 6.) Mr. Trainer testified that WTVE(TV) aired programs on behalf of the "Office of Aging" and on behalf of "United Cerebral Palsy". (*Id.* at 9-12, 52-54, 56, 58.) Mr. Trainer concluded that the assistance his organization received from WTVE(TV) was comparable to that provided by other local media. (*Id.* at 12-13.)

¹⁴ The "Community Outreach" program that related to flood victims was broadcast after the renewal period. *Id.* at 65-66. But the programming was created before the renewal period, served a significant public interest, and RBI gets some credit.

93. Ray Schacht verified that beginning in 1993, he hosted taped programs such as "Elderly Update" which were meant to address problems of the elderly. (RBI Exh. 30.) However, he was unaware of what was done with the programming after it was taped. (Id. at 18.)

94. Stanley J. McCarty has resided in the Reading area for 50 years. He was a police officer for 28 years. At the time of his deposition, he was the crime prevention supervisor and had held that position for nine years. (RBI Exh. 32 at 4-5.) He testified that WTVE(TV) produced Pennsylvania Crime Stopper spots, which name and portray people who are wanted in connection with serious crimes. (Id.) He was also involved in producing WTVE(TV) sponsored PSAs that covered a variety of topics. (Id. at 12-13.) The station provided time for "Reading React," a group that monitors a local emergency radio band. (Id. at 15-16, 58, 60.)

95. Thomas R. Caltagirone has been a member of the Pennsylvania House of Representatives for 23 years. Currently, he is Chairman of the Commerce and Economic Development Committee. He had served as Chairman of the Consumer Affairs Committee and of the Judiciary Committee. (RBI Exh. 33 at 4.) He described the program "Legislative Journal" as a summary of legislative events that occur each month in the Pennsylvania state legislature and confirmed that WTVE(TV) carried his appearances on "Legislative Journal" during 1994. (Id. at 8, 46-47.) He also verified WTVE(TV)'s broadcasting of the PSAs listed in the station's second quarter of 1994 Issues and Programs Report. (Id. at 49, 52-54.) Mr. Caltagirone further affirmed that other programs concerning state legislative affairs were broadcast on WTVE(TV). (Id. at 10, 12-13.) Only WTVE(TV) and a cable channel aired legislative report programs that "concerned public issues and/or public services". (Id. at 13.) The Station's broadcasts of legislative reports continued into the third quarter of 1994 and reported the first impeachment in Pennsylvania of a state supreme court justice. (Id. at 13-14.) Representative Caltagirone believed that WTVE(TV) did an exemplary job of allowing public access to these governmental related public interest programs. (Id. at 15.)

96. Monica Ruano-Wenrich, a long-term resident of the Reading area, has been an employee of the United Way of Berks County since July 1991. (RBI Exh. 34 at 4.) She testified that in 1993, WTVE(TV) broadcast PSAs concerning the United Way. (Id. at 9, 27, 29-30.)

97. Ronald Rouse has resided in the Reading area for 15 years. He produced segments for the WTVE(TV) program "Minority Voices." (RBI Exh. 35 at 4.) He recalled viewing the Station's calendar of events and the local weather. (Id. at 8.) "Minority Voices" did not appear on WTVE(TV) during the renewal period. But it was created during the renewal period and receives some credit.

98. Richard Bennett is executive of the Hawk Mountain Council of the Boy Scouts of America. He has resided in the Reading area continuously since 1988. (RBI Exh. 36 at 4.) Mr. Bennett related that Mr. Bendetti spoke at two area high schools in 1993 on careers in television in connection with a career awareness program that was sponsored by the Boy Scouts. (Id. at 7-8, 15.) Mr. Bennett recalled WTVE(TV) produced PSAs which focused on the environment and on belonging to the Boy Scouts as opposed to a street gang. (Id. at 11-12, 18-20.)

99. Douglas F. Didyoung, Sr. is a life-long resident of the Reading area. (RBI Exh. 37, at 4.) During the renewal period, Mr. Didyoung was the executive director of Prisoners of War/Missing in Action, Forget-Me-Nots, Inc. The organization is a public awareness group consisting of veterans and civilians who endeavor to have the federal government supply answers about soldiers still missing from various wars. WTVE(TV) aired videos supplied by his organization which related to the construction of a Vietnam War Memorial in Berks County. The Station also aired allegations that the federal government covered up knowledge about American soldiers held captive long after the Vietnam conflict ended. (Id. at 8-10, 25, 28, 33, 35.) He also confirmed that the station had interviewed him in connection with those veterans' issues. (Id. at 12, 14.)

100. Joan Breisch, a life-long resident of the Reading area, is the executive director of the Literacy Council of Reading/Berks. (RBI Exh. 38 at 4-5.) The Literacy Council is a non-profit organization that teaches adults to read, write and speak English. Ms. Breisch was with the Literacy Council throughout the renewal period. (Id. at 5.) She recalled the station airing PSAs during the renewal period and one longer program concerning issues related to literacy. (Id., passim.) She recalled other PSAs shown on WTVE(TV) concerning the Humane Society. (Id. at 15, 34, 40, 48.)

101. Daniel Dillard is executive director of the Burn Prevention Foundation. He served in that capacity throughout the renewal period. The organization develops and distributes educational materials and curricula related to the prevention of burn injuries. It also coordinates a comprehensive regional health care network of providers of burn care services. (RBI Exh. 39 at 3-4.) Mr. Dillard confirmed that WTVE(TV) provided assistance in connection with a Burn Foundation fund raising event and that it did not charge the Foundation for its services. (Id. at 5-7, 18, 20-21.) Mr. Dillard confirmed that WTVE(TV) aired PSAs from the Burn Foundation as well as "News to You" segments concerning the Burn Foundation and the National Fire Protection Association. (Id.)

102. Michael A. O'Pake, a life-long resident of the Reading area, filmed a monthly 30-minute program entitled "Report to the People." (RBI Exh. 40 at 4-5.) The program informs the people of Berks County about activities of the legislature in Harrisburg. (Id. at 5-6.) Mr. O'Pake could not confirm whether the program aired during the renewal period. But he acknowledged that he was contacted by WTVE(TV) in July 1994 with regard to a program which was taped and aired later in 1994. (Id. at 7-8, 39.)

103. Frederick C. Windbeck, Jr. is the founder and executive director of the Switchback Gravity Railroad Foundation, a volunteer organization established in 1986, which seeks to restore Pennsylvania's first railroad. (RBI Exh. 41 at 7-8, 11.) WTVE(TV) worked with the Foundation to produce a low-cost film for the purpose of promoting the Foundation and informing the public about the railroad. (Id. at 9-10.)

Witnesses Sponsored By Adams

104. John Loos has been coordinator of emergency management for Berks County since 1992. (Adams Exh. 44 at 6.) He has resided in the Reading area for 14 years. Mr. Loos coordinates the responses and recovery that follow an emergency. (Id. at 7.) In situations warranting warnings to the public, he uses an emergency alert which is handled by two county radio stations. (Id. at 9-10.) Local broadcast media are needed to inform the general public in responding to such events as a weather emergency. (Id. at 10.) WTVE(TV) failed to contact him or his agency in connection with broadcasting information concerning a local blizzard. (Id. at 14-15.) Mr. Loos recalled that WTVE(TV) only contacted him to do a "short program." Id. at 28-29. However, nothing ever came of it. (Id. at 23.) Mr. Loos does not recall whether WTVE(TV) provided any air coverage with respect to any local emergency that occurred during the renewal period. (Id. at 28.) Those emergencies included two blizzards and one earthquake as well as related water main and electrical problems. (Id. at 17-27.)

105. Lawrence Medaglia is the elected Registrar of Wills and Clerk of the Orphans Court for Berks County. He is a life-long resident of the Reading area. (Adams Exh. 45 at 5.) Previously, he was the administrative supervisor of the Berks County District Attorney's office. (Id. at 8.) So far as he knew, WTVE(TV) never broadcast any programming related to the District Attorney's office. (Id. at 13.) During the renewal period, the only television news coverage available was on Channel 69 from Allentown, the Philadelphia network channel, or Channel 8 from Lancaster. Mr. Medaglia was not aware of the station's airing of Crime Stopper PSAs or of its governmental affairs programming. (Id. at 19.) Such unawareness may have been due to the absence of WTVE(TV) program scheduling in the local newspapers.

106. James Troutman was the Berks County Clerk of Courts during the renewal period. (Adams Exh. 46 at 5.) He has been a resident of Berks County for 25 years. (Id. at 6.) Mr. Troutman attends meetings of the Berks County Commissioners. (Id. at p. 7.) WTVE(TV) never covered any meeting of the County Commissioners. (Id. at 13-14.) Mr. Troutman had no knowledge of WTVE(TV) ever providing any news coverage of any local, state or national elections during the renewal period. (Id. at 17.) If Mr. Troutman wanted to view any local news stories he would watch Channel 8 from Lancaster. (Id. at 18.)

107. Roger Kimpland resided in the Reading area for 25 years. For the past 20 years, he has been the media coordinator for the Reading Area Community College. (Adams Exh. 47 at 5-6.) If he wanted to watch coverage of local news and events during the renewal period, Mr. Kimpland would watch Channel 8 from Lancaster. (Id. at 9.)

108. David Baldinger is a television producer for Lucent Technologies. In the early 1980s he was the operations manager for WTVE(TV). He had also worked for Channel 69 in Allentown. He has resided in Reading since 1984. (Adams Exh. 48 at 5-6.) While he was at WTVE(TV), the station had two news broadcasts per day during the week with two-minute updates during the evening and on the weekends. Newscasts were locally oriented and included coverage of city council and county commissioners' meetings, local elections and criminal enforcement activities. (Id. at 7-8.) Mr. Baldinger recalled that after WTVE(TV) stopped covering local news sometime in the mid-1980s, the only television coverage of local news was provided for a brief period over Channel 15 from Lebanon and, infrequently, from Channel 69 in Allentown. (Id. at 8-9.) WTVE(TV) did not provide any local news coverage of interest to

Reading or Berks County during the renewal period. (*Id.* at 10.) Mr. Baldinger testified that while Philadelphia stations would not have carried news of interest to residents of Berks County, some of the stations closer to Reading would have done so. (*Id.* at 14-15.)

Community Activities

109. The staff at Station WTVE(TV) made efforts at community outreach. Those included fund raisers for the Red Cross, Reading React (emergency radio band) and the Burn Foundation. The Station also produced a film for the Switchback Gravity Railroad Foundation. School visits were made at which Station personnel spoke to students about careers in broadcasting. Visits were made by local youth groups to the Station's studio. (RBI Exhs. 6, 8, and 36.) Station staff assisted local police in preparing an informational video and a local fire company in producing tapes of an anniversary parade. Local high schools were assisted in producing their own shows. (RBI Exh. 8, App. N, P.) WTVE(TV) produced a five-minute segment about the Reading Rehabilitation Hospital that aired on a local cable system. (*Id.*) The Station donated space for the translator of the Harrisburg public television station. (*Id.* at 32.) The Station distributed fliers that explained a non-alcoholic dairy beverage program, donated equipment and support services in conjunction with the production of a video on teenage drinking and driving, and participated in meetings of local women's groups and discussions on careers in broadcasting. (RBI Exh. 8 at App. V.) These are all commendable activities that receive credit.

Compliance

Failures To Report Information

110. To qualify for a renewal preference, the incumbent licensee must show a positive record of compliance with the Communications Act and Commission rules. Cowles Broadcasting, Inc., 86 F.C.C. 2d 993, 1017 (1981). Under the management of Micheal Parker, RBI is shown to have been lax and indifferent in reporting significant events. RBI has candidly acknowledged that it failed on multiple occasions to comply with Commission requirements to timely and accurately report officers, directors, shareholders and ownership/operating agreements. (RBI Exh. 14; Tr. 624-628, 814-815.)

Management Services Agreement

111. RBI entered into the MSA on May 28, 1989, under which Partel was to receive a substantial ownership interest in RBI.¹⁵ (RBI Exh. 18 at 6-19; Adams Exh. 19; Tr. 626.) The MSA was to be reported to the Commission within 30 days of the MSA's execution under §1.65. On February 7, 1992, more than one year after its execution, RBI reported the MSA, but only as

¹⁵ The most legible copy of the MSA was introduced as Adams Exh. 19 that reflects signatures of Mr. Parker and Dr. Aurandt and their signatures' notarizations on May 28, 1989.

an amendment to the bankruptcy transfer application. (RBI Exh. 14.) The amendment contained no identifying reference to the MSA, did not direct the reader's attention to the MSA in the material which followed, and gave no communicative information from which it might be determined that Parker would be in full charge of the business of Station WTVE(TV). RBI's counsel, to his credit, disclosed in a composite document prepared for the hearing these many RBI "Reporting Failures." Mr. Parker offered as explanation for delays in disclosure the fact that the MSA was a work in progress which needed court approval before achieving finality. (Tr. 625-626.) But it was more than 18 months from the bankruptcy court's approval that the Commission finally was informed that Parker via Partel had "full authority necessary to conduct the day-to-day operations of the Station." (Adams Exh. 19 at 4.) There was no acceptable excuse offered for the delay.

112. Mr. Parker was to be elected chief operating officer with "full authority" to conduct those day-to-day operations. (Id.) Parker received the authority to make all personnel decisions and no checks for expenses were to be written without his express authority. (Id.) Approval of the MSA was obtained from the bankruptcy court on January 8, 1991. Thus, the Commission was not informed immediately after the court's approval in January 1991, that Mr. Parker was RBI's chief operating officer. (RBI Exh. 14.) Nor was the Commission informed in connection with the transfer of RBI's license that Mr. Parker had been elected a director of RBI in August, 1989, at the same meeting in which the MSA was approved by RBI's shareholders. (Adams Exh. 13 at 3-4.) (RBI Exh. 14.) Reference to the MSA appears towards the end of the document as a consulting contract between Partel, Inc. and the debtor that was court approved. (Adams Exh. 30.) The mere reference to the MSA in February, 1992 as cited in RBI Exh. 14, did not disclose that Partel was to receive a substantial ownership interest or that the Parker had full operational control over WTVE(TV).

Officers, Directors and Shareholders

113. RBI has acknowledged that between October, 1991 and March, 1994, it misreported to the Commission the identities of RBI's officers and directors. (RBI Exh. 14.) Inaccurate reports were included in RBI's 1991 long-form transfer of control application, in its April, 1992 ownership report, and in its April, 1993 ownership certification. Mr. Parker signed the inaccurate reports in question which he brushed away as "inadvertence[s]". (Tr. 815.) RBI's long-form transfer of control reflected that as late as November 1991, RBI stock had not been issued to individuals and entities who had received the right to the stock almost one month prior to the filing of the application. (Adams Exh. 28.) These matters were too important to be excusable "inadvertence[s]".

Telemundo Option Agreement

114. In May, 1998, RBI entered into a Network Affiliation Agreement ("Affiliation Agreement") with Telemundo Network, Inc. (RBI Exh. 11.) After a delay of one year, the Affiliation Agreement accompanied RBI's Ownership Report dated March 31, 1999. Section 10(b) of the Affiliation Agreement provided:

... Telemundo shall have the right (the "Option"), in its sole discretion, exercisable upon sixty (60) days written notice to [RBI] (the "Option Notice Date"), to purchase all interests in [RBI] or substantially all of the assets [sic] of [RBI] for a purchase price equal to the greater of (i) \$40 million or (ii) twelve (12) times the broadcast cash flow for the previous twelve (12) month period. --- [T]he Option shall be of no force or effect until such time as the grant of [RBI]'s license renewal application filed on or about April 1, 1994, with the FCC becomes final, that is, no longer subject to FCC or judicial review.

(Id.) Thus, Telemundo held a conditional option to acquire ownership of Station WTVE (TV) and timely disclosure of that option was withheld without excuse.

115. Section 73.3613 of the Commission's Rules requires the submission to the Commission, within 30 days of execution, of agreements which relate to the present or future ownership of a broadcast license. Section 73.3613(b)(3)(iii) specifically includes options as agreements required to be submitted. The Telemundo Affiliation Agreement was not submitted to the Commission until April, 1999, almost a year after it was executed. The fact that the option was contingent upon RBI succeeding in its renewal did not negate RBI's duty to timely disclose the option.

116. By letter dated March 26, 1999, addressed to Ms. Ann Gaulke, an official of Telemundo, Mr. McCracken acknowledged RBI's decision not to disclose the option:

Because I never believed that Section 10(b) [of the Telemundo Affiliation Agreement] constituted an option that Telemundo could exercise at any time whether RBI desired to sell or not, I have not filed the [Telemundo Affiliation Agreement] with our ownership reports as an option affecting ownership.

(Adams Exh. 87.)

117. A motive for the non-disclosure appears elsewhere in the McCracken letter:

Our communications attorney has pointed out to us that the option set out in Section 10(b) could be construed in a way that could cause RBI considerable comparative disadvantage in the [to-be-designated comparative renewal] hearing, because it may seem that RBI could not be relied upon by the FCC to honor its promises to operate the station during the coming license renewal.... Thus, the last thing RBI wants is for the FCC to perceive that it seeks license renewal solely to unload the television station at the direction of an option holder.

(Id. at 1.) Mr. McCracken and RBI were concerned that the agreement could harm their comparative case and therefore arbitrarily chose not to file in violation of §73.3613.

Phase II**Misrepresentation/Lack Of Candor**

118. Evidence was received on whether Mr. Parker engaged in a pattern of misrepresentation or lack of candor with respect to disclosures made to the Commission in six separate applications and one amendment. Five of the applications and the one amendment were filed while Parker was a principal of RBI. The disclosures concerned formal Commission decisions that were adverse to Mr. Parker's character qualifications. (Adams Exhs. 49, 50, 51, 52, 53, 54.) The burden of proceeding and the burden of proof on the issue were assigned to Adams. The Bureau participated in the examination of witnesses and sponsored two documents and two stipulations.

San Bernardino

119. On October 30, 1987, a Commission Administrative Law Judge issued an Initial Decision, which found, *inter alia*, that Mr. Parker was a real party-in-interest to the application of San Bernardino Broadcasting Limited Partnership ("SBBLP"), an applicant for a new television station in San Bernardino, California. The Judge based his finding on actions taken by Mr. Parker between the time SBBLP was organized and the time SBBLP's general partner fired Mr. Parker as consultant. Mr. Parker appeared as a witness and testified at the San Bernardino hearing. (Tr. 1922.) As a consequence of Mr. Parker's role, the Judge disqualified SBBLP's application from comparative consideration. Religious Broadcasting Network, 2 F.C.C. Rcd 6561 (Admin. L. J. 1987). Mr. Parker received and read a copy of the Initial Decision shortly after its release. (Tr. 2082.)

120. On July 5, 1988, the Review Board refused to award integration credit and held:

We affirm, *con brio*, the ALJ's refusal to award "integration" credit to SSB; its application was and remains a travesty and a hoax. We need not repeat, point-by-point, all of the findings of fact which the ALJ has set out to support his conclusion that the progenitor and the real party-in-interest of SBB is definitely not Van Osdel, she being merely a fig leaf for the true kingpin of SBB, one Micheal Parker, who currently holds an interest in numerous other broadcast permits (I.D., para. 61), and who could not in his own identity have hoped to prevail in this very close comparative contest.

* * *

[W]e find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure --- but a convenient vizard [and SBBLP] is a **transpicious sham** [cite omitted], and the ALJ justly rejected its **attempted fraud**. Religious Broadcasting Network, 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988). (Emphasis added.)

Mr. Parker received and read a copy of the Review Board's decision shortly after its release. (Tr. 2085.)

121. After the Initial Decision, the parties reached a settlement which the Review Board approved. 5 F.C.C. Rcd 6362, released October 31, 1990. SBBLP received \$850,000 to dismiss its application. Religious Broadcasting Network, 5 F.C.C. Rcd 6362 (Rev. Bd. 1990). Mr. Parker did not directly share in the payment to SBBLP. He testified that he "never got a dime." (Tr. 1945.) However, at one time Mr. Parker held a 20% interest in SBBLP which he transferred to a sister and her husband who did receive money from the settlement. Mr. Parker testified that his understanding at that time was that approval of the settlement resolved the real party-in-interest issue in favor of SBBLP, rationalizing that otherwise, SBBLP could not have participated in the settlement. (Tr. 2069-70, 2074-75.)

Mt. Baker

122. One month after the Review Board found Mr. Parker to be an undisclosed real party-in-interest, the Commission denied an application for review filed by another entity controlled by Mr. Parker. (Tr. 747.) Mt. Baker Broadcasting Co., Inc., 3 F.C.C. Rcd 4777 (1988). Mt. Baker asked the Commission to reinstate a construction permit for a new television station in Anacortes, Washington. The staff had cancelled the permit due to a substantial variance found between what had been authorized and what Mt. Baker had actually constructed. The Commission denied reinstatement and held:

[I]mproper construction did not occur through error or inadvertence; the facts clearly indicate an **effort to deceive** the Commission. (Emphasis added.)

3 F.C.C. Rcd at 4778. Mr. Parker received and read the Commission's decision shortly after its issuance. (Tr. 1908, 2076.) Notwithstanding the finding of an "effort to deceive the Commission", Mr. Parker testified that he understood that the Commission did not have a problem with anyone's character in the proceeding because no character issue was added and decided. (Tr. 2645.) The conclusion that the Commission had no problem is rejected in view of the decision's language.

Disclosures On Applications**Form 315**

123. Questions 4 and 7 of the Commission's transfer application form asks for information regarding character qualifications.

Question 4:**Legal Qualifications:**

- (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination? (Emphasis added.)
- (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in 4(a)?

If the answer to (a) or (b) above is Yes, attach as Exhibit No. ____ , a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status, of the matter. Information called for by this question which is already on file with the Commission need not be refiled provided: (1) the information is now on file in another application or FCC form filed by or on behalf of transferee; (2) the information is identified fully by reference to the file number (if any); the FCC form number and the filing date of the application or other form containing the information and the page of paragraph referred to; and (3) after making the reference, the transferee states, "No change since date of filing."

Question 7:**Broadcast Interests:**

Has the applicant or any party to this application had any interest in or connection with the following:

- (a) an application which has been dismissed with prejudice by the Commission?

- (b) an application which has been denied by the Commission?
- (c) a broadcast station, the license of which has been revoked?
- (d) an application in any Commission proceeding which left unresolved character issues against the applicant
- (e) If the answer ---is Yes, state in Exhibit No. --, the following information
 - (i) name of party,
 - (ii) nature of interest, giving dates,
 - (iii) call letters of station,
 - (iv) location.

Question 4 calls for “full disclosure” about adverse findings of “fraud” and essentially asks for copies of the decisions. The word “fraud” is sufficiently descriptive to require disclosure of the adverse decisions against Parker in San Bernardino (“transpicuous sham” and “attempted fraud”) and Mt. Baker (“effort to deceive the Commission”). Question 4 was answered “no.” The information requested by Questions 7(a) and 7(b) were answered “yes.” Question 7(c) asks about revocations and the question was answered “no.” Question 7(d) calls for disclosure in the context of the Commission’s Allegan policy and that question was answered “no.”¹⁶

Form 346

124. Form 346 is used to apply for an application to construct a low power television station (LPTV). Form 346 questions concerning the legal qualifications of an applicant are substantially the same that Form 315 asks of parties to a transfer. But Question 4 is different in one material respect. In Form 315, Question 4 asks whether a party was the subject of an adverse finding made by “any administrative body.” In Form 346, the Question 4 counterpart asks whether an adverse finding has been made that was related to “fraud before another governmental unit.” (Emphasis added.) Since the adverse findings that would apply to Mr. Parker involve only the subject of “fraud” at the Commission and not at “another governmental unit,” the facts of this case do not fit with respect to Form 346 Question 4. However, the disclosures in Form 346 Question 7 do apply to Mr. Parker in the same manner as Question 7 disclosures apply in Form 315.

¹⁶ Allegan County Broadcasters, Inc., 83 F.C.C. 2d 371, 373 (1980) (subsequent procedures to be taken to address unresolved substantial character allegations not addressed previously in order to accommodate settlement).

Parker's Disclosures To The Commission**San Francisco**

125. On March 2, 1989, an entity named West Coast United Broadcasting ("West Coast") filed an application for consent to transfer control of Station KWBB(TV), San Francisco. (Adams Exh. 50.) West Coast's secretary signed the application on behalf of the transferor and the transferee giving for her address Mr. Parker's residential address. (Adams Exh. 50 at 23; Tr. 1939-40.) The application reported that Mr. Parker was a vice president and a director for West Coast and would continue as such following the transfer. (Adams Exh. 50 at 24, 34.)

126. West Coast responded to the questions with an unqualified "no" to both parts of Question 4. (Adams Exh. 50 at 7.) West Coast responded to Question 7 in the affirmative as to subparts (a) and (b) and in the negative as to subparts (c) and (d) thus denying that there were any unresolved character issues against Parker. The narrative disclosure stated in an exhibit:

Micheal L. Parker, Vice President and a director of West Coast, ... is an officer, director, and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-8607OIKP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988. Mt. Baker Broadcasting Co. has pending before the Commission a Petition for Reconsideration of that decision.

(Id. at 26-27.) The narrative failed to mention the finding of the "effort to deceive the Commission." The narrative also failed to mention at all the San Bernardino decision or Mr. Parker's role in the flawed SBBLP application.

127. The law firm of Schnader, Harrison, Segal & Lewis ("Schnader, Harrison") submitted the application to the Commission. (Adams Exh. 50 at 1; Tr. 1858.) R. Clark Wadlow, a Schnader, Harrison partner, previously represented Mr. Parker, or entities in which he had attributable interests. (RBI Exh. 46 at 2.) Mr. Parker acknowledged having reviewed the narrative response in Exhibit III which he asserted had been drafted by Schnader, Harrison attorneys. Mr. Parker claimed that West Coast had relied upon legal advice to decide what was needed to respond to the application's questions. (RBI Exh. 46 at 6.) Mr. Parker testified that he believed the information referenced above in connection with Question 7 had been prepared by Mr. Wadlow. (Tr. 1941, 2012.) Mr. Wadlow was not certain that he had reviewed the application. (Tr. 1858, 1864-65.) Mr. Wadlow concluded that Question 7 was answered correctly, but he had no explanation as to why the San Bernardino decision was not referenced. Nor had he read the Mt. Baker decision at that time. (Tr. 1859-60, 1865.) Mr. Parker was not represented in Mt. Baker by Schnader, Harrison. (Tr. 1914.)

Los Angeles (LPTV)

128. On December 8, 1989, Mr. Parker filed an application for a construction permit for a new low power television station in Los Angeles. (Adams Exh. 49.) Mr. Parker answered questions 4 and 7 in the same manner as the disclosure in West Coast. He also included the same narrative statement relative to the Mt. Baker construction permit stating that an extension of time was denied and that a petition for reconsideration was pending before the Commission. (Adams Exh. 49 at 4-5, 11.) As was the case in the West Coast application, nothing appeared in the Los Angeles application relating to the "effort to deceive" in Mt. Baker and nothing at all appeared with respect to the San Bernardino decision which was not even mentioned.

Norwell (WHRC)

129. On July 23, 1991, an application was filed to transfer control of Station WHRC-TV, Norwell, Massachusetts, from Nikita Maggos to Two If By Sea Broadcasting Corporation ("TIBS"). Mr. Parker was the president, sole director and 100% shareholder of TIBS. (Adams Exh. 51 at 10.) The application was transmitted to the Commission by Mr. Eric Kravetz, a communications attorney. (Id., Tr. 2343.)

130. In response to Questions 4 and 7, TIBS checked the same "no" and "yes" boxes as had West Coast. (Adams Exh. 51 at 9, 11.) The narrative exhibit contained the same information about the denial of Mt. Baker's extension application but no reference was made to a petition for reconsideration. The exhibit explaining Question 7 "yes" responses stated the following:

Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV) , Anacortes, Washington, [citations omitted].

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. See Religious Broadcasting Network et. al., FCC 88R-38, released July 5, 1988. NM Docket 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein,

Sandino Telecasters, Inc. See Religious Broadcasting Network et. al., FCC 9OR-101, released October 31, 1990.¹⁷

(Adams Exh. 51 at 17-1 8.)

131. Mr. Parker testified that he does not know the narrative's author. But he believes that an attorney drafted it and he suggested that Mr. Marvin Mercer, RBI's bankruptcy attorney, prepared the narrative with input from either Mr. Eric Kravetz or Mr. Wadlow's law firm (then Sidley & Austin). (RBI Exh. 46 at 7; Tr. 1798, 1952-54, 2058.) Mr. Kravetz, a communications counsel who did some work for Mr. Parker, denied any role in the narrative's preparation and had no knowledge as to who prepared it or how it was prepared. (Tr. 2344-46.) Mr. Wadlow also denied that he had any role. (Tr. 1805.) Ms. Paula Friedman, a former Sidley & Austin associate, testified that she had no role in the Norwell application and that so far as she knew, no one from Sidley & Austin had any role. (Tr. 2105-06.) Whoever was the drafter, Mr. Parker admitted reviewing the application and approving it, including the narrative. (RBI Exh. 46 at 7.)

132. Mr. Parker justified the omissions regarding the Mt. Baker and San Bernardino decisions based on a letter that he had received from Mr. Wadlow on February 18, 1991. (RBI Exh. 46 at 7 and Attachment D.) The Wadlow letter addressed the sufficiency of the narrative's disclosure and stated:

It is our opinion that the Administrative Law Judge ("ALJ") [in the San Bernardino case] simply concluded that SBBLP had failed to report your activities and involvements [sic] with SBBLP - - which the ALJ found to be such as to make you a real party-in-interest. However, the ALJ did not find that you had done anything improper [sic] or that anything you had done reflected adversely on you.

As I mentioned above, we have continued to represent you in other FCC proceedings, as we have for the last eight or ten years. You serve as a principal of other FCC licensees. We are aware of no question that has ever been raised as to your qualifications to hold such a position.

Mr. Parker and Mr. Wadlow testified the letter was prepared in haste because Mr. Parker had requested that it be prepared quickly in order to present it to third parties in connection with matters related to RBI's bankruptcy. (Tr. 1806-08, 2001-02, 2016-19, 2025; Adams Exh. 59.) The letter was not prepared in connection with disclosures to be made to the Commission.

133. Following the Norwell grant, three more applications were filed which contained

¹⁷ Adams has objected in prehearing motions to the citations by Mr. Parker to non-published versions of Review Board decisions. While it was an irritant purposefully inflicted and although the rules require FCC Record cites, the practice does not constitute evidence of a lack of candor. See 47 C.F.R. §1.14.

the same questions and answers which had appeared in the West Coast and Norwell applications: Reading, Twenty Nine Palms and Dallas. The narrative describing the Mt. Baker and San Bernardino decisions which had appeared in the Norwell application was used once again. (Adams Exh. 52 at 7, 12, 30; Adams Exh. 53; and Adams Exh. 54 at 7, 10, 24-25; Tr. 1971-74.)

Reading (WTVE)

134. On November 13, 1991, an application was filed for the assignment of Station WTVE(TV), Reading, PA. (Adams Exh. 52.) The transferee was Partel, the company controlled by Mr. Parker that had entered into the MSA with RBI. The disclosure followed the pattern of answering “no” to questions about fraud and including in an exhibit the “boilerplate” narrative as was used for West Coast and Norwell. Sidley & Austin represented that it had no connection with Parker’s disclosure.¹⁸ (Tr. 1805, 2105.) In response to Question 7(a) as to whether any party had any interest in or connection with any application that had been denied or dismissed with prejudice, Mr. Parker responded “yes.” (Adams Exh. 52 at 12.) But Mr. Parker answered “no” to Question 7(d) asking whether there were unresolved character issues. The narrative descriptions of Mr. Parker vis a vis the Mt. Baker and San Bernardino proceedings were submitted to the Commission as follows:

Micheal Parker also was an officer, director and shareholder of Mt. Baker Broadcasting Co. Mt. Baker Broadcasting Co.’s application for extension of time of its construction permit for KORC(TV), Anacortes, Washington (FCC File No. BMPCT-86070KP) was denied. See Memorandum Opinion and Order, FCC 88 – 234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Mr. Parker’s role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership (“SBB”), - - - was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, for purposes of the comparative analysis of SBB’s integration and diversification credit, Mr. Parker was deemed such. - - - . This proceeding was settled in 1990 and Mr. Parker did not receive an interest of any kind in the Sandino Telecasters, Inc., the applicant awarded the construction permit. (Citation omitted.)

(Adams Exh. 52 at 30.)

¹⁸ The distancing of the lawyers from authorship of the narrative’s language creates a further inference that it was prepared by Parker or under Parker’s direction and then given to the lawyers.

Twenty Nine Palms (KVMD)

135. On June 4, 1992, an application for the assignment of Station KVMD(TV) at Twenty Nine Palms, CA was filed. (Adams Exh. 53.) Mr. Parker was the transferee and he executed the transferee portion of the application. There was no law firm or lawyer identified with this application. Mr. Parker responded “no” to Question 4 about “fraud”. He also answered “no” to Question 7(d) asking whether Mr. Parker had any interest in or connection with any application which left an unresolved character issue against the applicant. (Adams Exh. 53 at 6, 8.) Mr. Parker did answer in the affirmative to Question 7(a) and 7(b) asking whether he had any interest in or connection with an application which had been denied or dismissed with prejudice, referring to Parker’s disclosure in an exhibit. (Adams Exh. 53 at 18-20.) The narrative accounts of the Mt. Baker and San Bernardino proceedings were the same as those made in the Station WTVE(TV) transfer quoted above. (Adams Exh. 53 at 19-20.)

Dallas (KCBI)

136. On August 3, 1992, an application for assignment of the license of International Broadcast Station KCBI, Dallas, TX, was filed. (Adams Exh. 54.) The assignee was TIBS, a Parker controlled entity. Mr. Parker responded “no” to the question about fraud. He also answered “no” to the question of whether he had any interest or connection with any applications which left an unresolved character issue against the applicant. In this particular application, the staff sought a clarifying amendment on whether basic character issues had been sought or added with respect to any of the applicants whose applications had been dismissed. (Bureau Exh. 2 at 3; Tr. 1977, 1979.) After receiving the request, Mr. Kravetz spoke with Mr. Parker and in October 1992, Mr. Kravetz drafted an amendment, which Mr. Parker signed:

Two If By Sea Broadcasting Corporation ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and principals had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed. (Emphasis added.)

(Adams Exh. 55 at 3; Bureau Exh. 2; Tr. 1980, 1982-83, 2355-56.) Mr. Parker testified that he or someone under his direction had provided Mr. Kravetz with the information and that Mr. Kravetz proposed the amendment which Mr. Parker reviewed “very carefully” and was “satisfied as to its accuracy.” (Tr. 1983.) Mr. Kravetz testified that he had spoken to the FCC staff. (Tr. 2355.) Mr. Kravetz then drafted the amendment (Adams Exh. 55) based on information that Mr. Parker provided and which Mr. Parker reviewed and signed thereby giving his approval. (Tr. 2355-56.) In drafting the amendment, Mr. Kravetz relied exclusively on information provided him by Mr. Parker and made no independent research. (Tr. 2357.) Mr. Kravetz filed the amendment on October 29, 1992. The Commission staff granted the application one day later. (Adams Exhs. 55, 56.)

Evidence Of Lack Of Candor

137. Mr. Parker never told Mr. Kravetz that a real party-in-interest issue had been added in the San Bernardino proceeding. That was a critical piece of information and its withholding by Parker left Mr. Kravetz factually out in the cold. Mr. Kravetz was entitled to receive candid information from Parker before he drafted the amendment. Had Mr. Parker told Mr. Kravetz that a real party-in-interest issue had been requested and added in San Bernardino, Mr. Kravetz would not have drafted the amendment as he did. That conclusion is established by the uncontradicted testimony of Mr. Kravetz. (Tr. 2372.) Mr. Kravetz's testimony is credible. As a practicing attorney, there would be no motive for Mr. Kravetz to draft and/or file an incomplete or misleading amendment with the Commission. To the contrary, as a practitioner before the Commission, Mr. Kravetz had every motive to file a complete and truthful document. Therefore, it is accepted that Mr. Kravetz would have identified and fully described the San Bernardino proceeding had Mr. Parker informed him of the facts. In that event, Mr. Kravetz would have disclosed to the Commission staff that a real-party-in interest issue had been added in the San Bernardino proceeding and that it had been resolved by the hearing Judge adverse to Mr. Parker and that the Review Board had agreed with the Judge's conclusion. (Tr. 2372-74.)

138. Mr. Parker testified that he told Mr. Kravetz that there were no unresolved issues in the San Bernardino proceeding based on advice that Mr. Parker said he received from Sidley & Austin attorneys. (RBI Exh. 46 at 8; Tr. 1983-84.) But Mr. Parker received no such advice from Sidley & Austin. Mr. Wadlow testified that he could never have given such advice because he was aware that a character issue had been added against SBBLP in the San Bernardino proceeding. (Tr. 1813.) In direct contravention of advice that Mr. Parker would have received had the lawyers been fully informed by him, the amendment misleadingly concluded that:

No character issues had been added or requested against those applicants when those applications were dismissed.

(Adams Exh. 55 at 3.) That was not literally true and became misleading without a full explanation. A real-party-in-interest issue had been added in which Parker was involved and which was resolved on the merits against SBBLP and Parker. Initially, Mr. Parker contended in written testimony that the Dallas amendment was not meant to include information about the Mt. Baker or the San Bernardino proceedings:

Based on the previous advice from the Sidley attorneys about the Mt. Baker and San Bernardino proceedings, Linda or I indicated that there were no unresolved character issues pending when the applications to which I was a party were dismissed.

(RBI Exh. 46 at 8.) That statement, while incomplete, was literally accurate because with adverse character findings having been made on the merits, there were no unresolved character issues left to resolve.

139. But at the hearing, Mr. Parker took a different approach. He explained in open court that he had intended the amendment to cover only those applications in which he, Parker, was the named applicant or in which he had an interest. According to Mr. Parker's rationale, because the Dallas application noted that Mr. Parker was neither the applicant nor the holder of an interest in the applicant, the San Bernardino application was not relevant to the Dallas amendment:

The amendment says and gives the same disclosure --- . And it may be cutting fine hairs but the amendment says what the amendment says and it clearly says that while I was neither the applicant or a holder of an interest, this was (sic) the facts of the case.

(Tr. 1987-88.) Mr. Parker was less than candid in giving such testimony. His "fine hairs" explanation for omitting information shows Mr. Parker giving the Commission less than the full facts when he exchanged and introduced his written testimony. His live testimony that he held no interest in the San Bernardino application of SBBLP is intentionally deceptive because he had been found in that proceeding to be the real party-in-interest behind a "transpicuous sham." So in that respect he was a "holder of an interest."

140. Mr. Parker also wrongly suggested at the hearing that Mr. Kravetz had drafted the responsive amendment because Mr. Kravetz knew what had been represented in the original KCBI application concerning the San Bernardino application. (Tr. 1990.) That was at best a mischievous distraction. As noted above, Mr. Kravetz had no role in drafting the narrative in the Dallas application. (Adams Exh. 54 at 24-25.) And he had no knowledge about the real party-in-interest issue. (Tr. 2372) As for the Dallas amendment, Mr. Parker was solely responsible for the disclosure and took advantage of his counsel's lack of information. Yet, Mr. Parker seeks to convince in this proceeding that the Dallas amendment indirectly informed the staff of the legal effect of the San Bernardino proceeding because the Judge's adverse conclusions became subsumed in the Review Board's decisions that denied SBBLP any integration credit and accepted a settlement. (Tr. 2027.)¹⁹ But there is absolutely no basis in the language of the amendment and/or in Mr. Parker's testimony to excuse or justify an intentional omission by Mr. Parker in the Dallas amendment (Adams Exh. 55) of adverse findings against his qualifications in the Mt. Baker and San Bernardino proceedings.

¹⁹ This circular reasoning comes across in the testimony: [O]nce the ALJ's opinion was appealed, then the controlling document was the review board (sic); not just their opinion on the [\$]850,000 [settlement], but their opinion rendered in terms of – at least my understanding of what that opinion was --- that for comparative analysis she didn't get the credit, but they didn't extend on to the rest of opinion, and I'm sure you guys will argue about that, but that was understanding." (Tr. 2026-27.) Parker seems to have lost any semblance of truth and accuracy in that testimony when he stops short of the key finding that he was provocateur of a "transpicuous sham."

141. Mr. Parker has also testified in this proceeding that after the San Bernardino decisions denying comparative credit because Mr. Parker was the real-party-in-interest but allowing a settlement payment to be made to SBBLP, he believed that the real-party-in-interest issue "went away." (Tr. 2027.) Evidence cannot be found in this record that Mr. Wadlow shared Mr. Parker's view on the effect the settlement of the San Bernardino proceeding had on the Initial Decision's conclusions because Mr. Wadlow could not recall having so advised Mr. Parker on the subject. (Tr. 1829, 1856.) Mr. Parker testified that by the time of the San Bernardino dismissal, he had concluded in his own mind that the disqualifying issue had been resolved favorably by the Review Board notwithstanding the Board's critical language. (Tr. 2028, 2030, 2064-65.) Mr. Parker's explanation must be rejected. Mr. Parker acknowledged that he knew that a character issue had been added in the San Bernardino proceeding prior to the dismissal of the application. (Tr. 1992.) Even though not literally found to be "unqualified," Mr. Parker understood that the character issue focused, in large part, on him and that the character issue was going to have implications for him. (Tr. 2080-81.)²⁰

142. Mr. Parker continued to assert that prior to a Commission "by direction" letter to TIBS, he had formed his self-acquitting view that the Review Board in its approval of the San Bernardino settlement had favorably resolved the issue. (Tr. 2637-39.) That misapprehension was dispelled in 1997, when the Commission published that letter:

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 FCC Rcd 6561, 6566-67 (I.D. 1987). The Review Board upheld the disqualification, characterizing the application as a "travesty and a hoax" 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988), and the applicant as a "transpicuous sham" which had "attempted fraud" upon the Commission. *Id.* at 4091.

Two If By Sea Broadcasting Corporation, 12 F.C.C. Rcd at 2255, 2257 (1997). This "by direction" letter published for all to see the serious questions festering about Mr. Parker's character qualifications and came close to suggesting that Parker was "unqualified" to own or control a licensee. Despite those concerns about qualifications, it was later advised in a staff letter dated May 22, 1997, that the earlier "by direction" letter did not limit the transferability of any stations that were commonly controlled by Parker. (Bureau Exh. 2.)²¹ It seems from the later letter advice that it was contemplated that Parker's qualifications would be in hearing in

²⁰ Consider the more detailed disclosure that Mr. Parker made to Telemundo when a business opportunity was involved. See Paras. 162-163 below.

²¹ Letter dated May 22, 1997 (Corrected) to Alan C. Campbell, Esq. from Barbara A. Kreisman, Chief, Video Division, Mass Media Bureau received in evidence as Bureau Exh. 2 in posthearing ruling, Order FCC 00M – 52, released August 18, 2000.

connection with a contemplated assignment of a Hartford license (WHRC – TV) after the qualifications of the assignor were litigated in a pending renewal proceeding. (Bureau Exh. 2.)

But the qualification questions of the contemplated assignee which was a Parker controlled entity, were never formally addressed. The statute of limitations barred the issues for this case. See Memorandum Opinion and Order FCC 99M -49, released September 3, 1999. The Hartford license is now the subject of a settlement and to further avoid addressing Parker's qualifications, Parker's interest has been assigned to (or bought out by) a "white knight." See Martin W. Hoffman, Trustee, et al., 15 F.C.C. Rcd 22086, 22089 n.4 (2000). It is truly remarkable that since 1989, Mr. Parker has been able to successfully navigate through the Commission always one tack away from anyone taking a dead reckoning on his character qualifications.²²

Mr. Wadlow's Letter

143. The Wadlow letter was written eight months after the Review Board had affirmed the Initial Decision in the San Bernardino proceeding, yet the letter makes no mention of the decision. (Adams Exh. 58.) It was written and delivered within 45 minutes of the request because it was needed by Mr. Parker to show to a third party. (Tr. 1866; 2002 – 2003.) The letter was written on stationary of the law firm of Sidley & Austin and used the colloquial "our opinion" and the collective "we." It had the trappings of and indeed it was an opinion letter of the law firm of Sidley & Austin. The letter represented that the Initial Decision in the San Bernardino proceeding had not been reviewed. But Mr. Wadlow had litigated on behalf of another party in the San Bernadino proceeding. It is not surprising he had not reviewed the Initial Decision in a matter which he actively litigated because, having first-hand knowledge, he did not need to review the facts. (Tr. 1831.) According to the letter, the Judge "did not find [Mr. Parker] had done anything improper or that anything [he] had done reflected adversely on [him]. (Adams Exh. 58.) Mr. Wadlow modified that conclusion by his testimony that the "conclusion [in the letter], other than the reference to the ALJ, is accurate." (Tr. 1822.) But the letter was never intended as advice on Commission disclosure thereby making it less relevant.

144. The Wadlow letter also stated that the law firm was "aware of no question that has ever been raised as to [Parker's] qualifications" to serve as a principal of Commission licensees. That legal opinion was based in part on the action of the Review Board to approve SBBLP for settlement whose application was denied but not dismissed. (Tr. 1823.) It is true that there has not been an adjudication by an Initial Decision, the Review Board or the Commission that Mr. Parker was "disqualified" to hold a license.²³ That is an important distinction because while there were decisions on the merits that Parker had been involved in disqualifying conduct, there was never any ruling that he was "disqualified." Mr. Parker was justified in relying on the legal

²² To avoid any future uncertainty, based on this record, Mr. Parker is declared to be "unqualified" to exercise ownership or control over RBI's license.

²³ The Commission suggested that Mr. Parker might be disqualified in the published "by direction" letter to TIBS, 12 F.C.C. Rcd at 2255, 2257. But that letter was not an adjudication.

advice as stated in the letter that he has not been “disqualified”. However, that letter provides no comfort with respect to answering “no” to Question 4 or in failing to fully disclose the findings of “fraud.”

Norwell Disclosure

145. The transfer application for the station in Norwell was filed by Mr. Kravetz for the transferor, Nikita Maggos. (Adams Exh. 51.) (Tr. 2344.) TIBS, the transferee, was a controlled by Mr. Parker who personally executed the transferee section. (Adams Exh. 51 at 14, 16-18.) Mr. Parker answered Questions 7(a) and (b) in the affirmative as to whether any party to the application had any interest in or connection with any application which had been denied or dismissed with prejudice. (Adams Exh. 51 at 11, 16-18.) In an exhibit, Mr. Parker described his interests in Mt. Baker and his participation in San Bernardino.

146. Mr. Kravetz was not connected with the Parker/TIBS disclosure in the Norwell application. He received the transferee’s disclosure from Mr. Parker. (Tr. 2346–47.) Mr. Kravetz did not review the disclosure or discuss it with Mr. Parker. (Tr. 2348.) The question asking about “fraud” was answered “no” by Mr. Parker and not by Mr. Kravetz. Parker also answered “no” to the question asking if there were unresolved character issues. Mr. Parker believed that his San Bernardino disclosure was sufficient given that he had no ownership interest, he did not directly benefit financially from the settlement, and the crux of the offending conduct was a failure to disclose the scope of Parker’s association with the SBBLP application. And Parker was also relying on advice from Sidley & Austin that his “qualifications” to hold a Commission license were in order. There is a substantial question as to Mr. Parker’s reasoning for making inadequate disclosure which is being addressed in this proceeding. But under the limited circumstances of his retainer, Mr. Kravetz was not responsible for Mr. Parker’s disclosures. Therefore, there is no issue concerning advice of Mr. Kravetz as a defense.

Dallas Disclosure

147. Disclosure also was made at a later date in an exhibit with which Mr. Kravetz had more of a hands on connection. (Adams Exh. 55.) Mr. Kravetz recalls that in October 1992, he was contacted on a question about the application by Mr. Parker or by a member of the Commission staff. (Tr. 2354.) The application had been filed on August 3, 1992. (Adams Exh. 54.) But Mr. Kravetz was not associated with that document. (Tr. 2354.) A question was posed by Commission attorneys who were processing the application. The question concerned the adequacy of disclosure in the application. Mr. Kravetz testified:

And I talked to Andrea Ellis, who was the FCC staff person at the time who was reviewing the [Dallas] application to find out what the defect was. She advised me that there was nothing explicit in

the application that talked about whether [the] character issue had been added or raised with regard to the other applications with which the applicant was connected – the applicant and its principal were connected.

(Tr. 2355.)

148. Mr. Kravetz spoke with Mr. Parker, advised him of the staff's concerns and of the need to "cure the defect", and "asked him if he [Parker] could provide a statement." (Tr. 2355-56.) Mr. Parker complied and Mr. Kravetz prepared an amendment in which he inserted "the additional information" that Mr. Parker provided. (*Id.*) Mr. Kravetz sent the document to Mr. Parker for his review and signature. (*Id.*) Mr. Kravetz undertook no independent research into the cases because that is not what he had been retained to do in preparing an amendment. (Tr. 2357.) Mr. Kravetz testified that if Mr. Parker had told him (Mr. Kravetz) that he (Mr. Parker) had been found to be a real party in interest in the San Bernardino proceeding, Mr. Kravetz would have insisted on disclosing the case and the fact of the added issue and the relevant case history. (Tr. 2374-75.)

149. The evidence shows that Mr. Parker handled all disclosure himself, without benefit of counsel. Mr. Kravetz drafted and filed a Dallas amendment based on information provided by Mr. Parker. Mr. Parker has offered his own reasons as to why he thought that the additional details about the San Bernardino proceeding were unnecessary. But the reasons given by Mr. Parker, which are his alone and not attributable to Mr. Kravetz, are self-contradictory and rejected. First, he testified that he did not consider the San Bernardino proceeding to have been included in the universe of applications covered by the Dallas amendment. (Tr. 1986-88.) Second, he asserted that he thought that the San Bernardino proceeding had been resolved on a comparative basis only without any finding of a disqualification. (Tr. 2027-28, 2064-67, 2070.) Third, he stated that he believed that the real party-in-interest issue had been favorably resolved in an approved settlement. (RBI Exh. 46 at 4; Tr. 2070.) But such reasoning as discussed and analyzed above, has no connection at all with Mr. Kravetz's limited legal services that were of a technical filing nature not involving research or counseling.

Mr. Parker Was Capable Of More Meaningful Disclosure

150. In stark contrast to the wobbly explanations as to why the obvious Commission holdings were not disclosed in Parker's applications, Mr. Parker later found it to be in his interest to be more complete in representing operative facts of the adverse findings. Far more informative facts were contained in Mr. Parker's letter sent in 1998, to Ms. Ann Gaulke, Vice President for Affiliate Relations, Telemundo Network, Inc. (Bureau Exh. 1 at 9-10.) Mr. Parker wrote to Ms. Gaulke that the San Bernardino proceeding found that he was an undisclosed real party in interest and that as a result an applicant was found disqualified. He also made reference to conclusions reached in the Initial Decision. He advised Ms. Gaulke that in the Mt. Baker proceeding, the Commission held that construction of a facility without disclosing it to the Commission "evinced

an intention on the part of the permittee to deceive the Commission.” (*Id.*) However, Mr. Parker represented to Ms. Gaulke that she need not be concerned because in

subsequent transfer applications, the Commission “passed on” his qualifications and the Commission never raised “any alleged defects in character on [Parker’s] part.” (*Id.* at 10-11.) The Gaulke letter was written by another or others but Mr. Parker read it and signed it. (Tr. 2629, 2679.) The Gaulke letter presents a marked improvement over Mr. Parker’s earlier disclosures to the Commission.

151. In an effort to “educate” the proceeding on what was intended to be conveyed in the Gaulke letter, Mr. Parker testified that the fact of the San Bernardino settlement was not “significant in terms of this letter” though it was “significant in terms of the overall look at the case.” (Tr. 2683.) Ms. Gaulke had requested a “due diligence letter” on “my problems vis-à-vis relicensure at the FCC.” (Tr. 2663.) Mr. Parker considered himself to be “under an obligation to provide full disclosure of all information of potential consequence” relating to that question. (*Id.*) The Gaulke letter had legal implications which could have severe financial consequences if the information provided by Parker was misleadingly incomplete. Mr. Parker testified more than once that it was important that the letter disclose “all the bad things that can go wrong.” (Tr. 2622, 2629-30.) By contrast, in disclosures to the Commission for license transfers in San Francisco, Los Angeles, Twenty Nine Palms, Norwell, Dallas and Reading, there was not the same concern. He believed that the far lesser disclosures in the transfer applications were adequate because the limited disclosures would be linked with a presumed “personal knowledge” of the details on the part of the staff. (Tr. 2664.)

Phase III

Abuse of Process

152. A substantial question was raised on whether Adams filed its application for the purpose of obtaining a settlement which would be an abuse of the Commission’s process. The burden of proof and the burden of proceeding were assigned to RBI. The Bureau participated in the examination of witnesses.

153. Adams denies that it filed its application for the purpose of entering into any kind of settlement or other arrangement pursuant to which Adams would dismiss its application. (Tr. 2430.) Unrebutted testimony shows that Adams filed its application for the purpose of obtaining a construction permit and that it intends to build a station in Reading, PA. (Tr. 2429-30, 2465.) Adams principals testified without contradiction that the group was primarily interested in operating a new station and developing a community service for Reading. (Tr. 2430.)

154. All but one of Adams' principals also were principals of Monroe Communications Corporation ("Monroe"), a comparative renewal challenger in 1982 for a television station in Chicago. (Tr. 2429-2430.) After a decade of litigation, including appeals to a court of

appeals,²⁴ the proceeding settled with Monroe dismissing its application in return for a buy out of approximately \$18 million. (RBI Exh. 19.) The Commission approved the settlement and acknowledged that Monroe had not filed its application for the purpose of entering into a settlement. (RBI Exh. 22 at 3.)

155. The rules for settlement of comparative renewal proceedings were amended in 1989, seven years after the filing of the Monroe application and five years before the filing of the Adams application. Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 F.C.C. Rcd 4780, 66 R.R.2d 708 (1989), *recon. denied*, 5 F.C.C. Rcd 3902, 67 R.R.2d 1515 (1990). The rulemaking was an outgrowth of an in-depth analysis and criticism of the prevalence of abuses of process found to exist in the comparative renewal process. Cf. Second Further Notice of Inquiry and Notice of Proposed Rule Making, 3 F.C.C. Rcd 5179 (1988). The Commission revised rules so that no for-profit dismissal of a comparative renewal challenger would be permitted. The prohibition rule against abuse of process was in play when Adams filed in 1994.

156. Mr. Gilbert was a principal of both Monroe and Adams. He was the primary witness for Adams, having a close working relationship with Adams' communications counsel dating back to the Monroe venture. A practicing lawyer, Mr. Gilbert was aware of the settlement limitations that took effect in 1991. When he received and read Mr. Cole's memorandum dated August 15, 1991, he was made aware of this new policy to limit settlements of comparative renewal proceedings to out-of-pocket expenses. (Adams Exh. 62.) Mr. Gilbert continued to be aware in 1994, when Adams's application was prepared and filed, that no for-profit settlement would be permitted under the Commission's rules, and he so advised all of the Adams shareholders when they invested. (Tr. 2429-2430, 2466, 2467.) The Adams principals went forward because there was still potential benefits for challengers. As experienced risk-takers, the Adams group could, through the successful prosecution of a "comparative renewal" application, acquire a valuable television broadcast opportunity for considerably less than the fair market value. (Tr. 2430, 2467.) The potential for gain was attractive to the Adams principals who been financially successful in a similar venture, but who were yet to own a station. (Tr. 2429, 2467; Adams Exh. 1.)

157. Adams also held a belief that the renewal process presented an opportunity to replace "home shopping" programming which, in Adams view, was not providing locally-originated programming that served any local public interest. (Tr. 2457-2458, 2467-2468.) However, the Adams group had no connection at all with the Reading community and it cannot be accepted that they picked RBI from a list of renewals out of concern at the time of target selection for the interests of local viewers of Channel 51. The prime motivation was a business opportunity that incidentally could also target "home shopping." Adams had an awareness of the criticisms of "home shopping" programming from source materials that Adams' counsel

²⁴ In re Monroe Communications Corporation, 840 F.2d 942 (D.C. Cir. 1988), Monroe Communications Corporation v. F.C.C., 900 F.2d 351 (D.C. Cir. 1990).

provided which presented adverse views from knowledgeable sources. (Tr. 2468-2471; Adams Exhs. 63, 64, 65, 67.) Adams formed a belief that "home shopping" stations generally do not accommodate locally-originated programming dealing with local community issues. (Tr. 2468.) Mr. Gilbert also believed that a station which provided no locally-originated programming would be vulnerable to a renewal challenge because of the difficulty in achieving a renewal expectancy. (Tr. 2457 2468.) Adams' counsel apparently shared Mr. Gilbert's view of that vulnerability.

158. After discovering that "home shopping" was a target of opportunity, Adams and counsel formulated their strategy to file against a vulnerable applicant wherever located. (Tr. 2471, 2473; Adams Exh. 66). The first opportunity that met Adams' schedule and that "was available " was a station in Marlborough, Massachusetts. (Tr. 2474.) Adams reviewed two-weeks of taped programming while retaining a real-estate firm to locate an antenna site. (Tr. 2474.) Mr. Gilbert also interviewed residents of the Marlborough service area. Adams concluded that it had a suitable candidate to challenge. However, Adams did not file for the Marlborough channel because Adams could not locate a suitable transmitter site. (Tr. 2475-2476.)

159. So Adams decided to remobilize and strike against a "home shopping" target found in Reading, PA. (Tr. 2476.) Adams retained an engineering firm to prepare the technical portion of an application. Adams' consultant focused on planning for "news gathering equipment" with a goal of providing "local service to the community." (Tr. 2390-2393; Adams Exhs. 73, 74.) That commitment to local service influenced budget figures which the consultant provided to Mr. Gilbert. (Tr. 2392-2393; Adams Exhs. 73, 74.) Prior to filing its application, Adams made no effort to purchase WTVE(TV) outright or to even determine the potential cost of purchase. (Tr. 2541.) In fact, neither Adams nor Monroe ever sought to purchase any television station, anywhere. (Tr. 2542.) Adams' stated reason for not attempting to purchase a station is that doing so would not achieve Adams' goal of a Commission precedent negating public interest "home shopping." (Tr. 1118.) Adams had already decided that a challenge presented the highest and best economic opportunity.

On-Site Survey

160. Between February and June 1994, Mr. Gilbert made several trips to Reading. (Tr. 2475-2476, 2478, 2538.) At no time during any of these trips did Mr. Gilbert watch WTVE's Channel 51. (Tr. 1064, 1065.) During those trips, Mr. Gilbert informally interviewed 30 to 40 people. (Tr. 2476-2477, 2538.) The interviews were conducted at business establishments and not in homes. (Tr. 2538.) Mr. Gilbert did not ask for the names of the people he interviewed, and he made no written record of the interviews. (Tr. 2538-2539.) Mr. Gilbert stated that none of the people he interviewed were aware of Station WTVE(TV). (Tr. 2539) In view of the uncontrolled, haphazard methodology employed by Adams, this evidence of investigating the needs of the community is accorded little weight. But the evidence is consistent with Adams' strategy and was not rebutted.

Flawed Program Taping

161. In May 1994, approximately one month before filing, Mr. Gilbert hired Mr. Paul Sherwood to tape RBI's "home shopping channel." (Tr. 2483-2484 and Tr. 2139, 2154-2156.) Mr. Gilbert was referred to Mr. Sherwood by Mr. Gilbert's daughter who worked with Mr. Sherwood's brother in Chicago. (Tr. 2484, Tr. 2138.) Mr. Sherwood is not a professional media consultant. He is a computer systems consultant. (Tr. 2137, 2149.) Mr. Sherwood has no expertise in analyzing or in evaluating the content of television programming. (Tr. 2149-2150.) Nor does he have any expertise in analyzing or in evaluating the public service performance of television stations. (Tr. 2150.)

162. For the duration of the Adams taping job, Mr. Sherwood lived in Chester Springs, Pennsylvania, approximately 30 miles from Reading. Chester Springs was serviced by Suburban Cablevision. (Tr. 2147-2148.) Suburban Cablevision did not carry Station WTVE(TV). (Adams Exh. 11.) But it did carry the "home shopping" national program. (Tr. 2148.) Mr. Gilbert's initial instructions to Mr. Sherwood were to tape the "home shopping channel." (Tr. 2139, 2140) To the best of Mr. Sherwood's recollection, Mr. Gilbert never even mentioned Station WTVE or Channel 51. (Tr. 2139-2140.) Mr. Gilbert never told Mr. Sherwood the purpose for the taping. (Tr. 2144, 2145-2146.)

163. Per instructions from Mr. Gilbert, on June 1, 1994, Mr. Sherwood began recording an initial twenty four hours of the "home shopping channel." (Tr. 2148, 2485-2486.) That recording was not of WTVE programming but of the "Home Shopping Club," a cable channel carrying the national "broadcast feed". (RBI Exhs. 24, 47 at 1-2; Tr. 2477-2478, 2488-2489.) The recording contains not a single station identification for Channel 51 in Reading; it only contains identifications for the "Home Shopping Club." (RBI Exh. 47 at 12) The recording also shows a depiction of the "Home Shopping Club" logo and repeats the words "Home Shopping Club" with the voiceover announcement:

You're watching America's original shop at home television service,
bringing you 24 hours of savings, fun and excitement every day.
Live from Tampa Bay, Florida, it is the Home Shopping Club.

(RBI Exh. 47 at 2.) The recording also contains hourly promotional announcements for upcoming segments of the "Home Shopping Club." (RBI Exh. 47 at 2.) The misguided project had taped Tampa Bay programming and was clearly started off the mark.

164. Mr. Gilbert reviewed the recording of June 1, 1994. (Tr. 2487.) Based on his review and despite the evident fact that the Tampa Bay recording was not programming of Station WTVE(TV), Mr. Gilbert instructed Mr. Sherwood to continue to record the programming, twenty-four hours per day, each day for the period June 13 to June 30, 1994. (Tr. 2477, 2478, 2489-2490.) (RBI Exh. 47 at 1.) Mr. Sherwood dutifully recorded the "Home Shopping Channel" from June 13 through June 30, 1994. (Tr. 2148.) Mr. Gilbert received a second batch of recordings (June 22 through June 30) from Mr. Sherwood which was after Adams had filed its application. (Tr. 2493; Adams Exh. 77.) The June 22-June 30 recordings

also were not of Station WTVE(TV). (RBI Exh. 47 at 1-2.) The June 22-June 30 recordings virtually mirrored the content of the June 1 tape and the June 13-June 21 recordings. (RBI Exh. 47 at 2.)

165. The only PSAs reflected in any of the recordings were those produced for national consumption by the Missing Children Help Center located in Tampa Bay, Florida. (RBI Exh. 47 at 3.) Of the missing children highlighted in those PSAs, only four are identified as missing from or last seen in Pennsylvania. Of those four, only one is identified as missing from or last seen in the Philadelphia-Wilmington-Atlantic City area. None of the missing children were from or last seen in Reading. (RBI Exh. 47 at 3-4.) This best illustrates Adams' problem. There was no difference in the "home shopping" format that emanated from Tampa Bay. What Adams missed was WTVE(TV)'s noncommercial broadcasting and how and when it was presented to the community in between the predominant "home shopping" broadcasts.

166. It was five years later that Mr. Gilbert discovered the taping error. (Tr. 2499.) It is concluded that Mr. Gilbert believed that he had given adequate instructions on the tapings because there is no rational motive for Mr. Gilbert to deliberately skewer Mr. Sherwood's efforts or to intentionally send him down the wrong warren. (Tr. 2484-85; 2554-55.) The evidence of this faulty survey shows the value of careful prior planning. But it does not support a finding of an intent to deceive or an abuse of process.

Proposed Transmitter Site

167. On June 29, 1994, Adams offered to obtain an option for the prospective use of a transmitter owned by Conestoga Telephone & Telegraph Company ("Conestoga"). (Adams Exh. 68; Tr. 2480.) Adams wanted to lease space to affix a UHF antenna to Conestoga's existing tower, and to occupy 500-600 square feet of an existing equipment building at the site. Conestoga subsequently advised Adams that any lease concerning the use of the Conestoga tower would be contingent on the ability to obtain proper zoning permits to construct an additional building or expand the existing structure. (Adams Exh. 68; RBI Exh. 74.)

168. More than two years after the letter of intent, Adams and Conestoga had not reached an agreement regarding Adams' use of the proposed transmitter site. (RBI Exh. 74.) By letter dated August 8, 1996, Conestoga advised Adams: "At this point, we have no agreement whatsoever regarding this site." (RBI Exh. 74, Tr. 2531.) Gilbert, responded: "I am totally aware of the obligations stated in your letter of August 8, 1996.... Please forward me an executed copy of the Restated Option Agreement and License/Lease Agreement with the appropriate check and we can finally be on our way after all the many, many years." (RBI Exh. 75; Tr. 2532-2533.)

169. The Conestoga Option Agreement was not executed until December 1996. (Adams Exh. 71.) The Option Agreement was for a period of three years to begin with delivery of the executed agreement and payment to Conestoga. (Adams Exh. 69.) Adams delivered the executed Option Agreement and payment on December 20, 1996. (Adams Exh. 71.) The Option Agreement was neither renewed nor extended during its term and, on or about December 20,

1999, it expired. (Tr. 2535; RBI Exh. 76; Adams Exh. 69 at 2; Adams Exh. 71 at 1 and 3.) On May 17, 2000, shortly before the Phase III hearing in this case, Adams sought to renew its option for the prospective use of the Conestoga tower. (Tr. 2535; RBI Exh. 76.) There is no evidence of an absolute rejection by Conestoga. It is concluded from this record that Adams continues to make reasonable efforts to perfect its transmitter site and has a reasonable chance of success.

Adams' Dealings With Telemundo

170. Ms. Anne Swanson is a partner of the law firm of Dow Lohnes & Albertson in Washington, D.C. specializing in communications law. On behalf of Telemundo, a Spanish-language network, Ms. Swanson spoke with Mr. Cole on April 30, 1999, about the possibility of settling this proceeding. This conclusion was confirmed by the law firm's cooperative discovery and by her straightforward testimony assisted by contemporaneous notes.²⁵ (Tr. 2215-2217, 2219-2222, 2301-2302.) (RBI Exh. 52 at 4-5.) During an initial conversation, Ms. Swanson initiated a query about Adams' level of interest in settlement, and specifically at what amount of money its interest might ripen into acceptance. Later that day, Ms. Swanson again spoke with Mr. Cole. He advised her that while Mr. Gilbert planned to pursue the application, Mr. Gilbert would not say "no" to a settlement. (Tr. 2219-2221; RBI Exh. 52 at 4-5.)

171. Mr. Gilbert was Adams' designated negotiator. (Tr. 2215-17, 2219-24.) So on the same day, April 30, 1999, Ms. Swanson telephoned Mr. Gilbert. (Tr. 2219-2220, 2222-2224, 2302.) (RBI Exh. 51 at 2.) Ms. Swanson asked Mr. Gilbert for a settlement figure and Mr. Gilbert responded that he could not give her a figure because Adams had not valued the station. (Tr. 2225-2226; RBI Exh. 52 at 5.) Mr. Gilbert committed Adams to pay one-third of the expenses for obtaining an appraisal. (Tr. 2223-2224, 2230-2231; RBI Exh. 52 at 5; RBI Exh. 57.) According to Ms. Swanson's contemporaneous, reliable and credible notes, Mr. Gilbert had indicated at that time that Adams would be reasonable with respect to a possible settlement. (RBI Exh. 52 at 5.)

172. On June 2, 1999, Ms. Swanson received the appraisal. The next day, she faxed the appraisal to Mr. Cole along with a letter reconfirming that Adams had agreed to pay for a third of the cost. (RBI Exh. 62 and Adams Exh. 75.) On June 7, 1999, Mr. Gilbert, Mr. Cole, Ms. Swanson and possibly Ms. Gaulke, a Telemundo vice president, participated in a telephone conference to discuss the appraisal and hoped for settlement. (Tr. 2268-2274.) (RBI Exh. 52 at 10-11.) The noninvolvement of RBI and Parker in the appraisal and negotiations was a concern since the participation of all three parties, the two applicants and the "white knight," would be

²⁵ Dow, Lohnes attorneys were most diligent and cooperative under intense demands to produce relevant evidence on the Telemundo settlement efforts. There were multiple in-camera inspections made for privileged matter after the documents were screened by Ms. Swanson and other attorneys of the firm, including another partner. Ms. Swanson was personally attentive to each discovery request, including a review and redacting of her personal diary, and she answered the questions with care and candor. For more details, see Protective Order, FCC 00M-48, released July 18, 2000 (just clerical/paralegal, copying and messenger costs of document search and production were calculated @ \$6,800).

needed to close any settlement. (Tr. 2270-72.) Mr. Gilbert did not want his time wasted and reported that Adams was only interested in pursuing serious settlement negotiations. From this evidence it is found that Mr. Gilbert was prepared to negotiate a serious settlement in June 1999. (Tr. 2273.) (RBI Exh. 52 at 11.) But the evidence does not show Mr. Gilbert as initiator of the discussions.

173. On a subject aside from settlement, Mr. Gilbert contacted Ms. Swanson on July 14 to express Adams' interest in a Telemundo affiliation. (Tr. 2277-2278; RBI Exh. 52 at 12.) The next day, Mr. Gilbert and Ms. Swanson discussed the possibility of Telemundo providing Adams with Spanish language programming in the event that Adams' application was successful. (Tr. 2281-82; RBI Exh. 52 at 14.) On July 16, 1999, Ms. Swanson spoke with Mr. Cole and with Ms. Gaulke about Adams' interest in affiliation and settlement. (RBI Exh. 50 at 10.) The question of a future Adams-Telemundo affiliation was deferred since RBI was then a Telemundo affiliate. (Tr. 2286; RBI Exh. 54 at 4.) On July 29, 1999, Ms. Swanson spent more time in considering the affiliation question which was eventually deferred. (Tr. 2285-86.)

Common Counsel For Monroe And Adams

174. There is another circumstantial question raised by the retainer arrangement between Adams and its counsel. Adams is represented in this proceeding by Bechtel & Cole, the same law firm that represented Monroe which succeeded in winning a money settlement. (Tr. 1018, 1042.) Adams' fee agreement with Bechtel & Cole provides that the firm is to be paid at a rate that is \$100 per hour less than their usual hourly rates with respect to the prosecution of Adams' application (\$125/hour versus \$225/hour). (RBI Exh. 21.) (Tr. 1019.) The fee agreement also provides that Bechtel & Cole be paid twice their usual hourly rate (\$450/hour) in the event that Adams' application is granted or if the application is dismissed on terms that are "economically favorable," including a settlement for only reasonable and prudent expenses. (RBI Exh. 21.) The fee agreement that was signed on June 30, 1999, memorializes the substance of an oral agreement that was reached in 1993. (Tr. 1019-20.) Mr. Gilbert contends that there was no fee agreement until the written version was signed. Recall that Monroe had paid Bechtel & Cole "a substantial bonus" for its work. (Tr. 1014-15.) It is found that when the Adams application was filed in 1994, there was no question in anyone's mind that Bechtel & Cole would be satisfactorily compensated with or without a formal fee agreement. The Monroe past was the Adams prologue as far as legal fees were concerned. There is no feature of the fee agreement that is inconsistent with the testimony of Mr. Gilbert that the Adams application was filed to win the license.

Failure To Keep Current A Corporate Certificate

175. In the course of the hearing, it was determined that Adams had inadvertently permitted its corporate certificate to expire. Adams was incorporated in Massachusetts on November 23, 1993, before it filed its application in this proceeding. (RBI Exh. 71.) However, on August 31, 1998, Adams was involuntarily dissolved for failing to file state annual reports. (RBI Exh. 72.) The evidence shows that Mr. Gilbert and Adams' counsel were unaware of the

lapse until it was brought up in the hearing by RBI's counsel. Adams took immediate steps to correct the error and Adams is now current with respect to its incorporation. Order FCC 00M-50, released July 25, 2000 (revival certificate).

Credibility Findings

176. RBI sought misrepresentation/lack of candor issues against Adams after the conclusion of Phase III. The issues were denied. Memorandum Opinion and Order FCC 00M-56, released October 18, 2000. However, questions of Adams' candor which arose in the hearing of this case will be addressed here. The five subjects on which Reading challenges Adams' truthfulness are examined below and RBI's arguments are considered anew.

Application

177. There seemed to be a switch in testimony from Adams' asserting that its application was an opportunity to establish that it is impossible to broadcast in the public's interest through a "home shopping" format. That was the thrust of Mr. Gilbert's testimony in Phase I when he testified to the background of the Adams application.²⁶ Also, in the course of his testimony, Mr. Gilbert disclosed that Adams was discussing settlement possibilities beginning shortly before this case was set for hearing. That testimony raised questions of settlement intent, particularly when considered with the fact that the same principals, as members of the Monroe enterprise, had settled for cash. After hearing this testimony, RBI's motion to enlarge was granted in part and an abuse of process issue was added because substantial questions of fact had been raised. Memorandum Opinion and Order FCC 00M-07, supra and Memorandum Opinion and Order FCC 00M-19, supra.

178. It is important to note the negative fact that at no time in the deposition discovery phase was an Adams principal asked the question directly as to why Adams had filed or what was Adams' motive for filing. When Adams put on its case countering allegations of abuse of the hearing process, Mr. Gilbert testified that the prime motive for organizing Adams after a multi-million dollar settlement was for a business reason, i.e., that a challenge could result in acquiring a permit to construct a TV station at costs below the market value of the station. At the same time, Mr. Gilbert could achieve what he saw as an improvement in Channel 51's programming. (Tr. 2467-69.) Consistent with that testimony, in November 1999, in an attachment to an opposition to a motion, Mr. Gilbert declared that the Adams group intended to successfully prosecute its application and had no intention of settling. Mr. Gilbert's testimony was credible.

²⁶ On November 2, 1999, RBI filed a motion to add an abuse of process issue against Adams. The pleading cycle was concluded on December 1, 1999. The Presiding Judge waited to hear Mr. Gilbert's testimony before ruling on RBI's motion.

179. RBI seeks an adverse intent inferred from the fact that Adams did not pursue the option of purchasing a station that was broadcasting a home shopping format. Such a purchase would have permitted Adams to replace home shopping with its own programming. However, under Adams' cost benefit analysis, it would expend lower costs in a litigated challenge than in an open market purchase. RBI counters that Adams could have searched for a station that was available at a "bargain price" since Adams was not concerned about location. But Adams had no duty to bargain hunt rather than file a challenge. The controlling question is not to measure business options that were available to Adams in 1994.²⁷ It is to determine the primary motive underlying Adams' application.

Telemundo Discussions

180. The evidence shows that on April 30, 1999, the month before the HDO was released, Anne Swanson, counsel for Telemundo, spoke with Harry Cole, counsel for Adams, with respect to possible settlement. (Tr. 2215-17; RBI Exh. 52.) Ms. Swanson asked Mr. Cole how interested Adams might be in settling. Ms. Swanson heard that Mr. Gilbert would not say "no" to a settlement, thus encouraging further discussion. Ms. Swanson spoke directly with Mr. Gilbert and asked him to name a settlement price. Towards that end, both agreed to share the cost of an appraisal and Mr. Gilbert assured Ms. Swanson that he would remain reasonable as to agreeing on a settlement amount. (Tr. 2223-24; RBI Exh. 52 at 5.)²⁸ Then the discussion between Telemundo and Adams went no further.

181. RBI also seeks a finding of a lack of candor in Adams failing to fully explain in Phase I testimony the degree of interest that Adams had in Hispanic programming. The record evidence indicates that Adams would have liked to have a commitment from Telemundo that it would provide Hispanic programming. But Telemundo was then under contract to RBI and its counsel was concerned about a lawsuit if it pursued an opportunity with Adams. Mr. Gilbert should have been more forthright in answering deposition questions that skirted the issue of Adams having expressed an interest in obtaining the right to Telemundo programming. But Telemundo had cut off any such discussion in 1999, and the subject never became a matter of

²⁷ The business opportunity as seen by Mr. Gilbert did not include as a factor the lost opportunity to broadcast in his view of the "public interest" while the litigation was under way for these several years. But there is weight accorded to Adams' cost benefit analysis, the "horseback" economics of which were never challenged. More importantly, it does not negatively impact upon Adams' convincing credibility.

²⁸ There was a delay in the transmission of the appraisal documents to RBI in discovery. Adams contends that the delay was due to an oversight and that the identity of the appraisal was made clear in answers to interrogatories. According to RBI, Adams answers to interrogatories that are dated April 19, 2000, disclose that Adams was contacted by Ms. Swanson to negotiate a "white knight" settlement and that in June 1999, a copy of the appraisal was furnished to Mr. Cole. RBI was not caught by surprise as a result of the delay and there is insufficient evidence to support a finding that Adams had purposely withheld the documents.

negotiation. Such a “Q and A” in a deposition where the question of motive for filing was not asked directly will not support a disqualification and such evidence does not prove a lack of candor.

182. None of this evidence proves an intention on the part of Adams to settle when it filed in 1994. The motivation for the Swanson initiated discussions were consistent with pursuing Telemundo’s interest in the Spring of 1999, by preserving an affiliation. Such efforts were initiated by Telemundo when Ms. Swanson saw RBI exposed to a serious renewal challenge. These conclusions show nothing untoward about settlement.

Sherwood Tapings

183. Mr. Gilbert testified with adequate candor to Mr. Sherwood’s episodic taping. The “home shopping” format that was broadcast by Station WTVE(TV) was to be assessed for public service value by Adams. Mr. Gilbert was in charge of the taping project and programming evaluation. In June 1994, Mr. Sherwood taped what he and Mr. Gilbert believed to be programming that was being broadcast from Station WTVE(TV). (Adams Exhs. 76-77.) Mr. Gilbert reviewed the tapes, at times utilizing a fast forward feature. His testimony at deposition and in the hearing may have been lacking in clarity. But nothing of decisional significance was raised by RBI showing that Mr. Gilbert had intentionally misled. It happened that Mr. Sherwood, who was not experienced in taping television programming, accidentally taped national home shopping programming and the error was not caught. His review was in two stages that were prescribed by Mr. Gilbert. By happenstance, the first day of taping contained PSAs from Pennsylvania which, after review by Mr. Gilbert, led him to believe that taping was being made of WTVE(TV) programming. After a review of the test run, Mr. Gilbert perceived that it would be clear sailing and Mr. Sherwood was then virtually on his own as he taped for two additional weeks. Mr. Gilbert did monitor from afar by telephone but there was no hands-on supervision.

184. All taping was done in June 1994, shortly before Adams filed. The purpose of the taping and review was to document Mr. Gilbert’s long-held negative views on “home shopping” formats which he had reached before the Sherwood tapings. So the short time between taping and filing has no decisional significance. More importantly, there was no misleading testimony in Mr. Gilbert’s sometimes shaky account of what should have been an easy chore. There was no intentional misleading of the parties or of the Presiding Judge. The substance of the taping was sufficient for Adams to formulate or confirm a judgment on Station WTVE(TV)’s “home shopping” programming. It is concluded that there was in excess of two weeks of relevant programming taped which Mr. Gilbert reasonably monitored and reviewed. The net effect of the taping project was a good faith assessment by Adams of the programming of Station WTVE(TV) which was used by Adams to base a decision to file a challenging application.

Hispanic Programming

185. RBI requested adverse findings for allegedly misleading testimony on planned programming. The Adams principals gained appreciation for the benefit of Hispanic programming in the Monroe proceeding. Before filing in 1994, the Adams principals had formed a general intent to seek to offer Hispanic broadcasting if an affiliation could be arranged with a Hispanic network. RBI argues that there were conflicting accounts given by the Adams' principals. Mr. Umans testified that Hispanic programming had been decided upon from the outset, while Mr. Haag had no recollection, and the application makes no reference to programming. Mr. Fickinger testified that there never was a plan. But Mr. Fickinger also testified that it was always understood that at the appropriate time, there would be an effort made to offer Hispanic broadcasting. The Adams principals operated in a loose fashion in light of their past success over a period of many years and in view of the length of time that it takes to prosecute a challenging application. Evidently, the group saw no need for an internalized structure in view of the experience of having once endured a lengthy renewal hearing. The exploratory efforts of Mr. Gilbert with Ms. Swanson to discuss a relationship with Telemundo supports Adams contention that it was interested in providing a Hispanic programming format for Reading.

Corporate Status

186. There is no reason to spend any more time on the significance of a short lapse in Adams' certificate of incorporation which Adams took steps to correct as soon as was reasonably possible after its discovery. Order FCC 00M-50, supra. Compare Memorandum Opinion and Order, FCC 00M-56, released October 18, 2000.

CONCLUSIONS OF LAW

I

Comparative Renewal Hearing Standards

187. Integration of ownership into management was declared to be unlawful by a federal appeals court. Bechtel v. F.C.C., 10 F. 3rd 875 (D.C. Cir. 1993) (criterion of integration declared arbitrary and capricious) ("Bechtel II"). After Bechtel II, the Commission addressed the comparative standards to be applied in the few remaining comparative cases. Reexamination of the Policy Statement on Comparative Broadcast Hearings, First Report and Order, 13 F.C.C. Rcd 15920, 16004-16006 (1998) ("First Report and Order"). The Commission determined that its 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. The parties in this case were put on early notice of the application of the newly adopted standard. Memorandum Opinion and Order, FCC 99M-47, released August 9, 1999.

188. The court left it to the Commission to adopt standards that might include the

existing “enhancements” of local residence, civic involvement, and broadcast experience. The Commission did not reject these “enhancements.” Each enhancement could be considered as an individual objective comparative factor. However, with only a few comparative cases that could be litigated, the Commission decided not to adopt any new criteria. The Commission continues to recognize, however, that in a hearing in which a renewal applicant carries the burden of proof in showing “substantial performance”, a high level of performance will be the most important factor and will trump other comparative considerations. First Report and Order, supra at 16005-16006.

Renewal Expectancy Requires Substantial Performance

189. RBI has the burden to show that it is entitled to a preference as a renewing licensed broadcaster. 47 U.S.C.A. §309(e). RBI’s showing must be based on non-commercial programming that was broadcast on Channel 51 during the renewal period. If RBI’s service is shown to be only “minimal”, RBI receives no preference. Central Florida Enterprises, Inc. v. F.C.C., 683 F.2d 503, 506 (D.C. Cir. 1982). The “public interest” supercedes self interests of the incumbent and the challenger:

The merit or lack of merit in the incumbent’s record – and the degree of renewal expectancy to which he is thereby entitled – and all the other factors are all to be weighed, all at once, all with an eye toward the public interest.

Id. at 506 – 507 n.16.

190. The Commission awards a renewal expectancy only to those renewal applicants who demonstrate a performance during the renewal period that was “substantial.” See Cowles Broadcasting, Inc., 86 F.C.C. 2d 993, 1006 – 1008 (1981), aff’d sub nom. Central Florida Enterprises, Inc. v. F.C.C., 683 F. 2d 503 (D.C. Cir. 1982), cert denied, 460 U.S. 1084 (1983). The renewal expectancy is so important that the enhancement factors of challengers pale before a showing of an incumbent’s “meritorious service.” F.C.C. v. National Citizens for Broadcasting, et al., 436 U.S. 775, 805 (1978). Under the Cowles standard, where past service is shown to be “substantial” it must also be considered to have been “meritorious.” Central Florida Enterprises, Inc. v. F.C.C., supra at 506. And where service is “meritorious,” the renewal expectancy “should not be destroyed absent good cause.” F.C.C. v. National Citizens for Broadcasting, supra at 805.

191. RBI’s programming will be considered in the context in which RBI was operating between 1989 and 1994. RBI was in Chapter 11 from 1986 to 1991. RBI had made a business decision to specialize in “home shopping” and there is no prohibition against broadcasting a “home shopping” format. The Commission found that a licensee can fulfill its public interest obligation by offering a predominance of “home shopping,” provided that there is an appropriate amount of public interest broadcasting provided. See Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, as amended, 47 U.S.C. Section 614(g)(2), 8 F.C.C. Rcd 5321 (1993) (“Home Shopping Order”).

192. The Adams principles were opposed to “home shopping” as programming that

could accommodate public service broadcasting. But nothing was filed by Adams in connection with the rule making, a failure which undercuts Adams' claim of championing the public interest by filing against RBI's renewal. The Commission did show concern for a lessening of community directed broadcasting at "home shopping" stations and issued a specific directive that such stations must provide public affairs programming that is responsive to issues confronting local communities. Home Shopping Order at Para. 9. Accordingly, RBI's duty remains the same, and if the evidence in this case shows that RBI's community directed programming was only "minimal", then RBI receives no renewal expectancy. Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 3 F.C.C. Rcd 5179, 5185 (1988).

193. The renewal expectancy paradigm has five criteria: (1) the efforts made to ascertain community needs and interests; (2) the programming response to those needs and interests; (3) the incumbent's reputation in the community for serving the needs and interests; (4) the record of compliance with the Communications Act and the Commission's rules and policies; (5) evidence of community outreach in providing a forum for the expression of local views. Fox Television Stations, Inc., 8 F.C.C. Rcd 2361, 2366 – 68 (1993), recon. denied, 8 F.C.C. Rcd 3583 (1993), modified, 9 F.C.C. Rcd 62 (1993), aff'd sub nom. Rainbow Broadcasting, Inc. v. F.C.C., 1995 WL 224866 (D.C. Cir 1995). Compare similar standards applied in Radio Station WABZ, Inc., 90 F.C.C. 2d 818, 840-842 (1982), aff'd sub nom. Victor Broadcasting v. F.C.C., 722 F. 2d 756 (D.C. Cir. 1983) (quantity of non-entertainment programming and extent it met identified needs and interests; amount of locally produced programming; and station's local reputation). The later formulated and more extensive Fox Television standards will be applied in this case.

Ascertainment

194. From 1989 to 1990, RBI ascertained community needs by referrals and staff review of literature of community based organizations. In 1990, with the hiring of Mr. Mattmiller as Station Manager, the efforts expanded to include the polling of business and community leaders and organizations. Heavy reliance for ascertainment was placed on news items in the Times/Eagle, a newspaper of local distribution and interest. There were meetings and discussions with community organizations that were identified in the Station's quarterly issues and programs. There were improvements made. But there was no showing of "extensive measures" that are necessary for the expectancy preference. See Fox Television Stations, Inc., supra, 8 F.C.C. Rcd at 2370-71 (formal interviews with community leaders and numerous contacts with community leaders). Nor do the efforts of RBI even approach those that were approved in other renewal cases. Cf. Metroplex Communications, Inc., 4 F.C.C. Rcd 8149, 8151-52 (Review Bd 1989) and Seattle Public Schools, 4 F.C.C. Rcd 625, 635 (Review Bd 1989) (subsequent histories omitted). Where a station takes short cuts, does not utilize direct contacts with local civic leaders, and tries to make up the difference with PSA type formats, the renewal expectancy is not to be expected.

Responsive Programming

195. RBI relies on its quantitative analysis of programming that it asserts was responsive to identified community issues or needs. But the programming is in large part in the PSA format:

A [PSA] is one for which no charge is made and which promotes programs, activities, or services of Federal, State or local governments (e.g. recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UTGF, Red Cross Blood Donations, etc.) or any other announcements regarded as serving community interests. See [former] Section 73.1810(d)(4) of the Commission's Rules."

In the Matter of Airing of Public Service Announcements by Broadcast Licensees, 81 F.C.C. 2d 346 at n.1.

196. Under Commission doctrine, it is necessary to separate PSAs from programming. PSAs are important but are not to be "a broadcaster's primary method of responding to community needs" and are not to be considered to be "public affairs" programming. Id. at 349, 367. The Commission did not want PSAs to dilute or diminish "the airing of program-length material meeting community problems." Id. And the Commission made clear that while it encouraged PSAs, it did not want its approval to have any "negative effect on the broadcasting of public affairs material." Id. at 368. There were three categories for broadcasters to report in the Annual Programming Report: "news, public affairs and other." Since PSAs did not meet the first two categories, the Commission authorized their being reported (at the option of the licensee) in the third "other" category. Id. What was made clear by this prescribed reporting methodology was continuation of the policy that PSAs could not be claimed for credit as news or programming.

197. As deregulation evolved, the Commission repealed TV programming guidelines and permitted a laissez faire programming mix at the option of the licensee. Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 F.C.C. 2d 1076, 1087 (1984). But even with deregulation, the Commission recognized "the continuing obligation of all licensees to contribute issue – responsive programming." Id. at 1088. And even though RBI chose to use a short form of public programming as a matter of its "licensee discretion,"²⁹ it still must be held to the Commission's policy requiring issue responsive programming.

²⁹ See RBI's Proposed Findings of Fact and Conclusions of Law at 90 n.15 (WTVE's use of short form public programming is a matter of licensee discretion).

198. The record contains composite week analysis reflecting in accord with RBI's Program/Issues Reports [RBI Exh 8, Tabs C – X], that there was no local news and only a scant amount of issue programming at WTVE(TV). In three of the composite weeks, there was no more than three hours of non-entertainment programming. At best, the home shopping format was interrupted only 8% of the time in 1994, for noncommercial programming, the highest percentage of noncommercial programming in the entire renewal period. RBI's increased use of PSAs did not serve as a substitute for news or issue - responsive programming or local news. RBI's new children's programming and an expansion of religious programming were minimal improvements that were not shown to be issue responsive. State legislative reports were more in the nature of last ditch efforts by WTVE(TV) at the end of the period to give an appearance of responsive programming. In actuality, the legislative programming was in the "canned" format and was not shown to be community issue responsive.

199. Most of WTVE(TV)'s broadcast day was devoted to the "home shopping" format with the resulting effect of minimizing issues of concern to the Reading community. By comparison, a "substantial" record was found where the evidence showed regularly scheduled news and public affairs programming, specials and PSAs. See Fox Television Stations, Inc., supra, 8 F.C.C. Rcd at 2376. In this case, none of RBI's public service programs were offered on a regularly scheduled basis, its short form public service programming appeared at the end of each 30 minutes of home shopping, and its flagship programming such as "News To You" appeared in a variety of time slots with little or no notice given to viewers. The programming had such little respect in the community that the local newspaper did not carry program times. As a result, there was no way for viewers to keep informed through the programming of WTVE(TV). RBI has a programming record that for the category of responsive programming, fails to qualify for the preference. Cf. Harriscop of Chicago, Inc., 5 F.C.C. Rcd 6383, 6385 ("minimal" performance receives no preference).³⁰

Community Reputation

200. This criteria is relevant to renewal expectancy only if the programming is found to be substantial. Metroplex Communications, Inc., 4 F.C.C. Rcd 8149, 8153 (Review Bd. 1989), aff'd, 5 F.C.C. Rcd 5610 (1990) (public witness testimony cannot create a basis for renewal expectance). But as a contingency, the evidence will be considered here.

³⁰ RBI relies on Radio Station WABZ, Inc., 90 F.C.C. 2d, 818, 836 (1982) as authority for awarding a renewal preference for short form public service programming. In fact, in that case, the Commission approved broadcasting with "a number of recorded public affairs series on a weekly basis, as well as a number of specials dealing with political, educational, religious, and health-related issues." Id. at 837 (fn. omitted). Also, in that case there was a record of composite week broadcasting of 3 hours and 40 minutes of noncommercial broadcasting for an average of 31 minutes per day. Compare the composite week of RBI's public affairs programs from all sources which showed nothing for the first three years and only a minimal amount for the last two years. (Adams Exh. 2-7.)

201. At best, RBI's reputation was mixed. To its credit, the Red Cross, the March of Dimes, and a local Children's Rights group were complimentary of the PSAs. Representatives of local government and police were also complimentary of responsive PSAs. A member of the Pennsylvania House of Representatives praised the Station's willingness to devote airtime to PSAs and to the presentation of prepared political statements of state representatives and state senators. But there was also criticism from others for the absence of local news. The Mayor of Reading was reticent about the Station's performance. One terminated employee testified about complaints that he received from members of the community about the lack of local newscasting from WTVE(TV). The nature of the positive evidence was one of gratitude for carrying PSA spots. Such qualified evidence is necessarily given lesser weight than positive testimony of programming that is found by viewers to be especially useful for the community. In that regard, the significant weakness found in the public witnesses on behalf of RBI was that none was a regular viewer of Station WTVE(TV). By comparison, the adverse testimony of Mr. Loos that there was no coverage of local emergencies and of Mr. Baldinger that there was no local news during the renewal period offset RBI's positive testimony.

Community Outreach

202. Recognition is given for efforts at community outreach. RBI assisted organizations such as the Red Cross, the March of Dimes, the Children's Rights of Pennsylvania, the Burn Prevention Foundation, and the Switchback Gravity Railroad Foundation, primarily through the airing of helpful PSAs. Station staff members also held career days for school children to encourage interest and careers in the fields of broadcasting. These activities merit some recognition. But they do not meet the efforts that the Commission found noteworthy in Fox Television Stations, Inc., supra, 8 F.C. C. Rcd at 2416-2418 and Seattle Public Schools, supra, 4 F.C.C. Rcd at 638. This evidence proffered by RBI of its record on community outreach is not sufficient to gain a renewal preference.

Record of Compliance

203. Compliance with the Communications Act and the Commission's Rules is a sine que non to qualify for a renewal expectancy preference. Metroplex Communications, Inc., 4 F.C.C. Rcd, supra at 8153 (licensee's record must reflect compliance with the strictures governing broadcasters' conduct). The Commission has an exacting standard:

[L]icensee misconduct may provide a more meaningful basis for preferring an untested challenger over a proven incumbent. Licensee misconduct pertinent to broadcast service may raise questions both as to the licensee's continued compliance with Commission rules and its dedication to serving the community.

Cowles Broadcasting, Inc., *supra*, 86 F.C.C. 2d at 1017. RBI falls short of the Commission's norm of "continued compliance." Because of the predictive nature of future compliance, there is no room to vacillate. Even if RBI's minimal programming qualified for a finding of "substantial service," RBI's intended or reckless noncompliance rebuts the preference. *Id.* The record contains substantial and credible evidence establishing that there were violations by RBI of the Act and the Rules during the renewal period.

Failures To File Timely And Accurately

204. RBI was inaccurate in reporting its ownership. RBI also transferred control to Mr. Parker before receiving authorization from the Commission and omitted material information from the transfer application. Finally, RBI lacked candor through the multiple delicts of its agent Parker and particularly when he responded in a misleading manner to a specific inquiry by Commission staff. RBI also failed to file with the Commission, prescribed documents that are required under specific Commission rules.

Reporting Violations

205. Section 73.3613(b)(3) requires:

Filing of contracts:

Each licensee ... of a commercial ... TV... station shall file with the F.C.C. copies of the following ... documents... within 30 days of execution thereof:

Ownership or control: Contracts, instruments or documents relating to the present or future ownership or control of the licensee... shall include but are not limited to the following:

Any agreement providing for the ownership or voting rights of the licensee's stock

Management consultant agreements with independent contractors; ... station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

206. Section 73.3615(a) requires:

Ownership Reports:

Ownership Reports shall provide the following information [for a corporation] as of a date not more than 60 days prior to the filing of the Report:

The name, residence, citizenship, and stockholding of every officer, director

And in the case of all licensees:

A list of all contracts still in effect required to be filed with the F.C.C. by § 73.3613 showing the date of execution and expiration of each contract; ---.

The evidence establishes, and RBI admits, that the MSA was not filed within thirty days of its execution in violation of §73.3613. Nor did RBI list the MSA in its ownership reports until 1997, eight years after the MSA's execution, a gross violation of §73.3615. In addition, RBI did not correctly list its directors in its 1992 ownership report and it wrongfully certified in its 1993 filing that its 1992 report had been correct.

207. With respect to ownership reports, Mr. Parker, as RBI's president, certified recklessly to the accuracy of each noted document. Mr. Parker knew that he was providing ownership information to the Commission. He also knew that the information must be accurate. RBI asserts that Mr. Parker just did not pay attention to the accuracy of the information that he was providing. If failure to pay attention is accepted as an excuse, it could be used anytime a licensee is questioned about a deficient disclosure. In this case, that "excuse" is not acceptable because it is not supported by any fair view of the relevant evidence.

208. The Parker/RBI MSA was executed in May 1989, which a bankruptcy court approved in August 1990. Yet the MSA was not reported with an acceptable degree of candor until seven years later in 1997.³¹ There were many opportunities to set the record straight with the Commission between 1989 and 1997. But Mr. Parker chose to leave the Commission in the dark as to who was calling the shots at Station WTVE(TV).

209. In October 1991, a year after the MSA received court approval, Mr. Parker caused the issuance of a sufficient number of shares of RBI stock to effect a transfer of control in his favor. To secure this control, he caused a block of control stock to be voted in favor of a new slate of directors which included himself. Shortly after the election of those directors, the application for RBI's transfer was filed without disclosing any of those critical corporate decisions to the Commission. Nor were they disclosed while the Commission was considering a transfer application to bring RBI out of bankruptcy. One result of Parker's deficient disclosure was to hide from the Commission the fact that Mr. Parker was gaining control of RBI's

³¹ RBI claims that the MSA "was reported in an amendment filed by [RBI] on February 7, 1992". (RBI PFC at 96-97.) But there was only passing reference to the MSA in the February, 1992 amendment as an attachment. (Adams Exh. 30 at 8.) It did not mention that the "contract of employment" gave control of the station's operations to Parker. Nor did it disclose that such "contract of employment" included Partel or mention the contemplated RBI stock ownership for Partel. Such oblique hints do not qualify as a "report" to the Commission.

management. If while the transfer application was being considered the Commission had been presented with complete facts about Mr. Parker, a decision to consider the application might have been deferred until the significance of Parker's history with the Commission was assessed. The willingness on the part of RBI, through Parker, to hold back significant information on the truth about control while the Commission was considering a license transfer shows a motive to obtain the transfer before the Commission learned the facts about Parker's background. The willful withholding of such material corporate information also showed indifference or a reckless and wanton disregard of a licensee's obligation to be forthcoming with the Commission. RKO General, Inc. v. F.C.C., 670 F. 2d 215, 225 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

210. There also is sufficient evidence indicating that Mr. Parker as prospective president and director of RBI understood that the MSA, a document required to be filed under §73.3613, had not been filed and that as a result erroneous information had been deliberately or recklessly provided to the Commission while it was considering a transfer application that it was being asked to approve. As a matter of law and as a matter of fact, those reporting violations were willful.³² Such willful transgressions or acts of indifferent disregard of truthfulness in filing detract from the renewal expectancy. Cowles Broadcasting, Inc. supra, 86 F.C.C. 2d at 1017.

Unauthorized Transfer Of Control

211. The evidence shows an unauthorized transfer of control. RBI's November 1991 transfer application and amendments thereto willfully or recklessly omitted material facts, namely, the MSA, the actual issuance of stock, and the subsequent election of new officers and directors. Those violations and failures to be fully informative to the Commission, particularly when coupled with an intentional failure to respond candidly to a staff inquiry, eliminates any hope of renewal expectancy. Fox Television Stations Inc., supra, 8 F.C.C. Rcd at 2390.

212. Section 310(d) of the Act provides:³³

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

³² The term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules. Southern California Broadcasting Co., 6 F.C.C. Rcd 4387 (1991).

³³ 47 U.S. C. § 310(d).

Commission licensees first must seek and obtain the Commission's consent before transferring control of Commission licenses. Thus, prior to any consummation of a transfer of control of a license, the parties to the transfer must file a full and complete application with the Commission. The Commission then must grant the application before consummation of the transaction may take place. See, e.g., American Music Radio, 10 F.C.C. Rcd 8769 (1995).

213. A transfer of control includes a transaction in which a name remains the same, but control of the licensee-entity is transferred from one person or entity or group of persons-or entities to another. Control includes any act which vests in a new entity or individual the "right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue." WHDH, Inc., 17 F.C.C. 2d 856, 863 (1969), aff'd sub nom. Greater Boston Television Corp. v. F.C.C., 444 F.2d 841 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). Full disclosure is required for a transfer of control even where as here, a corporation in bankruptcy transfers a license to a newly formed corporation using the same name. In this case, Mr. Parker had full managerial, operational and budgetary control under the MSA.

214. In October 1991, control of RBI passed from the shareholders who had taken RBI into bankruptcy to a new group of shareholders, appointed and led by Mr. Parker to effect his control as president of RBI. Parker's control took place prior to the filing of a transfer application which occurred in November 1991. And the change took place well before Commission approval which occurred in February 1992. RBI, under the direction and control of Mr. Parker, improperly issued its stock so that control of RBI was transferred to Partel/Parker without the Commission being adequately informed that Mr. Parker was back in business in control of another licensee.

215. It is instructive to observe the ways that the Commission was misinformed. The November 1991 transfer application indicated that stock had not yet been issued when in fact it had been issued. The application erroneously reported that 50,000 shares of RBI voting stock was currently outstanding which was not the case. It further reported erroneously that "consummation" of a previously granted short-form application (the August application) had not occurred. In fact, the opposite was true in all these respects. The referenced 50,000 shares had been cancelled on September 17, 1991; new stock had been issued four weeks later on October 15, 1991; and the new stockholders met and voted in new directors on October 30, 1991. A true and accurate transfer application would have disclosed those facts. The application also could have offered the explanation provided by Mr. Parker at the hearing, if it was true, that RBI felt it could not fully consummate the transaction and emerge from bankruptcy until it had satisfied secured creditors. But whether or not true, any deference to creditors had nothing to do with timely disclosing material facts to the Commission about control. The ultimate travesty was holding back from disclosing to the Commission until 1997, the fact and effect of the MSA.

Exculpatory Circumstances

216. The Bureau would offset Mr. Parker's reporting errors with his removing RBI from a debtor-in-possession status. The Bureau observes that the November 1991 application disclosed the basic parameters of the transaction inasmuch as all of RBI's "proposed"

shareholders were listed. A "consummation" of the short form grant could not occur because of an intervening garnishment of Dr. Aurandt's stock. But even under that scenario, the Bureau concedes that Mr. Parker would have had a motive to conceal the issuance of the stock. That being the case, the Bureau would count the lapses in disclosure against renewal expectancy but not against RBI's basic qualifications. While the Bureau does not believe that RBI's premature transfer of control and related failures to disclose are fatal to its license, the Bureau contends that the scope of RBI's non-disclosures significantly detracts from any renewal expectancy. But a finding of RBI's disqualification is not needed to resolve this case. Certainly, it would be unfair to charge RBI with the disclosure machinations of Mr. Parker who had succeeded in snatching control from an unwilling board of directors. It is evident that in 1991, there was intense corporate infighting over control and by October 1991, Mr. Parker had won.

Diversification

217. RBI fails to attain a renewal expectancy because of WTVE(TV)'s minimal performance during the renewal period and RBI's failures to comply with the communications laws. Therefore, diversification of control of media of mass communications has become relevant to the outcome. Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 394 (1965). See also Bible Broadcasting Network, Inc., 7 F.C.C. Rcd 4578, 4579 (1992). Here, Adams holds the advantage. Only one of its principals, Mr. Umans, has an interest in a medium of mass communications. He has pledged to divest himself of that interest in the event Adams prevails. By comparison, Mr. Parker, RBI's president, a director, and its largest shareholder, holds the licenses to two full-power television stations through 100% ownership of corporate licensees. RBI knew of Mr. Parker's holdings when it entered into the MSA and RBI must be aligned with Mr. Parker's objective qualifications for purposes of diversification. Accordingly, Adams is awarded a significant diversification preference. Pueblo Radio Broadcasting Service, 5 F.C.C. Rcd 4829 (Rev. Bd. 1990).

Comparative Coverage

218. Because RBI cannot be counted on to build a transmitter with the permit it holds, Adams gains a very slight preference for proposing to serve 33% more people than WTVE(TV) currently serves. Simon Geller, 90 F.C.C. 2d 250, 276 (1982) (slight preference to applicant with four times greater coverage to well-served areas); Global Information Technologies, Inc., 8 F.C.C. Rcd 4024, 4031 (Rev. Bd. 1993) (slight preference for 30% differential in overall population service); Christian Broadcasting of the Midlands, Inc., 99 F.C.C. 2d 578, 583 (Rev. Bd. 1984) (slight preference for 24% coverage differential to well-served areas).

Local Residence And Civic Activities

219. RBI is owned by a majority of shareholders who reside or have resided within the city limits of Reading or within the predicted Grade B contour of WTVE(TV). RBI is entitled to a preference for local ownership. Edward F. and Pamela J. Levine, 8 F.C.C. Rcd 8401 (1993).

Past participation by an owner in local civic affairs is considered a part of the local residence affiliation which indicates an interest in the community's welfare. Policy Statement on Comparative Broadcast Hearings, F.C.C. 2d 393, 396 (1965). Several of the stockholders have been involved in local civic activities in Reading or within the Grade B service area. Quarterly lists of issues and programs show that RBI also has participated in community activities. Adams, on the other hand, claims no credit for local civic activities. Accordingly, RBI also is entitled to a preference for civic involvement. Gloria Bell Byrd, 8 F.C.C. RCD 7124 (1993). Because RBI has failed to meet the criteria for a renewal preference, there should be lesser credit awarded for local residence or local civic involvement. It would be inconsistent to award RBI for sporadic civic involvement when it had fallen down on its primary duty to provide comparative credit for local residence and civic activities in view of its far greater failure as a broadcaster. Therefore, RBI receives only a marginal credit.

II

Misrepresentation/Lack Of Candor

220. The Phase II issue was added to resolve substantial questions concerning failures on the part of Mr. Parker to disclose in his filings with the Commission "the actual nature and scope of his previously adjudicated misconduct." Memorandum Opinion and Order, FCC 99M-61, released October 15, 1999. A finding and conclusion of a misrepresentation requires reliable evidence that false or materially misleading statements were made with an intent to deceive. Fox River Broadcasting Inc., 93 F.C.C. 2d 127, 129 (1983) ("Fox River"). Lack of candor, a more subtle form of misrepresentation, involves concealment, evasion or some other failure to be fully informative, but also carried out with an intent to deceive. Fox River, supra. The affirmative duty of candor, which has particular significance for a licensee, requires an applicant before the Commission to be "fully forthcoming as to all facts and information relevant" to its application. Swan Creek Communications, Inc. v. F.C.C., 39 F.3d 1217, 1222 (D.C. Cir. 1994). What is relevant is that which may be of "decisional significance." RKO General, Inc. v. F.C.C., 670 F.2d 215, 229 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982). An intent to deceive can be found by direct evidence or when the evidence supports a reasonable inference. California Public Broadcasting Forum v. F.C.C., 752 F.2d 670, 679 (D.C. Cir. 1985). Such an inference arises from a false statement of fact coupled with proof that the party making it had knowledge of its falsity. David Ortiz Radio Corp. v. F.C.C., 941 F.2d 1253, 1260 (D.C. Cir. 1991). Intent can also be inferred from motive. Joseph Bahr, 10 F.C.C. Rcd 32, 33 (Rev. Bd. 1994). Finally, indifference and wanton disregard for accuracy are equivalent to an affirmative and deliberate intent to deceive. RKO General, Inc. v. F.C.C., supra, and Golden Broadcasting Systems, Inc., 68 F.C.C. 2d 1099, 1106 (1978).

221. Because of the regulatory need of a licensing agency to rely on licensees' representations, when a licensee is found to have intentionally misled the Commission whether through misrepresentation or lack of candor, that party may no longer be qualified to hold a Commission license. Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C. 2d 1179, 1210-11, 1231-32 (1986) ("Character Qualifications"); Center for the Study and Application of Black Economic Development, 10 F.C.C. Rcd 2836, 2837 (Review Bd. 1995)

(fundamental purpose for character inquiry is to make predictive judgment for honesty and future compliance). Deceptions take many forms. And whether the deception involves misrepresentation or lack of candor through affirmatively false statements or through evasion or failures to be fully honest and forthcoming, there must be an intent to deceive or mislead the Commission in order for the deceptive disclosure to be disqualifying. See Fox River, supra. Thus, it is well established that only an intentional misrepresentation or lack of candor can result in an adverse character finding. Fox River, supra.

222. The most relevant character traits in dealing with the Commission have always been “truthfulness” and “reliability.” The Commission’s main concern is with respect to licensing someone who will be forthright in dealing with the Commission and respectful of compliance with the law. Character Qualifications at 1209. In transfer application questions calling for disclosures of “fraud” by yes or no answers, the nature of the “fraud” to be disclosed is equated with deceit. Character Qualifications at 1196; Webster’s New Collegiate Dictionary 453 (1979); Black’s Law Dictionary 594, 903 (5th Ed 1979). See also Leflore Broadcasting Co., Inc. v. F.C.C., 636 F. 2d 454, 461 – 62 (D.C. Cir. 1980). Cf. United States v. Nill, 518 F. 2d 793 (7th Cir. 1975) (fraud connotes perjury, falsification, concealment, misrepresentation). The Commission may treat even an insignificant misrepresentation as disqualifying. See Leflore Broadcasting Co., Inc v. F.C.C. , supra. Certainly, the nature of the violation, the circumstances surrounding it, and other pertinent considerations such as repetitiveness are relevant as to future reliability. Therefore, all of the facts and circumstances of Mr. Parker’s false or misleading disclosures or disclosures that were lacking in candor will be considered. Character Qualifications, 1210-11 and n. 76 and n.77.

Question 4 **False And Misleading “No” Answers**

223. Applying those principles to Mr. Parker’s multiple filings, the checking of a “no” to a direct question asking about “adverse final action taken” related to “fraud” results in a disqualification for intentional misrepresentation or lack of candor. Mr. Parker admits to having substantial experience in broadcast regulation compliance. He has made many filings with the Commission in connection with applications for licenses and license transfers. (RBI Exh. 46 at 1-2.) From 1989 to 1992, Mr. Parker was responsible for making disclosures to the Commission regarding five applications for the transfer of TV station licenses, and one amendment to an application for transfer of an international radio broadcast license. In each instance, Mr. Parker was responsible for providing truthfully complete information as it was called for by each form utilized. It would be unreasonable to require the staff to trace for truth and accuracy each and every checked answer in every transfer form that is filed at the Commission. This case presents a clinical illustration of how licensing regulation is fundamentally premised upon the Commission’s reliance on the truth, accuracy, completeness and candor of representations made by those owning and/or controlling licensees. See Leflore Broadcasting Company, Inc. v. F.C.C. supra, 636 F. 2d at 461.

224. An intent to deceive by providing false answers to direct questions can be inferred from this “special nature of the obligation of honesty that a licensee owes to the F.C.C.” *Id.* The gravamen here is that in each of five transfer forms, Mr. Parker answered “no” to specific questions as to whether an adverse finding was made by any administrative body relating to “fraud.”³⁴ Mr. Parker consistently answered “no” to the questions on the transfer application forms asking about “fraud. The “no” responses made repetitively by Parker with respect to the five transfer applications were false and misleading. A fair assessment of the evidence dictates that conclusion. A preponderance of the evidence establishes Review Board findings of “transpicuous sham” and “attempted fraud” and a Commission decision that Mr. Parker was a principal in “an effort to deceive” the Commission. Clearly, in order to be truthful with the Commission, Mr. Parker had to check off the “yes” answers to the question of whether he had been the subject of “an adverse finding” by an “administrative body.” To make matters worse, the false and misleading “no” answers were not even mentioned in Mr. Parker’s prepared written testimony. (RBI Exh. 46.) To escape responsibility, Mr. Parker slanted his testimony to protest that neither proceeding “raised a character issue as to [his] qualifications to hold Commission licenses” and that the San Bernardino proceeding “did not present an issue as to [his] qualifications.” (RBI Exh. 46 at 3, 7.)

225. Mr. Parker’s self serving explanations in RBI’s case in chief about “character issues” and “qualifications” amount to smokescreens that offer no credible defense for giving “no” answers to highly focused questions asking about “adverse findings.” Mr. Parker even persisted in cross examination when he was pointed to Question 4 and asked “whether an adverse finding has been made” to which he twice answered “no.” (Tr. 1944.) The answer, if given truthfully, clearly calls for a “yes” because Mr. Parker was a party to each of the five transfers and knew that both the Mt. Baker and the San Bernardino decisions had made unequivocal “adverse findings” as to himself and to the parties to those proceedings that he controlled. Under the circumstances, Mr. Parker, as a principal of RBI, must be found to have violated the requirement for absolute candor of licensees. Catoctin Broadcasting Corp. of New York, 2 F.C.C. Rcd 2126 (Review Bd 1987), aff’d, 4 F.C.C. Rcd 2553 (1989) (further citation history omitted). Also evident is the clear motive for Mr. Parker to falsify his answers to Question 4 because the Commission can refuse to renew a license where the applicant has made a knowing misrepresentation or lack of candor of the kind found in Mr. Baker and in San Bernardino. Leflore Broadcasting Company, Inc. v. F.C.C., supra, 636 F. 2d at 461. The courts recognize that the Commission would be derelict if it did not hold licensees such as RBI to a “high standard of punctilio.” *Id.* Mr. Parker has disregarded this standard of “punctilio” with his “no” answers to Question 4 in five applications which constitute a series of multiple misrepresentations in disclosure exacerbated by misleading written testimony and live hearing testimony.

³⁴ Mr. Parker’s “fraud” was committed at the Commission and not before another governmental unit. Therefore, there is no adverse finding or conclusion made with respect to Parker’s “no” answer to the “fraud” question in Form 346 used in the application for an LPTV license in Los Angeles. (See para. 124, supra.)

Question 7
Adequate Answers But
One Misleading Amendment

226. Acts of willful misrepresentation raise a “core concern of truthfulness.” Character Qualifications, *supra* at 1209. The narrative descriptions of the Mt. Baker and San Bernardino proceedings made or obtained by Mr. Parker in each of the application exhibits were incomplete. But in view of the questions asked, the narrative disclosures are not found to be willfully misleading. Parker answered “yes” to Question 7(a) and (b) which were literally correct answers. He then gave “exhibit 3” narratives for the follow-up questions on name, dates, nature of interest, and locations in Question 7(e). However, the information provided in an amendment in response to a broader staff inquiry for more information was deliberately inadequate and Mr. Parker intended thereby to mislead the Commission staff.

Negligent Omissions

227. There was no excuse for the total omission of the San Bernardino proceeding from the San Francisco and the Los Angeles applications. Mr. Parker thought it was Mr. Wadlow’s oversight and Mr. Wadlow denied any role in drafting the disclosures in those two applications. While the omission is highly disappointing, there is only evidence of poor recollection and negligence or a combination of both on the part of Mr. Parker. In a very close call, the overall evidence of incomplete disclosures in those two applications fails to show purposeful omission with intent to mislead. In another context, the element of deliberateness is lacking in proof and therefore there is no proven disqualifying conduct shown with respect to the minimal narrative disclosures made by Mr. Parker in the San Francisco, Los Angeles, Norwell, Reading, Twenty Nine Palms and Dallas applications. See Schoenbohm v. F.C.C., 204 F. 3d 243, 247 (D.C. Cir. 2000). In the allegedly deficient narrative descriptions the alleged delict was in not providing sufficient detail. But as noted above, Parker properly checked “yes” to question 7(a) and 7(b). Those affirmative answers required Parker to take the next step and provide identifying data (name, interest, call letters, docket number, location). Parker went beyond that data and volunteered a narrative which while lacking significant details, was reasonably responsive to the question. So it would be improper to find willful acts of intentional deceit in the Parker narratives that responded to Questions 7(a) and (b) which were correctly answered “yes.”³⁵

Adequate Allegan Disclosure

228. The Allegan policy was adopted in a comparative proceeding in which qualifying issues were added against a competing applicant. In an attempt to settle the case before deciding the merits of the added issues, the Commission adopted a policy permitting settlement buyouts

³⁵ Question 7 does not ask for the details of findings of “fraud” as does Question 4 to which Parker falsely and repeatedly answered “no”.

where there are unresolved character issues which can be revisited in a later proceeding, license renewal, transfer or assignment. Allegan County Broadcaster, Inc., 83 F.C.C. 2d 371, 373 (1980). In other words, if there had been an unresolved issue in Mt. Baker as to whether Parker intended to deceive in his construction plans, the issue would be required to be fully disclosed under Question 7(d). Similarly, if there was an unresolved real party-in-interest issue in San Bernardino, then that issue would need be fully described. But in both cases, there was nothing that was unresolved: In Mt. Baker, Parker was found to have attempted to “deceive the Commission” and in San Bernardino he was found to have orchestrated a “transpicuous sham.” Question 7(d) asks only about “unresolved character issues.” There were no unresolved issues to be disclosed and Parker did not misrepresent by checking off “no” to Question 7(d) asking for a “yes” or “no” answer on whether there is “any Commission proceeding which left unresolved character issues against the applicant.”³⁶

False And Misleading Amendment

229. The Dallas disclosures in an application and particularly in an amendment, are treated separately because of aggravating circumstances. The “no” answer to Question 7(d) in the Dallas application could have prompted the staff to ask Mr. Parker to file an amendment stating whether basic character issues had been sought or added with respect to any of the applications listed. (Bureau Exh. 2. at 2.) The staff’s question about added issues was over and above information called for by Question 7 and was not limited by Allegan. The amendment that was filed on October 29, 1992, in response to the staff’s query was misleading and lacked candor in stating only:

This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed.

(Adams Exh. 55 at 3.) The Mt. Baker case was not a comparative case and so an added issue would not have been procedurally necessary. But the Commission finding of a Parker contrived “effort to deceive” would have been responsive to the staff’s oral request for basic qualifying information that should have been provided. However, the more offending aspect of the amendment was with respect to San Bernardino. The staff’s question was more open-ended and was directly applicable to San Bernardino wherein a hearing Judge had added a character issue that directly implicated Parker as the undisclosed real party-in-interest who had engineered the scheme. In affirming that determination, the Review Board characterized the ploy as a “transpicuous sham” and an “attempted fraud.” One would be hard put to craft stronger language

³⁶ The Commission facilitated future consideration of unresolved issues by amending its forms (including Forms 314 and 315) “to require full disclosure by an applicant of any interest in an application “dismissed with prejudice” by the Commission, and the underlying circumstances thereof. See 83 F.C.C. 2d at 373. But in both Mt. Baker and San Bernardino, the request for extension of time and the SBBLP application were only “denied” and there were no “dismissals with prejudice.” In fact, Mr. Parker apparently was permitted the right to participate in a San Bernardino settlement. That will not be permitted in the Initial Decision in this case.

to make the point that a character issue had been added against an entity that was controlled by Mr. Parker, the undisclosed operative behind the sham. The aggravation starts with the failure of Mr. Parker to use an inquiry from the staff to finally come clean with respect to his role in San Bernardino. It was insulting under the harsh light that the Review Board had cast on Mr. Parker to advise the staff in a written formal amendment only that “no character issues had been added.” One was not only added. It was decided “con brio” against Mr. Parker. Finally, it was a degrading tactic to deliberately withhold material adverse information from the attorney retained to make the filing.

Parker Disclosures Not Involving RBI

230. Phase II focused on Commission forms which required “yes” or “no” answers and narrative descriptions about the facts and circumstances related to filings that described the Mt. Baker and San Bernardino proceedings. It was a truth finding mission. There was no evidence found that Mr. Parker consulted any other officer or director about his disclosures in Commission filings, including the transfer application taking RBI out of bankruptcy. Nor is there any evidence that any other officer or director knew about or had participated in the Parker disclosures before this proceeding was set for hearing. Therefore, the record evidence does not support a separate finding of deceit (or intent to deceive) on the part of the licensed entity. Mr. Parker, as an individual applicant and as an officer of TIBS and RBI, should have provided more detail related to the Mt. Baker and San Bernardino proceedings. But his failure to do so in responding to Question 7 did not involve deceit attributable to RBI. On the other hand, when confronted directly with a staff question as to whether any character issues had been requested or added in any proceeding where he had been a party to the application, Mr. Parker, as president of TIBS, misled his attorney and responded in a less than candid fashion. The processing staff, in the course of its duty, was asking whether there were any questions about Parker’s character that should be considered before approving the application. Mr. Parker is experienced and sophisticated in Commission applications and in making disclosures. He must be held to be aware of and responsible for his obligation to be forthright when asked a question by the Commission staff. But RBI should not bear the responsibility.

Parker Testimony Not Involving RBI

231. On a specific point of candor, the Presiding Judge formed an impression, made known in open court, that Mr. Parker appeared to believe that merely disclosing the San Bernardino proceeding’s ultimate result was sufficient and that it was up to the staff to look up the case history and read for themselves what the hearing Judge and the Review Board had found as to Mr. Parker. (Tr. 2652.) Mr. Parker denied the accuracy of that impression but his explanation was off-the-point. He offered the circular explanation that when the Commission staff asked the question, the Dallas amendment provided a sufficient answer. (Id.) But the amendment could only provide a sufficient answer if the staff looked up the San Bernardino case

history.³⁷ So there is no reason to change that impression in light of Mr. Parker's wholly inadequate Dallas amendment and it is concluded here that the impression formed in hearing the testimony of Mr. Parker was justified. It also shows an added lack of candor for Mr. Parker to now deny the effect of what he clearly said under oath.

232. In contrast with the incomplete Dallas disclosure, there is reliable evidence in this record through the "Gaulke letter" showing that in a context outside of Commission disclosure, Mr. Parker has been selectively more sharing of the facts. (Bureau Exh. 1 at 9-10.) The evidence shows that when substantially the same information about prior character findings was requested and forwarded to Telemundo in connection with a contemplated business transaction, the disclosure was more extensive and, as a result, was closer to the truth about Mr. Parker and his previously adjudicated character. While the letter is not directly relevant to the Phase II issue, it illustrates the level of knowledge that Parker has with respect to the resolved character issues in Mt. Baker and San Bernardino and that the focus and scope of his disclosure depends entirely on his personal interest in making the disclosure. For purposes of this case, such contrasting disclosures illustrate how Parker's self-interested disclosures are not to be trusted. But his lack of candor for purposes of preserving his self-interest should not be attributed to RBI.

Parker's Exclusive Fault Mitigates Against RBI's Disqualification

233. There are mitigating circumstances for RBI to remain qualified to hold a license, provided Parker leaves the scene. See Character Qualifications, supra at 1210 n. 76 (circumstances and other considerations may attenuate consideration of further reliability and truthfulness). The record shows that RBI was in dire financial straits when Mr. Parker appeared on the scene. It was the fact of bankruptcy that brought RBI and Parker together. RBI needed an experienced manager to bring the enterprise out of bankruptcy. A factor that resulted in the court's approval of a Parker crafted reorganization plan included the MSA which gave Parker operational control and a substantial equitable position through Partel. It was soon after the MSA was executed that Mr. Parker challenged RBI's directors, took control, and appointed his own slate of directors. As a result, when he was filing misleading applications, including the transfer application removing RBI from bankruptcy, Mr. Parker was acting alone and without any input, direction or control from RBI's other officers and directors with regard to disclosure.

234. It is expected that Mr. Parker will voluntarily remove himself from all vestiges of control at RBI. As Mr. Parker testified:

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

³⁷ The fact that information is on file elsewhere at the Commission, does not relieve an applicant of its responsibility to furnish the Commission with complete and accurate information when asked. Vogel Ellington Corp., 41 F.C.C. 2d 1005, 1010 (Review Bd 1973), and Folkways Broadcasting Co., 27 F.C.C. 2d 614, 616-617 (Review Bd 1971).

(RBI Exh. 46 at 8.) If Mr. Parker does not honor that pledge, the other directors of RBI might wish to consider his removal from his position of control because as this record illustrates, he cannot be trusted to deal openly with this agency. Commission precedent shows the importance that would attach to Mr. Parker's removal. The Commission has acted favorably towards licensees taking remedial action to remove persons from ownership and control positions who are responsible for misconduct. See PCS 2000, L.P., 12 F.C.C. Rcd 1681, 1688 – 89 (1997) (disqualification not warranted where applicant expeditiously removed CEO responsible for misrepresentation); Faulkner Radio, Inc., 88 F.C.C. 2d 612, 618 (1981) (renewal conditioned on total exclusion of wrongdoer from station operations); and Teleprompter Cable Systems, Inc., 40 F.C.C. 2d 1027 (1973) (no disqualification in case involving criminal misconduct where applicant took rehabilitative step of hiring new management and board members). It is recognized that RBI was a party only to one transfer application and all other applications had no connection with RBI. And the Commission finds that character is more relevant "where an applicant is acquiring, as opposed to transferring." See Character Qualifications, supra, at 1224 n. 103. Therefore, RBI's non-involvement is buttressed by the lesser harm of Parker's misconduct with respect to transfer applications, even though one of the tarnished transfers was for the purpose of gaining RBI's release from bankruptcy, an isolated event not likely to reoccur.

235. The Policy Statement on Character Qualifications, supra, 102 F.C.C. 2d at 1217-18 holds that mitigating factors are relevant and must be considered on a case by case basis to determine whether the removal of a principal as the sole wrongdoer will suffice without sanctioning a corporate licensee and its other stockholders. Here there was the further mitigating factor of RBI being subjected to the jurisdiction of a bankruptcy court that limited the authority of the directors. It was the court which approved the MSA that gave Mr. Parker the control, thereby giving judicial assurance to the directors that the licensee was in good hands. Mr. Parker operated alone on disclosures and he could not be effectively controlled by the board of directors. That is particularly true with respect to applications having nothing to do with the license of WTVE(TV) in which Mr. Parker gave false answers to a very specific Question 4. It also was Parker alone who gave inadequate disclosures in an amendment about the issues in the Mt. Baker and San Bernardino proceedings. Even in the case of the disclosures in connection with the transfer removing RBI from bankruptcy, there is no evidence that the directors were consulted or had any control over disclosures made to the Commission for that purpose. And Mr. Parker alone gave the testimony lacking in candor in this proceeding. Since the removal of Mr. Parker would be a sine qua non to RBI's qualification to hold a Commission license, there is no predictive value in Mr. Parker's misconduct insofar as RBI's future broadcast conduct is concerned. Therefore, RBI, removed from Mr. Parker's influence and control, need not be disqualified from holding a Commission license.

Parker's Misconduct Still Attributable To RBI's Renewal Expectancy

236. But RBI cannot disavow Mr. Parker's conduct for purposes of a renewal expectancy. One of the elements for a renewal expectancy is "licensee misconduct." Cowles Broadcasting, Inc., 86 F.C.C. 2d 993, 1017 (1981). When misconduct is not an isolated event and is not counterbalanced by a showing of substantial broadcast performance, the renewal

expectancy is lost to the renewal applicant. Central Florida Enterprises, Inc. v. F.C.C., 683 F. 2d 503, 509 (D.C. Cir. 1982) affirming Cowles Broadcasting, Inc., supra. In this case, RBI's mediocre programming for the community was not close to substantial. In addition, RBI, through Mr. Parker, was subjected to an unauthorized transfer of control which was unreported. RBI also admitted failures to timely disclose to the Commission the MSA executed in May 1989, the Form 315 transfer application for Station WTVE(TV), an FCC Form 323 ownership report filed in 1992, an Annual Ownership Certification Letter for 1993, and an Annual Ownership Report for 1994. (RBI Exh. 14.) Mr. Parker's conduct as RBI's president must be attributed to RBI in the narrow context of license renewal and therefore, as a result of Mr. Parker's wrong-doings and the Station's deficient programming, RBI cannot receive a renewal expectancy.³⁸

III

Abuse Of Process

237. The Phase III issue was added to determine whether there was substantial evidence showing that Adams filed its application with a purpose of obtaining a payoff. The issue was added after the conclusion of Phase I and following the testimony of Mr. Gilbert on the "background" of the Adams application. (Tr. 994 to 1136.) Mr. Gilbert gave as reason for Adams' filing, his conviction that home shopping programming was inherently flawed in that it cannot meet the duty owed by a broadcaster to address the public interest needs of a community. He also testified to discussions with Telemundo's counsel about a possible settlement. As a result of that testimony, it became necessary to determine the motive or motives for the Adams application and the circumstances of the settlement discussions. See Memorandum Opinion and Order, FCC 00M-07, released January 20, 2000, appeal denied, Memorandum Opinion and Order, FCC 00M-19, released March 6, 2000.

238. The legal test of an "abuse of process" includes the use of a Commission process to achieve a result that the process was not intended to achieve or to make any use of that process to subvert the purpose that the process was intended to achieve. Broadcast Renewal Applicants, 3 F.C.C. Rcd 5179, n.2 (1988). Section 311(d)(1)(3) of the Act permits the Commission to approve a settlement agreement "only if it determines that --- (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement." Thus, an abuse of process would include the filing of an application for the purpose of achieving a settlement which would also be a direct violation of §311 of Act. However, the Commission will not infer improper purpose without a specific showing of an improper motivation. WWOR-TV, Inc., 7 F.C.C. Rcd 636 (1992), aff'd sub nom. Garden State Broadcasting Limited Partnership v. F.C.C., 996 F. 2d 386 (D.C. Cir. 1993). It is necessary to evaluate and analyze the relevant evidence surrounding the application and testimony in order to determine motivation.

³⁸ Findings of fraud, misrepresentation and lack of candor require a specific intent and therefore those findings are not attributable to RBI.

239. Underlying this concern for Adams' motives were the circumstances involving these same principals and their earlier settlement. The Adams principals are virtually all the same principals as those of Monroe, the challenger in Chicago. The Monroe application was declared the winner. But rather than construct and operate a station, the principals opted to take a cash settlement of approximately \$17.5 million. The Monroe/Adams principals claim that they would have proceeded to construct and operate in Harriscope but they believed that Monroe would not have been able to produce similar quality Spanish language programming. The settlement order specified that there would be a continuation of Channel 44's "exemplary Spanish language programming."

240. Adams consists of experienced business persons and community leaders who were well aware of the substantial monetary reward that can be achieved as a renewal challenger. With millions of dollars obtained through a settlement and the continued use of the law firm that had succeeded for Monroe, the contest for WTVE(TV) might also result in a favorable monetary settlement. However, the relevance of that awareness is offset by the fact that in 1989, five years before Adams filed, the Commission had addressed shenanigans of renewal challengers and decided to limit settlements to costs and expenses and then only if a challenger remained in the case through an Initial Decision. See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 F.C.C. Rcd 4780, recon. denied, 5 F.C.C. Rcd 3902 (1990). Counsel for Adams informed the principals of that policy change through a memorandum dated August 15, 1991. (Adams Exh. 62.) Therefore, with a policy against settlements in place, the Adams principals realistically could not have filed an application with a primary intention of obtaining a settlement. Rather, Adams' motivation for filing was primarily to obtain a construction permit and build a station in Reading, PA. The evidence shows that the Adams principals saw the renewal process as a means to acquire a valuable television broadcast authorization at less than market value. In an effort to achieve that legitimate business goal, the Adams principals were just as prepared to litigate in earnest here as they were in the decade long Harriscope challenge. (Tr. 2429-30, 2465.)³⁹ The mere fact that this cohesive group of experienced business people did not cobble together a written business plan does not convince otherwise.

241. In addition to their business outlook, the Adams principals have evidenced some concern for programming. The Commission has in the past carefully examined evidence of a repeat challenger's concern over programming as evidence of the bona fides of a lawful motive for a challenge. See WWOR-TV, supra at 638-639. In that case, the applicant had at first testified that a concern for programming was what drove the application. But when the date of a key meeting was shown to negate sufficient time to review programming, the challenging applicant lost all credibility. Id. In this case, the record contains un rebutted testimony establishing that Adams principals had concluded before filing that "home shopping"

³⁹ The Monroe principals litigated many years before the Commission and a federal court of appeals. In the order approving settlement, the Commission noted that the Monroe application was not filed to secure a settlement. (RBI Exh.22.)

programming was not providing locally-originated news programming or other programming that served a public interest. (Tr. 2457-58, 2467-68.) In addition, starting in August 1993, almost a year before filing the challenge, Adams' counsel was providing literature to Mr. Gilbert that was critical of "home shopping" programming. (Adams Exhs. 63, 64, 65, 67.) Mr. Gilbert studied the literature upon its receipt and before filing the application. (Tr. 2468-71.)

242. There are other indicia which reject settlement as the overriding motive. Adams considered a range of stations that carried home shopping and initially chose to file in California and later in Boston.⁴⁰ The steps taken to look into the available opportunities were those expected, including a serious search for antenna sites. The searches in California and in Boston would have been a waste of time and money if settlement was the only goal and those unproductive efforts negate an inference of an intent to file for a settlement in Reading. Other credible evidence shows that in addition to site searches, the venture obtained bank financing, hired an engineer to analyze a suitable site, instructed that engineer that local broadcasting capability was a prime concern, methodically reviewed the Station's programming, visited the Reading area and interviewed local persons. While there was a foul up in the taping of programming, it did not prevent Adams from undertaking a plausible assessment of familiar "home shopping" format that was broadcast by Station WTVE(TV). And while no one of these indications of interest is conclusive of motive, in the aggregate, these are significant objective facts that negate an intent to file for settlement.

243. The most significant circumstance of a settlement motive was the discussion in the Spring of 1999. Mr. Parker first approached Mr. Gilbert on a settlement proposal which was summarily rejected as not serious. Telemundo later contacted Mr. Gilbert through Ms. Swanson and broached the subject of settlement for credible business reasons. At that time, Telemundo had an affiliation agreement with RBI to provide Hispanic programming. Telemundo's counsel was aware that there was a serious challenge to RBI's renewal and that there would be a hearing commencing in May 1999. Telemundo saw its RBI affiliation to be in jeopardy and therefore had a business reason to initiate settlement discussions. Adams took the contact seriously enough to share in paying for an appraisal of the Station's market value. But there is no evidence that there was any activity beyond discussion which was never joined in by RBI. Telemundo was probing in order to protect its affiliation status. Adams would have given consideration to a serious settlement offer. With the primary impetus coming from Telemundo, there is no inference from that fact that Adams had filed to settle. Nor would settlement in 1999, or later, effect the convincing item of objective circumstantial evidence which is the Commission policy effectively banning "greenmail" that was in place when Adams filed.

244. In the final analysis, if Adams was primarily interested in repeating a hefty buyout by challenging another renewal, would this sophisticated syndicate have targeted a licensee that was emerging from bankruptcy and obviously short of cash? If a profitable settlement was its prime motive, Adams might have attempted a more ingenious "greenmail" against a renewal

⁴⁰ Adams relies on its certificate of incorporation in Massachusetts as evidence of a bona fide intent to conduct business. The fact that there was an inadvertent lapse in the charter, subsequently cured, is not entitled to any weight and will not be considered as adverse evidence against Adams.

applicant having deeper pockets than a financially wounded RBI. Viewed in a realistic light, a renewal applicant just coming out of bankruptcy would be a highly likely target to compete with for a license because of the likelihood of difficulty for such an incumbent to prove a meritorious renewal expectancy.

Adams' Testimonial Veracity

245. For a finding of an intentional misrepresentation or a lack of candor there must be substantial and reliable evidence that Adams intentionally distorted a hearing record. María M. Ochoa, 8 F.C.C. Rcd 3135, 3137 (1993), aff'd Marie M. Ochoa v. F.C.C., 98 F.3d 646 (D.C. Cir. 1996). Candor in a hearing is important. But there will not be a disqualification for "insignificant misstatements." Fox River Broadcasting, Inc., 88 F.C.C. 2d 1132 n.15 (Review Bd. 1982). It appears that in depositions, filings in this litigation, and in testimony at the hearing, there were varying accounts given by Mr. Gilbert. And in certain respects, Mr. Haag and Mr. Fickinger also gave different testimony than that of Mr. Gilbert. But none of those testimonial disparities significantly distorted the record. Any confusion caused may be attributed to the fact that this case has a complex hearing record that has been in assemblage since May 1999. The Commission recognizes that "errors and inconsistencies [in witness positions and emphasis] are not unusual in cases of this magnitude and complexity." ABC-ITT Merger Case, 9 F.C.C. 2d 289, 324 (1967). There has been a careful analysis of the testimony of Adams principals regarding motive for filing, the Telemundo settlement and programming discussions, the taping episode, and the temporary lapse of Adams' corporate status. The testimony of Adams principals, while not crisp, clear and concise in all respects, has not misrepresented any material facts, has not misstated any facts of decisional significance, has not distorted the record, has not been misleading, and has not been lacking in candor.

Ultimate Conclusions

246. Micheal Parker assumed control without authorization and serially caused RBI to violate the Commission's filing rules. Because of Mr. Parker's filings on behalf of RBI while in control of its management and its Station WTVE(TV), and because of the deficiencies found in WTVE(TV) programming during the renewal period, RBI cannot qualify for a renewal preference.

247. Adams did not file its application for purposes of a settlement. And there are no substantial questions raised with respect to Mr. Gilbert's testimony. Therefore, Adams is fully qualified to hold a license.

248. In light of RBI's failure to show by a preponderance of evidence that it merits a renewal expectancy, diversification, signal coverage and local residence/civic activities become the controlling standards under the "generally phrased standard comparative issue."⁴¹

249. Adams has only one principal with one existing media interest which is pledged to be divested if Adams is declared the winner. Mr. Parker, who is the largest shareholder of RBI and its president, holds licenses to two full power television stations through his ownership of their corporate licensees. Therefore, Adams must be awarded a slight comparative merit for diversification. Pueblo Radio Broadcasting Service, 5 F.C.C. Rcd 4829 (Review Bd. 1990).

250. RBI has failed to show by reliable evidence that it will be able to obtain a new antenna site and construct a new tower. Adams, by comparison, has shown a reasonable likelihood to construct an antenna that will serve 33% more people than Station WTVE(TV)'s current signal presently serves. Therefore, Adams is awarded a slight comparative credit for its projected slightly superior signal coverage. Compare Global Information Technologies, Inc., 8 F.C.C. Rcd 4024, 4031 (Review Bd. 1993) (slight preference for 30 % coverage differential) and Christian Broadcasting of the Midlands, Inc., 99 F.C.C. 2d 578, 583 (Review Bd. 1984) (slight preference for 24 % coverage differential).

251. RBI receives slight credit for local residence and related local civic activities. But those criteria receive a lesser credit than Adams' diversification and superior signal coverage. Policy Statement on Comparative Broadcast Hearings, *supra* at 394 (diversification merits primary significance). Compare Pueblo Radio Broadcasting Service, 5 F.C.C. Rcd 4829, 4832 (excluding credit for integration, diversification and superior coverage should surpass its local characteristics and civic affairs). (Review Bd 1990). RBI deserves an even lesser credit for local residence because of its failure to qualify for a renewal preference in that it failed to adequately service the local issues. The Commission has emphasized the relevance of local residency as showing an interest in the welfare of the community. Edward F. and Pamela J. Levine, *supra* at 8402. RBI has shown a disinterest in the welfare of the community by its meager public service programming and by not qualifying for the preference.

252. Based on the criteria of diversification and better signal coverage compared against local residency and civic affairs which are substantially discounted by unmeritorious programming, Adams is declared the winner.

⁴¹ Implementation of Section 309(j) of the Communications Act, *supra*, 13 F.C.C. Rcd at 16006; Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 394 (1965); Bible Broadcasting Network, Inc., 7 F.C.C. Rcd 4578, 4579 (1992).

Settlement Option

253. Both the renewal applicant (without Parker/Partel) and the challenger are found to be basically qualified to receive a Commission license. In view of the phasing out of comparative selection, the Commission has authorized “where the circumstances afford assurance that the competing applications were not filed for speculative or other improper purposes,” the waiving of limitations on settlement payments to dismissing applicants. Implementation of Section 309(j) of the Communications Act, supra at 16006. This expresses a policy permitting settlement of the remaining comparative cases. Id. The Bureau urges settlement as being in the public interest. In light of the findings that RBI, without Parker, is qualified to own or assign its license and that Adams has not abused the renewal process, the parties could settle this case while exception(s) to the Initial Decision are being prepared for submission or are filed and being considered by the Commission.⁴²

254. In deciding this case, Parker is found to be “unqualified” to control RBI’s license because of his unauthorized taking of control, his failures to report timely and accurately, and particularly because of his false answers to Question 4 denying “fraud,” his causing the misrepresented Dallas amendment to be filed, and his lacking in candor in his hearing testimony. Mr. Parker also is found to be “disqualified” from benefiting from any settlement that might be achieved between RBI and Adams. See SL Communications, Inc. v. F.C.C., 168 F3rd 1354, 1358 (D.C. Cir. 1999) (Commission policy was approved which denies the right of settlement to those who act “mendaciously” before the agency). As a result, Mr. Parker is not qualified either to hold any position of control in connection with RBI’s license, or to participate in a settlement between RBI and Adams.

ORDER

IT IS ORDERED that the renewal application of Reading Broadcasting, Inc. (File No. BRCT-940407KF) IS DENIED.

IT IS FURTHER ORDERED that the application of Adams Communications Corporation (File No. BPCT-940630KG) IS GRANTED.

⁴² Any settlement would be without reference to Mr. Parker who would be expected to honor his pledge and accept a result which is not to the detriment of RBI or to the detriment of RBI’s other stockholders. (RBI Exh. 46 at 8.)

IT IS FURTHER ORDERED that Micheal L. Parker IS FOUND NOT QUALIFIED to hold or control a broadcasting license allotted to Reading Broadcasting, Inc., or to participate in a settlement between Reading Broadcasting, Inc. and Adams Communications Corporation in connection with this proceeding, or in a settlement of this proceeding involving any assignee of either entity.⁴³

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

⁴³ In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the decision on its own motion, this Initial Decision will become effective 50 days after its public release pursuant to 47 C.F.R. §1.276 (d).