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Before the
Federal Communications Commission
Washington, D.C. 20554
Jun 30 4 00 PM '93

DISPATCHED BY Docket No. 93-190 ✓

In re Application of

Metrocomco, Inc.

For Renewal of License of Station WBRL(AM) Berlin, New Hampshire BR-901130XE

HEARING DESIGNATION ORDER

Adopted: June 17, 1993; Released: June 28, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Services Division, Mass Media Bureau, has before him: (a) the captioned application for renewal of license filed by Metrocomco, Inc. ("Metrocomco") licensee of WBRL(AM), Berlin, New Hampshire; and, (b) the results of an investigation into WBRL(AM)'s silent status.¹

2. By letter dated December 23, 1992, Metrocomco notified the Commission that WBRL(AM) had ceased broadcasting in August, 1988. Prior to this letter, Metrocomco had failed to notify the Commission regarding WBRL(AM)'s silent status. The current renewal of license application for WBRL(AM) has not been acted upon because Metrocomco has failed to respond to letters, dated March 1, 1991, March 5, 1991, and September 11, 1992, from the Assistant Chief, Audio Services Division, Mass Media Bureau, requesting information regarding the environmental impact of WBRL's RF radiation. In its December 23, 1992 letter, Metrocomco stated that it was unable to supply the RF information because its "transmitter is no

longer in service and there is no staff on the premises. In addition, the tower has been removed because it was a safety hazard"

3. Seeking further clarification of the station's operational status, the Chief, AM Branch, Audio Services Division, Mass Media Bureau, by letter dated March 31, 1993, requested that Metrocomco provide further information, including information concerning its compliance with Section 73.1740 (Minimum Operating Schedule) of the Commission's Rules.² No response to this letter has been received. Consequently, WBRL(AM) is currently off the air without authority. This fact, coupled with the fact that WBRL(AM) has been off the air for over four years, supports our determination that Metrocomco is in apparent violation of Sections 73.1740(a)(4) and 73.1750 (Discontinuance of Operation) of the Commission's Rules.³ We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding Metrocomco's capability and intent to resume the broadcast operations of WBRL(AM). We will therefore designate the WBRL(AM) renewal of license application for an evidentiary hearing on appropriate issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 309(e), the renewal of license application of Station WBRL(AM), Berlin, New Hampshire, IS DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

- (a) To determine whether Metrocomco, Inc. has the capability and intent to expeditiously resume broadcast operations of WBRL(AM) consistent with the Commission's Rules.
- (b) To determine whether Metrocomco, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules;
- (c) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

5. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resump-

¹ The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See *Moenkopi Communications, Inc.*, 8 FCC Rcd _____, FCC 93-273, adopted May 25, 1993.

² Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the ex-

piration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³ Section 73.1750 reads:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

tion of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

6. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Metrocomco, Inc.

7. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the mailing of this Order, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

9. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order denying the renewal of license application of WBRL(AM), Berlin, New Hampshire, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau