

APR 6 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
ORIGINAL

In re Application of)
)
PINE TREE MEDIA, INC.)
)
For Renewal of License of)
Station KARW)
Longview, Texas)

MM Docket No. 93-265

File No. BR-900817UF

To: The Review Board

**REPLY TO MASS MEDIA BUREAU'S
OPPOSITION TO SECOND APPEAL**

Praise Media, Inc. ("Praise"), by its counsel and pursuant to Section 1.302(g) of the Commission's Rules, 47 C.F.R. § 1.302(g), hereby submits its Reply to the Mass Media Bureau's Opposition to Second Appeal ("Opposition") filed April 11, 1994, with regard to Praise's Appeal of the Memorandum Opinion and Order ("Order") released by the Honorable John M. Frysiak, Administrative Law Judge ("ALJ"), on February 24, 1994. The Order, *inter alia*, denies Praise's Petition to Accept Late-filed Notice of Appearance in the above-captioned proceeding, dismisses the pending application for renewal of KARW, and terminates the proceeding.¹ For the reasons set forth below, Praise respectfully requests that the Review Board reverse the Order in its entirety, grant Praise party status in this proceeding and direct the ALJ to continue this proceeding as specified in the Hearing Designation Order.

¹ As noted in the Appeal, Praise filed the instant Appeal of the ALJ's action terminating the proceeding to fully protect its rights in this matter. This proceeding presents an unusual situation in that the Order both denies Praise's right to participate as a party and terminates the proceeding in light of the fact that no other party has appeared or attempted to appear. Praise believes that two appeals are necessary because the FCC's rules differentiate between appeals of denial of party status (Section 1.301) and appeals of the termination of a proceeding (Section 1.302).

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Preliminary Statement

In its Opposition, the Mass Media Bureau ("MMB") argues that Praise has misperceived the Commission's requirement in the Hearing Designation Order and Notice of Forfeiture, 8 FCC Rcd 7591 (1993) ("HDO"), that Pine Tree Media, Inc. ("Pine Tree") its successors and assigns, file a notice of appearance. The MMB attempts to support this argument with two assertions: First, the MMB argues that Praise is neither a successor nor an assign of Pine Tree because "[a]ssuming an assignment application had been filed and granted, the successor of Pine Tree would be the heirs of Tuck, who is now dead, or perhaps American Plastics, which was the apparent successor to a note held by Tuck." Opposition at 3. Second, the MMB argues that "[t]he HDO limits the filing of a notice of appearance by those currently operating the station to those granted party status; American Plastics, and/or H.E. Ferrell and Robert Dub Murray." Opposition at 4.

The MMB's reasoning as to the appropriate interpretation of the term "successor and assign" does not support the MMB's opposition to granting Praise party status in the instant proceeding as a successor and assign of Pine Tree. Moreover, contrary to the MMB's assertion, the HDO cannot be read such that its reference to "those persons now in control of Pine Tree Media, Inc." is or should be expressly limited to American Plastics or H.E. Ferrell and Robert Dub Murray. The MMB's Opposition should be denied and Praise should be granted party status in the instant proceeding.

**Praise Is A Successor And Assign
Of Pine Tree Media, Inc.**

The MMB's reasoning as to the definition of the term "successor and assign" does not support denial of party status to Praise. The MMB argues that because the initial FCC staff visit to the station revealed that the station was apparently not under the control of Tuck, and was instead under the control of Messrs. Murray and Ferrell, that only those entities (or the beneficiaries of Tuck's estate) could be the successor and assign of Pine Tree, and then only assuming an assignment application had been filed and granted by the FCC. This argument does not undercut Praise's status as a successor and assign for two reasons. First, the MMB's argument that the heirs of Tuck or American Plastics are successors and assigns of Pine Tree "[a]ssuming an assignment application had been filed and granted" (Opposition at 3), is merely a restatement of its apparent position that the lack of any formal FCC assignment application precludes the appearance of a successor or assign in this proceeding. In the HDO, the Commission acknowledged that no application to assign KARW had been filed by specifically stating that "the Commission has not received any application to transfer control of Pine Tree to anyone else or to assign the station's license." HDO at 7952. Based on the record before it indicating that transfers of control had occurred and faced with the lack of any application to assign or transfer control, the Commission designated an issue on that point and required "successors and assigns" to enter appearances. However, under the MMB's reasoning, the lack of an assignment application precludes the participation of any party as a "successor or assign," thus robbing the Commission's requirement that successors and assigns file notices of appearance of any meaning or practical effect. The MMB completely fails to address this point.

Second, despite arguing that no successor or assign can be granted party status in the absence of an assignment application, the MMB appears to posit that the heirs of Tuck and American Plastics would be entitled to party status because Tuck's death and the apparent control of KARW by American Plastics are referenced in the HDO.² In support of this implication, the MMB recites the staff's attempts to determine the entity in control of the station and then implies that only those entities which are specifically mentioned (i.e. the heirs of Tuck or American Plastics) are entitled to party status. The MMB's implication is convenient, in light of the fact that neither the heirs of Tuck nor American Plastics have attempted to participate in this proceeding.³ Moreover, given the scope of the issues designated for hearing, there is no reason whatsoever to limit party status to those entities referenced in the HDO. Rather, it is clear that the Commission requests and requires participation by those entities which are successors and assigns, or presently in control of KARW. The facts before the Commission at the time of the HDO indicated that American Plastics had purchased Tuck's note and were operating the station at the time of the Commission inspection, See HDO at 7951, and that at some later date Ferrell and Murray no longer managed the station. Id. at 2. Based on these facts, the Commission designated an issue as to whether "one or more unauthorized transfers of control of Pine Tree Media, Inc. have occurred." Id. Praise has provided evidence, supported by affidavit, establishing the chain of ownership and operation of KARW since Tuck's

² The MMB states that the heirs of Tuck and American Plastics would be successors and assigns assuming an assignment application had been filed and granted. However, the MMB knows that no such application was filed. Thus, Praise is left to assume that the MMB is arguing that the heirs of Tuck and American Plastics would be entitled to party status simply and solely because they are referenced in the HDO.

³ Moreover, the MMB has inferred the existence of the heirs of Tuck from the fact that Tuck died. It is difficult to imagine how the heirs of Tuck, who may or may not exist, have greater right to participate in this proceeding than an entity such as Praise, which has proven its rightful place at the end of the chain of legal title to the radio station in question.

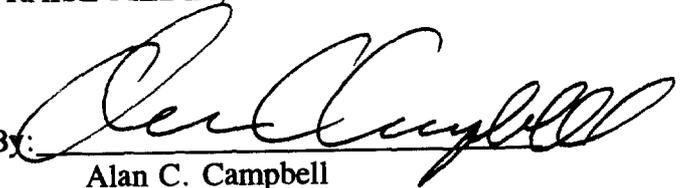
death, and showing that Praise is the owner of the station under applicable contract law and has operated the station since acquiring such ownership. The MMB's apparent attempt to "freeze" the right to participate in this proceeding to those entities specifically mentioned in the HDO is without explanation and contrary to the clear intent of the Commission as found in the HDO.

In sum, the MMB simply fails to address the argument made repeatedly by Praise, that the term "successor and assign" cannot reasonably be limited to only those entities which are approved assignees in the context of a proceeding which seeks to determine, *inter alia*, the identity of the proper parties to the renewal application in question - i.e. whether and when unauthorized transfers of control occurred. Similarly, the MMB's implication that party status should be limited to those entities specifically identified and made parties to the proceeding in the HDO is contrary to the language of the HDO and the clear intent of the Commission. The MMB's arguments are self-contradictory and contrary to the clear intent of the HDO and cannot be supported.

Likewise, the MMB's argument that the HDO limits the filing of a notice of appearance by those currently operating the station to the entities granted party status, i.e. American Plastics, cannot be credited. The record before the Commission indicated that Ferrell and Murray were apparently in control of KARW at the time of the inspection, and that at some later time Ferrell and Murray were no longer in control. Given this record, the HDO cannot reasonably be read to require only the appearance of Ferrell and Murray (American Plastics) whether or not they are presently in control of the station. Praise has shown that it is presently in control of KARW and that it is the rightful owner of the station under contract law. Given these facts, and good cause having been shown, Praise must be made a party to the proceeding.

WHEREFORE, the premises considered, Praise respectfully requests that the Review Board reverse the ruling of the Presiding Officer and the dismissal of the KARW renewal application and grant Praise party status in this proceeding.

Respectfully submitted,
PRAISE MEDIA, INC.

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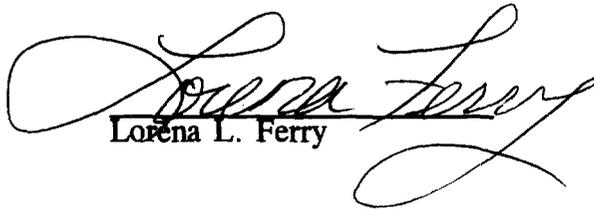
CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 26th day of April, 1994, copies of the foregoing "Reply To Mass Media Bureau's Opposition To Second Appeal" have been served by hand delivery upon the following:

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