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

In re Applications of	)	
	)	
RAINBOW BROADCASTING COMPANY	)	File Nos. BMPCT-910125KE
	)	BMPCT-910125KE
For Extension of Construction	)	BTCCT-911129KT
Permit and For Consent to	)	
Transfer of Control of Station	)	
WRBW(TV), Orlando, Florida	)	

To: Roy J. Stewart, Chief
Mass Media Bureau

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RAINBOW RESPONSE TO SUPPLEMENT TO INFORMAL OBJECTIONS

Rainbow Broadcasting Company, permittee of Station WRBW, Channel 65, Orlando, Florida, hereby responds to an unauthorized pleading filed by Press Broadcasting Company on April 30, 1993 entitled "Supplement to Informal Objections".[1/]

Press is the operator of independent UHF Station WKCF(TV), Cocoa, Florida. It is in Press' private interest to prevent Rainbow's WRBW(TV), a new independent UHF station, from operating in the market. In furtherance of this anticompetitive effort, Press has objected at every stage to Rainbow's efforts to move forward with construction and commencement of operation of its station. It

1/ While Press' pleading is not provided for under the rules, see Section 1.45(c), and should accordingly be dismissed without consideration, Rainbow has responded in an abundance of caution.

has successfully utilized and abused the Commission's processes to prevent grant of Rainbow's Form 307 extension request filed in January 1991 (File No. BMPCT-910125KE) and its *pro forma* transfer request filed in November 1991 (File No. BTCCT-911129KT). Despite the fact that Press has no legal standing to object to Rainbow's requests and despite the fact that it filed an impermissible Petition for Reconsideration of the 1991 extension, the Commission has yet to dismiss the improper request for reconsideration; has not acted on Rainbow's subsequent timely filed extension request (File No. BMPCT-910625KP), presumably because it has not yet acted on Press' improperly filed Petition for Reconsideration; and has taken no action on Rainbow's *pro forma* Form 314 transfer application permitting the formation of a limited partnership (BTCCT-911129KT), presumably because it has not yet acted on the extension requests.

Press' only interest is keeping Rainbow from going forward. It has no public interest objective and it has raised no public interest consideration. Its only and so far successful effort has been to tie Rainbow and the Commission in procedural knots so that Rainbow cannot go forward as proposed. As a result of those efforts, Rainbow remains precluded from constructing because it cannot

utilize the limited partnership funds; it cannot utilize the limited partnership funds because it cannot transfer the construction permit to the limited partnership; and it cannot transfer the permit unless it has a valid construction permit. Only the Commission can break this tangle, by prompt dismissal of Press' unauthorized Petition for Reconsideration of File No. BMPCT-910125KT; denial of its informal objections to Rainbow's pending applications in File No. 910625KP and File No. BTCCT-911129KT; and grant of those applications.

None of Press' pleadings, including the present one, which raises no argument not previously made and answered, presents any impediment to the actions Rainbow seeks. Indeed, neither Press itself nor any of its contentions is even properly before the Commission. Press is barred as a matter of law by the provisions of Rule 1.106(b) from seeking reconsideration of the Commission's denial of its informal objections to Rainbow's extension request. *See Redwood Microwave Association*, 61 F.C.C.2d 442 (1976). And Rainbow's financing is not here relevant: because it has already borne that burden in its licensing proceeding, "an applicant for a *pro forma* change of control is not required to demonstrate financial qualifications." *Canton 67, Ltd. Debtor in*

Possession, 7 FCC Rcd. 736, 738, 70 R.R.2d 788, 791 (1992).[2/]

Moreover, even if the adequacy of Rainbow's financing proposal were here relevant, Press' filings, crafted of innuendo, speculation, assumption and surmise,[3/] offer no basis for Commission action. "Notwithstanding the obvious distinctions between petitions to deny and informal objections (compare §§73.3584 and 73.3587 of the Commission's Rules), informal objections like petitions to deny must also contain adequate and specific factual allegations sufficient to warrant the relief requested." *Area Christian Television, Inc.*, FCC 86-298, 60 R.R.2d

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2/ Press' suggestion that in seeking to change from debt to equity financing, Rainbow has put in question the legitimacy of its original financing as proposed and approved in its application, is contrary to law. The Commission finds no basis for review of financial qualifications in this kind of change because, "[a]s we have observed, projected expenditures and sources of funds relied upon by applicants in establishing their financial qualifications frequently change and are rarely carried out as planned." *Urban Telecommunications Corp.*, 7 FCC Rcd. 3867, 3870, 71 R.R.2d 12, 15 (1992).

3/ Even the speculation is often irrelevant and facially at odds with reality, as in the case of Press' allusion (at pages 2-4) to *Rey v. Guy Gannett Publishing Co., Inc.*, which Rainbow is alleged to have lost with presumptive dire effects on its basic qualifications. In fact, after denying a preliminary injunction, Judge Marcus removed the case to Florida state court where it is still in the discovery stage. That ongoing litigation can have no effect on the matters raised by Press, including specifically Rainbow's financial qualifications and the availability of its transmitter site.

862, 864. Press utterly fails to meet this threshold standard.

There is, in short, neither procedural nor substantive warrant for Press' attack on the bona fides of Rainbow's proposal. Rainbow is ready and willing to go forward with construction and foresees commencement of operations within six (6) months of grant of its pending requests.[4/] See Statement of Joseph Rey attached to Rainbow's April 12, 1993 letter to Clay Pendarvis. The sole cause of delay is Press' efforts to enlist the Commission in a private commercial vendetta which should properly be resolved by head to head competition in the marketplace. The public interest favouring such competition will be thwarted unless the Commission rejects Press' delaying tactics and grants Rainbow the authorizations prerequisite to commencement of its operations.

4/ While Press contends that Rainbow should not be given time to construct because its original target date has passed, Rainbow continued ready to meet that schedule at the time it filed its transfer application. Only the agency inaction engendered by Press precluded it and the Commission recognizes that governmental delays can constitute good cause for grant of extension requests under Section 73.3534(b) of the Rules. *See Golden Eagle Communications, Inc.*, 6 FCC Rcd. 5127, 5129, 69 R.R.2d 1318, 1320-1321 (1991), *reconsideration denied*, 7 FCC Rcd. 1752 (1992).

CONCLUSION

For the reasons stated above and in its several previous pleadings, Rainbow respectfully requests that the Commission reject Press' objections and grant Rainbow's pending applications for transfer and for extension of time to construct. Further, to facilitate the earliest possible institution of a new independent television service to the Orlando market, Rainbow requests that such actions be taken expeditiously.

Respectfully submitted,

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13 May 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Rainbow Response to Supplement to Informal Objections were sent first class mail, postage prepaid, this thirteenth day of May 1993, to the following:

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