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

JUL 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
RAINBOW BROADCASTING, LTD.)
For license to cover the)
construction permit of)
Station WRBW(TV), Orlando, Florida)

File No. BLCT-940617KI

DOCKET FILE COPY ORIGINAL

TO: The Commission

REPLY OF PRESS BROADCASTING COMPANY, INC.
TO "RAINBOW RESPONSE"

1. Press Broadcasting Company, Inc. ("Press") hereby replies to the "Response" of Rainbow Broadcasting, Ltd. ("Rainbow") to Press' Formal Opposition to Rainbow's above-captioned application.

2. In its Formal Opposition Press complained about Rainbow's apparent failure to submit appropriate ownership information to the Commission, as required by Sections 73.3613 and 73.3615 of the Commission's Rules. Press' complaint was based primarily on the fact that repeated efforts, over a period of months, to obtain such documentation from the Commission's files -- where they would normally be expected to be available to the public if they had, in fact, been submitted by Rainbow -- had failed to turn up any such materials. Press specifically acknowledged that it was conceivable that Rainbow had complied with the rules and that the non-availability was attributable to the Commission's filing system. Formal Opposition at n.6. If that were the case, Press noted, Press would welcome the

production by Rainbow of date-receipted filed copies establishing its compliance.

3. In its Opposition Rainbow asserts that it has complied with the rules, but fails to produce any stamped copies.^{1/} Instead, it describes a total of three documents: (1) a letter, dated October 2, 1993, supposedly advising the Commission of the consummation of Rainbow's assignment; (2) an Ownership Report, supposedly filed November 29, 1993; and (3) a letter, dated June 15, 1994, certifying the continuing accuracy of the November 29, 1993 Ownership Report.

4. Press has still been unable to locate in the Commission's files a copy of the October, 1993 letter (item (1), above) described by Rainbow.

5. Press has managed to obtain, from the station itself, a copy of a document which appears to be the November, 1993 Ownership Report; this document has still not turned up in the Commission's files, as far as Press has been able to determine. A copy of the item, as obtained from the station, is included as Attachment A hereto. And Press has also managed to obtain, from the Commission, a copy of the June 15, 1994 letter (which became available in the Commission's public reference room only in late July, 1994). A copy of that letter is included as

^{1/} Rainbow's failure to include copies of its supposed filings is surprising in light of Rainbow's suggestion that copies could have been obtained if Press had simply called Rainbow's counsel and asked for them. If that was really the case, why would Rainbow decline to include copies in its Response?

Attachment B hereto. ^{2/}

6. Review of the documents which are available tends to support, rather than undermine, the concerns expressed by Press in its Formal Opposition. The June, 1994 letter itself merely states that the November, 1993 report remains accurate. Thus, the November, 1993 report appears to be the only source of ownership information submitted to the Commission by Rainbow (since, even if the October, 1993 letter was filed, it presumably simply reported that the proposed assignment had been consummated and that an appropriate Ownership Report would be filed at a later date). But the November, 1993 report, on its face, raises a number of questions.

7. First, when asked in Paragraph 2 for the name of "any corporation or other entity for whom a separate Report is filed due to its interest in the subject Licensee (See Instruction 3)", Rainbow has answered "N/A". ^{3/} But later in the report, Rainbow clearly indicates that there exists Rainbow Broadcasting Company, Inc. ("Rainbow Corp."), which purportedly holds a general partnership interest in Rainbow. So the response to Paragraph 2 is wrong.

^{2/} Press thus stands corrected with respect to the June 15, 1994 letter -- Press acknowledges that it was indeed filed with the Commission, apparently on June 16, 1994 (according to the date stamp), although as far as Press has been able to determine it was not available for public inspection until late July, 1994.

^{3/} Instruction 3 to FCC Form 323 reads in relevant part as follows:

If the licensee or permittee is directly or indirectly controlled by another entity or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 should be submitted for such entity.

8. And when asked in Paragraph 4 for the "[n]ame of entity, if other than licensee or permittee, for which report is filed", Rainbow has similarly answered "N/A". This seems to suggest that this report was filed on behalf of Rainbow, and not any other entity. And yet, the rest of the report seems to provide more information about Rainbow Corp. than about Rainbow.

9. And in response to Paragraph 6, which requires the listing of all materials required to be filed by Section 73.3613, Rainbow has again answered simply "N/A". But at a minimum Rainbow should have listed its own partnership agreement (if the report were intended to be for Rainbow itself) or its underlying corporate documents (if the report were intended to be for Rainbow Corp.). So the blithe "N/A" response is insufficient on its face.

10. Additionally, if any security agreements, pledges, options, rights of conversion or the like exist which are required to be filed with the Commission, see Section 73.3613, those too should have been listed. While Press cannot state conclusively at this time that any such materials in fact exist, Rainbow's own previous submissions to the Commission indicate that they likely do. In July, 1993, in its Petition for Reconsideration of the cancellation of its permit, Rainbow advised the Commission that it had "already concluded an agreement for equipment financing." See Rainbow Petition for Reconsideration at 11. Rainbow attached to its petition a copy of an "Equipment Loan Agreement" which specifically reflected (at Paragraph 3 to the agreement) that Rainbow had committed to

executing a security agreement; however, the form of the security agreement was neither included nor described in the materials submitted by Rainbow. If the security agreement included any provision relating to ownership or control, or potential ownership or control, of Rainbow, Rainbow Corp. or the broadcast authorization -- and, in view of the substantial (\$2,000,000) level of financing specified in the agreement, some such provision would not be unexpected -- obviously it should have been listed on the Ownership Report as well.

11. And finally, Rainbow's Report provides no clue concerning the precise understandings and agreements underlying its partnership structure. Recall that, at least according to Rainbow's November, 1991 Form 316 assignment application, Rainbow expected the formation of a limited partnership to generate some \$6,000,000 in capital contributions, of which Rainbow's general partner (i.e., Rainbow Corp., an entity supposedly controlled by original participants in the approved permittee) would be contributing only \$60,000, i.e., a mere 1%. In other words, Rainbow would have the Commission believe that Rainbow Corp. (and, thus, the original principals of the permittee) would supposedly be acquiring complete control of a \$6,000,000 company for a mere \$60,000. Conversely, Rainbow would have the Commission believe that some investor(s) would be willing to turn over \$6,000,000 to Rainbow's original principals who, by their own admission as of July, 1993, were themselves financially

incapable of constructing and operating the station. ^{4/}

12. But such notions do not comport with the everyday reality, often recognized by the Commission and the Courts, that "finances and control are closely linked". Weyburn Broadcasting Ltd. v. FCC, 984 F.2d 1220, 71 R.R.2d 1386, 1394 (D.C. Cir. 1993) and, e.g., cases cited therein. ^{5/} Here, the information which Rainbow has itself submitted strongly suggests that actual financial control of the permittee is or may be exercised by parties other than Rainbow's original principals (whose financial contribution was said by Rainbow itself, in its November, 1991 application, to comprise only approximately 1% of the limited partnership's then-anticipated total capital). In view of that information -- which, again, was submitted by Rainbow itself, and which remains unchanged insofar as Rainbow's submissions to the Commission reveal -- Press submits that Rainbow's claimed limited partnership structure is "unbelievable".

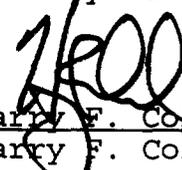
13. Had Rainbow fully disclosed all agreements and understandings among its participants, the Commission might have some clue as to the locus of actual control. But no such

^{4/} Again, this supposed limited partnership structure was described by Rainbow itself in its November, 1991 assignment application. To the best of Press' knowledge, Rainbow has not advised the Commission of any modification of that structure.

^{5/} See also, e.g., Gloria Bell Byrd, 7 FCC Rcd 7976 (Rev. Bd. 1992), aff'd, 8 FCC Rcd 7124 (1993) (discrediting alleged limited partnership arrangement in which allegedly passive investors owned "lion's share of equity" while allegedly sole controlling owner held only a token equity share for which minimum consideration had been paid); Royce International Broadcasting, 5 FCC Rcd 7063, 7064, n.10 (1990) (alleged business structure may be discredited where it is "irreconcilable with the exercise of sound business judgment" or simply "unbelievable").

disclosure has been provided. ^{6/} Until such disclosure is made and opportunity is afforded the Commission and other interested parties to review the materials so disclosed, the Commission should defer action on the above-captioned application. ^{2/}

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Broadcasting
Company, Inc.

July 27, 1994

^{6/} Rainbow did submit, as an attachment to its November, 1991 assignment application, a copy of a limited partnership agreement. But even if that document were in effect, and even if that document were deemed to incorporate the insulatory provisions normally expected by the Commission of such arrangements, the most that could be said of that agreement is that it might be deemed to accord de jure control to Rainbow's original principals. But the Court of Appeals has admonished the Commission that "fixation on de jure control is both inappropriate and uncharacteristic", particularly where there are independent indications of actual or potential de facto control through financial dominance. Weyburn Broadcasting, 984 F.2d at 1220, 71 R.R.2d at 1394.

^{2/} Contrary to Rainbow's rather tired complaints about Press' supposed efforts to prevent Rainbow from competing in the television marketplace, the fact is that Rainbow can compete and is competing. Withholding action on Rainbow's license application will not change that. Of course, since the actions pursuant to which Rainbow is operating are the subject of on-going appeals, any action which Rainbow might have taken, or might take in the future, pursuant to those actions will be subject to rescission in the event that those actions are ultimately reversed. See, e.g., Improvement Leasing Co., 73 FCC2d 676, 684 (1979), aff'd, Washington Ass'n for Television and Children v. FCC, 665 F.2d 1264 (D.C. Cir. 1981). Nevertheless, in the meantime, if Rainbow wishes to compete, Rainbow can do so until the Commission or the Courts order otherwise.

ATTACHMENT A

I certify that I am President

(Official title, see Instruction 1)

of Rainbow Broadcasting Company, Inc

(Exact legal title or name of respondent)

General Partner, Rainbow Broadcasting
I have examined this Report and to the best of my knowledge and belief all statements in the Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in item 1 in no event prior to item 1 date):

(Signature)

November 11

(Date)

1993

Ownership Report

NOTE: Before filling out this form, read attached instructions

Section 310(d) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license/permit or transfer of control (except to report an assignment of license/permit or transfer of control made pursuant to prior Commission consent).

1. All of the information furnished in this Report is accurate as of

November 1, 1993

(Date must comply with Section 73.3615(a), i.e., information must be current within 60 days of the filing of this report, when 1(a) below is checked.)

Telephone No. of respondent (include area code):

305-361-8223

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001.

This report is filed pursuant to instruction (check one)

1(a) Annual 1(b) Transfer of Control or Assignment of License 1(c) Other

for the following stations:

Name and Post Office Address of respondent:

Joseph Ray
Rainbow Broadcasting, Ltd.
151 Crandon Boulevard #110
Key Biscayne, Florida 33149

Call Letters	Location	Class of service
<u>WRBW</u>	<u>Orlando, Florida</u>	<u>UHF TV</u>

4. Name of entity, if other than licensee or permittee, for which report is filed (see Instruction J):

N/A

2. Give the name of any corporation or other entity for whom a separate Report is filed due to its interest in the subject license (See Instruction J):

N/A

5. Respondent is:

- Sole Proprietorship
- For-profit corporation
- Not-for-profit corporation
- General Partnership
- Limited Partnership
- Other

3. Show the attributable interests in any other broadcast station of the respondent. Also, show any interest of the respondent, whether or not attributable, which is 5% or more of the ownership of any other broadcast station or any newspaper or CATV entity in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3555 and 76.501 of the Commission's Rules.

N/A

If a limited partnership, is certification statement included as in Instruction

- Yes No

List all contracts and other instruments required to be filed by Section 73.301.1 of the Commission's Rules and Regulations. (Only licensees, permittees, or a reporting entity with a majority interest otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution	Date of Expiration
N/A			

Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued
Rainbow Broadcasting Company, Inc. Common	Voting Nonvoting	1000 1000	525 475		475 525

make concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)

Line (Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of officer, director, cognizable stockholder or partner (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interest.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.
8. All other ownership interests of 5% or more (whether or not attributable as well as any corporate officer or directorship, in broadcast, cable or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3565 and 73.50 of the Commission's Rules, including the nature and size of such interest and the position held.

1	(a) Rainbow Broadcasting Company, Inc.	(b) Joseph Rey 151 Crandon Boulevard #110 Key Biscayne, FL 33149	(c) Letitia Jaramillo 5103 Ernst Court Orlando, Florida 32819
2	USA	USA	USA
3		Pres/Treasurer/Director	Vice Pres/Director
4	General Partner	475 common voting	50 common voting
5		475	50
6	100%	90%	10%
7	NONE	NONE	NONE
8	NONE	NONE	NONE

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assess compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, will use the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

4, 5, and 6.

(Read carefully - The numbered items below refer to the numbers in the following table.)

Name and residence of officer, director, cognizable stockholder or partner (other than individual also show name, address and citizenship of natural person authorized to vote the stock). List officers first, then directors and thereafter, remaining stockholders and partners.

Citizenship.

Office or directorship held.

Number of shares or nature of partnership interest.

Number of votes.

6. Percentage of votes.

7. Other existing attributable interests in any other broadcast station, including nature and size of such interest.

8. All other ownership interests of 5% or more (whether or not attributable) as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in Sections 73.3088 and 73.501 of the Commission's Rules, including the nature and size of such interests and the position held.

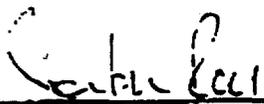
(a)	(b)	(c)
Susan Jaramillo 251 Crandon Boulevard #120 Key Biscayne Florida 33149		
USA		
Vice Pres/Secretary		
475 Common Nonvoting		
None		

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Disclosure of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to assess compliance with the Commission's multiple ownership restrictions. The staff, consisting variously of attorneys and examiners, uses the information to determine such compliance. If all the information requested is not provided, processing may be delayed while a request is made to provide missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to retain your authorization.

I hereby certify that:

No limited partner is materially involved, directly or indirectly, in the management or operation of the media related activities of the partnership, as specified in paragraph 4 of the Instructions to F.C.C. Form 323.



Joseph Rey
President, Rainbow Broadcasting, I
General Partner
Rainbow Broadcasting, Ltd.

ATTACHMENT B



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JUN 16 1994

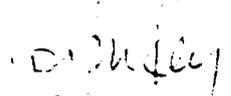
June 15, 1994

Sharon E. Jenkins
Chief Ownership Section
Federal Communications Commission
1919 M Street, N.W., Room 234
Washington, D.C. 20554

Dear Ms. Jenkins:

In conjunction with the filing of its FCC Form 302 application, Rainbow Broadcasting, Ltd., permittee of Station WRBW(TV), Channel 65, Orlando, Florida, hereby certifies that its Ownership Report (FCC Form 323) filed on November 29, 1993, continues to be accurate as of this date.

Very truly yours,

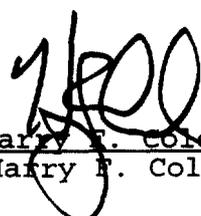

Joseph Rey
President
Rainbow Broadcasting Co., Inc.
General Partner
Rainbow Broadcasting, Ltd.

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 27th day of July, 1994, I have caused copies of the foregoing "Reply of Press Broadcasting Company, Inc. to 'Rainbow Response'" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

Christopher J. Wright, Deputy General
Counsel - Litigation
Federal Communications Commission
1919 M Street, N.W. - Room 614
Washington, D.C. 20554
(By Hand)

Margot Polivy, Esquire
Renouf & Polivy
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
Counsel for Rainbow Broadcasting
Company


/s/ Harry F. Cole
Harry F. Cole