

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

FCC 95M-29
60864

In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File No. BMPCT-910625KP
)	File No. BMPCT-910125KE
)	File No. BTCCT-911129KT
)	
For an Extension of Time to Construct)	
)	
and)	
)	
For an Assignment of its Construction)	
Permit for Station WRBW(TV),)	
Orlando, Florida)	

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FEDERAL COMMUNICATIONS COMMISSION

MEMORANDUM OPINION AND ORDER

Issued: March 4, 1996 Released: March 7, 1996

1. Under consideration are "Petition For Order Requiring The Unwinding Of The Assignment Of The Construction Permit Of Station WRBW(TV)" filed February 12, 1996 by Press Broadcasting Company, Inc. (Press), Opposition To Petition For Order Requiring The Unwinding Of The Assignment Of The Construction Permit Of Station WRBW(TV) filed February 16, 1996 by Rainbow Broadcasting Company (RBC), and Rainbow Broadcasting, Limited Opposition To Press Petition For Unwinding Of WRBW(TV) Assignment filed February 22, 1996. ¹

2. Press seeks an Order requiring the unwinding of the construction permit of Station WRBW(TV). Press asserts such relief is necessary to assure that the current permittee is RBC and not RBL, the successor to RBC and the proposed assignee of the construction permit for WRBW(TV) as well as the current operator of the station.

3. Press' petition will be denied. The Presiding Judge is without authority to unwind the subject transaction. In its Memorandum Opinion and Order, 9 FCC Rcd 2839 (1994), the Commission granted RBC's application for a pro forma assignment of its construction permit to RBL. The HDO, noting "that the court remanded this case to the Commission without purporting to vacate the Commission's earlier order" ordered that the earlier Order remain in effect "and Rainbow may continue to operate until the hearing is concluded and all issues are finally resolved" (Par. 9). The Commission took this action because disruption of the service which Rainbow is currently providing pending the outcome of the hearing would not serve the public interest (Par. 9). In this connection, notwithstanding its reference to "Rainbow", the Commission necessarily had to have considered RBL as the permittee in light of its grant of the pro forma assignment of the construction permit to RBL and its expressed interest in maintaining the current operation of WRBW(TV).

4. Granting the relief sought by Press and unwinding the subject transaction would constitute partial reconsideration of the HDO which ordered the preservation of the status quo. Since the Commission fully considered this matter in the HDO, the Presiding Judge is bound by the Commission's determination and is without authority to reconsider that determination. See Atlantic Broadcasting Co., 5 FCC 2d 717, 720-721 (1966).

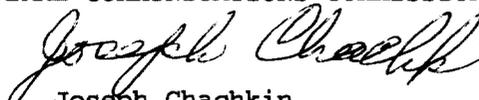
¹Rainbow Broadcasting, Limited (RBL) has not been named a party in the HDO and has not sought intervention pursuant to Section 1.223 of the Rules. Its Opposition pleading is, therefore, dismissed.

5. Moreover, allowing RBL to continue as permittee of WRBW(TV) does not prejudice Press. The HDO makes clear that RBL's retention of the permit rests entirely on favorable resolution of the issues designated against RBC. In this connection, as pointed out by RBC, at the pre-hearing held January 30, 1996, the Presiding Judge clarified RBL's status by ruling that for the purpose of this hearing, the assignment had not taken place (Tr. 18) and RBC, rather than RBL, is the party in hearing. RBC was required to enter an appearance (Tr. 16) and has done so.²

Accordingly, IT IS ORDERED, That Rainbow Broadcasting, Limited Opposition To Press Petition For Unwinding Of WRBW(TV) Assignment filed February 22, 1996 IS DISMISSED.

IT IS FURTHER ORDERED, That the "Petition For Order Requiring The Unwinding Of The Assignment Of The Construction Permit Of Station WRBW(TV)" filed February 12, 1996 by Press Broadcasting Company, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge

² As noted in note 1, supra, RBL has not been named a party in this proceeding.