

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 4

Presented by Joint

Disposition } Identified
 } Received
 } Rejected

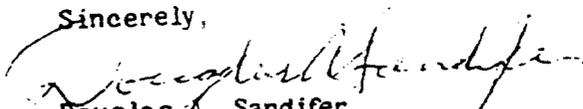
Reporter YS

Date 6-25-96

George G. Daniels

Your interest and concern in this matter is appreciated.

Sincerely,



Douglas A. Sandifer
For the Managing Director

cc: Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, D. C. 20036

✓ Harry F. Cole
Bechtel & Cole, Chartered
1901 L Street, NW Suite 250
Washington, D. C. 20036

2

JOINT HEARING EXHIBIT NO. 5

**Supplement to Rainbow Broadcasting Company
Application for Extension of Broadcast
Construction Permit (File No. BMPCT-910625KP),
November 27, 1991**



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Applications of)
Rainbow Broadcasting Company)
For Extension of Construction)
Permit for New UHF Television)
Station on Channel 65, Orlando,)
Florida)

File No. BMPCT-910625KP

REC'D MASS MED BUR
DEC. 2 1991

To: The Commission

SUPPLEMENT TO RAINBOW APPLICATION FOR BROADCAST CONSTRUCTION PERMIT VIDEO SERVICES

Rainbow Broadcasting Company submits the attached statement of Joseph Rey, as a supplement to its pending application for extension of its broadcast construction permit, File No. BMPCT-910625KP. As reflected in the attached statement of Mr. Rey, Rainbow is proceeding with construction and anticipates completion and the commencement of operation in accordance with the schedule it previously set forth to the Commission.

Respectfully submitted,

Margot Polivy
RENOUF & POLIVY
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
202.265.1807

27 November 1991

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 5

Presented by Joint

Disposition } Identified X
 } Received X
 } Rejected _____

Reporter YD

Date 6-25-96

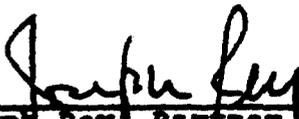
SUPPLEMENT TO RAINBOW APPLICATION FOR EXTENSION
OF BROADCAST CONSTRUCTION PERMIT

On June 25, 1991, Rainbow Broadcasting Company, permittee of Station WRBW, Channel 65, Orlando, Florida filed the above titled application, File No. BMPCT-910625KP. At the time that still pending application was filed, Rainbow reported that construction had not commenced. The purpose of this supplement is to update the status of construction.

In July 1991, Rainbow undertook the construction of a transmitter building at its transmitter/antenna location. That construction, at a cost of approximately \$60,000, was completed early this month. With the completion of the building to house the transmitter, Rainbow is actively engaged in final equipment selection. The equipment bids are being accepted on the full RF plans.

It is anticipated that equipment contracts will be let in early 1992 and that the station will be operational by December 1992.

This statement is true and correct to the best of my knowledge and belief and is made under penalty of perjury.



Joseph Rey, Partner
Rainbow Broadcasting Company

Date: _____

11/25/91

②

JOINT HEARING EXHIBIT NO. 6

**Letter from Clay Pendarvis, Chief, Television Branch,
Video Services Division, Mass Media Bureau, to
Rainbow Broadcasting Company, March 22, 1993**



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAR 22 1993

IN REPLY REFER TO:

1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street NW
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File No. BMPCT-910625KP

Dear Ms. Polivy:

This is with respect to the above-captioned application of Rainbow Broadcasting Company (Rainbow) for an extension of time to construct station WRBW(TV), Orlando, Florida. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, has filed an informal objection to the application.

By letter dated November 27, 1991, you stated that you expected to construct the station by December, 1992. However, it does not appear that construction has been completed. At this time, we cannot conclude that grant of the extension application would serve the public interest. We therefore request that you provide a detailed explanation of what specific actions you have taken towards construction since November 27, 1991. Accordingly, further consideration of your application will be deferred for 20 days to allow you the opportunity to respond.

Sincerely,



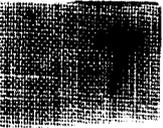
Clay C. Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Harry F. Cole, Esq.

<u>Federal Communications Commission</u>	
Docket No. <u>GC 95-172</u>	Exhibit No. <u>6</u>
Presented by <u>Joint</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <input checked="" type="checkbox"/>
	Rejected <input type="checkbox"/>
Reporter <u>JS</u>	
Date <u>6-25-96</u>	

JOINT HEARING EXHIBIT NO. 7

Letter from Margot Polivy to Clay Pendarvis, April 12, 1993



RENOUF & POLIVY

1532 SIXTEENTH STREET NW WASHINGTON DC 20036 - (202) 265-1807

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APR 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

12 April 1993

Clay C. Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Re: Station WRBW(TV)
Orlando, Florida
File No. BMPCT-910625KP

Dear Mr. Pendarvis:

This letter is in response to your letter dated March 22, 1993 requesting information as to the status of construction of Station WRBW, Channel 65, Orlando, Florida.

As recited in the attached statement of Joseph Rey, Rainbow General Partner, Rainbow has been and is prepared to complete construction and commence program test operation within six months of Commission action on its requests for extension of time to construct (BMPCT-910625KP) and Form 316 request for consent to transfer control of the permit to Rainbow Broadcasting, Ltd. (BTCCT-911129KT). Both requests have been pending since 1991.

Rainbow's status as a permittee has been the subject of continual challenges by Press Broadcasting Company, a UHF competitor in the Orlando market, since February 15, 1991, when Press filed an untimely objection to Rainbow's previous Form 307 request. That filing was followed by an unauthorized Petition for Reconsideration dated February 15, 1991. Despite the fact that Press had no standing to seek reconsideration, as noted in Rainbow's March 12, 1991 Opposition to Press Petition for Reconsideration, the request for reconsideration has not yet been acted upon by the Commission. Notwithstanding the

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 7

Presented by Joint

Disposition } Identified X
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Reporter YJ

Date 6-25-96

pendency of the challenge, Rainbow filed another timely Form 307 on June 24, 1991 and indicated its intention to undertake design and construction of its transmitter building. On November 27, 1991, Rainbow informed the Commission of the completion of the building.^{1/} No action on Rainbow's June 24, 1991 application (File No. BMPCT-910625KP) has been taken.

In November 1991, Rainbow filed a Form 316 application requesting permission to assign the construction permit to Rainbow Broadcasting, Ltd. In doing so, Rainbow noted that the voting rights would remain in the hands of the principals of Rainbow Broadcasting Company and the pro forma transfer would permit Rainbow to rely upon equity rather than debt financing. Rainbow's application, File No. BTCCT-911129KT, was the subject of yet another effort by Press Broadcasting to obstruct Rainbow's operation, in the form of an "Informal Objection and Request to Hold Application in Abeyance," filed January 7, 1992. Rainbow opposed Press' objection by pleading dated January 30, 1992. Again, no Commission action on Rainbow's requested transfer has yet been forthcoming.

In filing the November 25, 1991 request to restructure Rainbow from a general to a limited partnership, Rainbow, in contemplation of normal Commission processing periods, expressed its intention to have the station operational by the end of 1992. However, in order to go forward under the limited partnership, Rainbow required Commission approval of the transfer and a valid construction permit. In the absence of Commission action, Rainbow cannot use the funds committed to the partnership.

Rainbow is prepared to complete construction and have the station operational within six months of Commission action on its pending requests. Rainbow therefore requests simultaneous and expedited consideration of its pending applications, File Nos. BMPCT-910625KP and BTCCT-911129KT, and dismissal of Press' various objections.

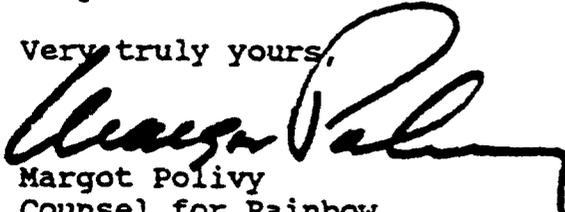
Under the circumstances, Rainbow believes that its request for an extension of time to construct is contemplated under Section 73.3534(b)(2) and (3) of the

1/ Rainbow expended approximately \$60,000 to construct the transmitter building and has paid approximately \$500,000 in rental fees for its transmitter space on the Bithlo Tower.

Commission's rules. Rainbow respectfully requests that its construction permit be extended until six months after approval of its pending applications.

We would be glad to provide the Commission with any further information or documentation it would find helpful to resolution of this matter.

Very truly yours,



Margot Polivy
Counsel for Rainbow
Broadcasting Company

Attachment: Statement of Joseph Rey

Statement of Joseph Rey

I, Joseph Rey, a General Partner in Rainbow Broadcasting Company, the permittee of Station WRBW(TV), Channel 65, Orlando, Florida. This statement is written in response to a letter request of Clay C. Pendarvis, Chief, Television Branch, Video Services Division, Mass Media Bureau, dated March 22, 1993.

On June 25, 1991, Rainbow filed an F.C.C. Form 307 request to extend time to construct Station WRBW(TV) until December 31, 1992 (BMPCT-910625KP). In furtherance of that effort, Rainbow commenced construction of its transmitter building and on November 27, 1991, by Supplement to its application, advised the Commission that the construction of the \$60,000 building had been completed and that equipment bids were being received. Rainbow indicated its continuing intention to commence operation by the end of 1992.

On November 29, 1991, Rainbow filed an F.C.C. Form 316 to permit change of the permittee's structure to a limited partnership (File No. BTCCT-911129KT). Rainbow proposed the reorganization to reduce the permittee's reliance on debt in favor of nonvoting equity contributions. Assuming normal F.C.C. processing time, the permittee foresaw no delay in its scheduled December 31,

1992 commencement date. However, for reasons unknown to the permittee, the Commission did not act on Rainbow's Form 316 application. In fact, no action on the reorganization has been taken thus far. Until the reorganization request is acted upon, Rainbow cannot use the limited partnership funds to effect construction.

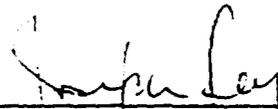
Rainbow has selected equipment and has sufficient committed funds to purchase the equipment, construct the station and operate without revenue for the required initial period. Release of those funds is tied to F.C.C. approval of the transfer of the permit to Rainbow Broadcasting, Ltd. Rainbow projects that the station would commence program test operation within five (5) months of a final F.C.C. action extending its construction permit and granting the pending transfer of control request. In order to go forward, Rainbow requires favorable action on both pending requests. If the transfer request is not granted, Rainbow will go back to its lenders for a reaffirmation of their commitments.

As a practical matter, Rainbow has been in limbo since November 1991. We anticipated Commission action on ~~BMPCT-910625KP~~ and ~~BTCCT-911129KT~~ in the first half of 1992. No action was forthcoming. Rainbow was prepared then and is prepared now to go forward on a six month

5

construction to operation schedule. It is, however, practically impossible to go forward when the status of the permit and the business structure are subject to F.C.C. action.

This statement is true and correct to the best of my knowledge and belief and is made under penalty of perjury.



Joseph Rey, General Partner
Rainbow Broadcasting Company

Date: April 10, 1993

6

JOINT HEARING EXHIBIT NO. 8

**Letter from Barbara A. Kreisman, Chief, Video Services Division,
Mass Media Bureau, to Rainbow Broadcasting Company and
Press Television Corporation, June 18, 1993**



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 18 1993

IN REPLY REFER TO:
1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, DC 20036

Press Television Corporation
c/o Harry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, NW
Suite 250
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File Nos. BMPCT-910625KP
BTCCT-911129KT

Dear Counselors:

This is with respect to the above-captioned applications of Rainbow Broadcasting Company (Rainbow) for: (1) an extension of time to construct station WRBW(TV), Orlando, Florida; and (2) authorization for a pro forma assignment¹ of its construction permit to Rainbow Broadcasting, Ltd. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, has filed informal objections to the applications. The parties have also filed several other responsive pleadings.

BACKGROUND

In 1984, after a comparative hearing, the Commission granted Rainbow a permit to construct a UHF television station in Orlando. Metro Broadcasting, Inc., 99 FCC 2d 688 (Rev. Bd. 1984), rev. denied, FCC 85-558 (released October 18, 1985), held in abeyance, 2 FCC Rcd 1474 (1987), aff'd, 3 FCC Rcd 866 (1988), aff'd, Winter Park Communications, Inc. v. F.C.C., 873 F.2d 347 (1989), aff'd, Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997 (1990). Although Rainbow's initial permit expired during the appellate process, we have since

¹ Rainbow submitted the application as a transfer of control. However, because Rainbow seeks to change the legal identity of the licensee, it is properly considered an assignment.

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 8

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 } Rejected

Reporter YS

Date 6-25-96

extended or reinstated the permit five times. Thus, Rainbow has held a valid permit for a total of 32 months since the grant became final. The most recent extension was for the period from February 5 - August 5, 1991.²

Rainbow stated in its application for an extension that it had not ordered any equipment to construct its facilities. However, by letter dated November 27, 1991, nearly four months after the end of the extension period, the permittee alleged that it had that month completed the construction of a transmitter building at its transmitter/antenna location; Rainbow asserted that it had begun the construction in July, 1991, and that it was still engaged in the selection of equipment for the station.³

Section 73.3534(b) of the Commission's Rules sets forth the conditions under which a construction permit can be extended. Pursuant to that Rule, we can grant the extension application only upon a showing that construction is complete, that substantial progress has been made (equipment is on order or on hand, the site is acquired and cleared, and construction is proceeding towards completion), or that no progress has been made due to circumstances clearly beyond the permittee's control. The first condition clearly has not been met. With regard to the second, Rainbow's failure to order equipment falls far short of the requirement of substantial progress contemplated by the Rule. Accordingly, we shall address the applicant's contention that circumstances beyond its control have prevented construction.

Two such factors have prevented timely construction, Rainbow maintains. The first is the appellate process which did not end until 1990. The second obstacle, according to the permittee, is a conflict with Guy Gannett Broadcasting Services (Gannett), the owner of the tower from which Rainbow is authorized to operate. In its extension request, Rainbow asserts that a "dispute with the tower owner" delayed construction. Asserting that Gannett granted it an exclusive lease for the section near the top of the tower, Rainbow sued Gannett in federal district court to prevent it from renting that space to Press. However, on June 6, 1991, before Rainbow filed the extension

² File No. BMPCT-910125KE. Press's petition for reconsideration of that extension was still pending when Rainbow filed the current extension application. Because of our denial of Rainbow's application, we shall dismiss Press's petition for reconsideration as moot.

³ By letter dated March 22, 1993, the staff requested Rainbow to provide a detailed explanation of what specific actions towards construction the permittee had taken since November 27, 1991. Rainbow responded that it took no further actions after that date. The permittee claims that release of the funds needed to purchase equipment and construct the station is tied to Commission approval of its pro forma assignment application. However, reorganization of the permittee and the infusion of new capital are not bases for the grant of an extension application. See High Point Community Television, Inc., 2 FCC Rcd 2506 (1987). Moreover, because Rainbow filed the assignment application several months after the end of its last extension period, it is irrelevant to its showing concerning the lack of substantial progress of construction during that time.

application now before us, the court denied its motion for a preliminary injunction. The permittee states that after that denial, it notified Gannett of its intention to commence construction and requested that the lease provisions regarding construction bids be effectuated.

Press argues that the dispute with Gannett did not prevent Rainbow from constructing.⁴ According to Press, Rainbow never asserted in its lawsuit that Gannett's proposed lease with Press would prevent Rainbow from constructing. To the contrary, Press presents the sworn testimony of Rainbow general partner Joseph Rey, given in connection with Rainbow's suit against Gannett, stating that Rainbow could proceed at any time with construction, but that it did not want to share the valuable space near the top of the tower with Press.

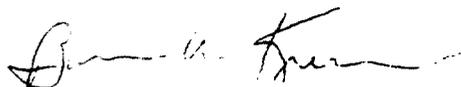
In addressing the merits of an application for extension, we note that the permittee's actions during the most recent extension period form the sole basis of whether it has complied with Section 73.3534(b). See, e.g., Metrovision, Inc., 3 FCC Rcd 598 (VSD, 1988). Because the last extension period began in February, 1991, many months after the appeals process terminated, Rainbow's argument that the appeal delayed construction is not relevant. Therefore, our sole concern is whether circumstances beyond the permittee's control prevented construction (or substantial progress) during the most recent extension period. Based on the information before us, we find that the permittee's lack of progress is not due to circumstances beyond its control, and that Rainbow has therefore failed to meet the requirements for obtaining an extension of time.

In making our finding we note that Rainbow cannot rely on its claim that Gannett's planned lease with Press impaired its ability to proceed with construction. Instead, the record reflects that the permittee clearly chose not to begin construction, and that the dispute with Gannett was not over whether Rainbow could construct but rather over whether it could prevent a competitor from utilizing its site. It was only after Rainbow failed to obtain a preliminary injunction against Gannett that it initiated steps toward construction. Undoubtedly, then, the dispute with Gannett was not a circumstance beyond Rainbow's control that impeded construction. We therefore find that Rainbow made a deliberate business judgment not to construct, pending the outcome of its motion for preliminary injunction. This decision was clearly within the permittee's control and cannot be used to justify an extension. See, e.g., High Point Community Television, above. Accordingly, on the basis of the facts set forth in Rainbow's application, we are unable to find that construction of the station was prevented by causes beyond the permittee's control, and therefore Rainbow's application for an extension of time is denied. Therefore, we also dismiss as moot Rainbow's pro forma assignment application.

⁴ Press also raises issues regarding Rainbow's financial qualifications, alleged anti-competitive behavior, abuse of Commission processes, misrepresentation, and lack of candor. Our disposition of Rainbow's extension application makes it unnecessary to address these issues.

Accordingly, the informal objections of Press Television Corporation are granted, and the application of Rainbow Broadcasting Company for an extension of time within which to construct station WRBW(TV), Orlando, Florida, is denied. Further, the construction permit of Rainbow Broadcasting Company for station WRBW(TV), Orlando, Florida, is cancelled, the call sign WRBW(TV) is deleted, and the application of Rainbow Broadcasting Company to assign the construction permit for station WRBW(TV), Orlando, Florida, to Rainbow Broadcasting, Ltd., is dismissed as moot.

Sincerely,



Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

JOINT HEARING EXHIBIT NO. 9

**Letter from Roy Stewart, Chief, Mass Media Bureau,
to Rainbow Broadcasting Company, July 30, 1993**



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

30 JUL 1993

IN REPLY REFER TO:
1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File Nos. BMPCT-910625KP
BTCCT-911129KT

Dear Ms. Polivy:

This is with respect to the above-captioned applications of Rainbow Broadcasting Company (Rainbow) for: (1) an extension of time to construct station WRBW(TV), Orlando, Florida; and (2) authorization for a pro forma assignment¹ of its construction permit to Rainbow Broadcasting, Ltd. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, filed informal objections to the applications. By letter dated June 18, 1993, the Chief, Video Services Division, denied the extension application, deleted the station's call sign, and dismissed as moot the assignment application. The staff denied the extension request pursuant to Section 73.3534(b) of the Commission's Rules, finding that Rainbow had failed to demonstrate that substantial progress toward construction had been made, or that circumstances clearly beyond Rainbow's control had prevented progress. You now seek reconsideration of the staff's action and grant of your extension and assignment applications. Press opposes your petition.

In support of your petition for reconsideration, you argue that you did not have two years to complete construction when you submitted the instant extension application.² Specifically, you claim that grant of the permit did not become final until August 30, 1990, when the Supreme Court denied a request for rehearing of its decision affirming the grant. In addition, you assert that Rainbow has spent approximately \$950,000 in obtaining the permit and constructing the station. You also state that you have completed the construction of the transmitter building. Further, you claim that the only

¹ Rainbow submitted the application as a transfer of control. However, because Rainbow seeks to change the legal identity of the licensee, it is properly considered an assignment.

² The permit was granted in 1985. Metro Broadcasting, Inc., 99 FCC 2d 688 (Rev. Bd. 1984), rev. denied, FCC 85-558 (released October 18, 1985), held in abeyance, 2 FCC Rcd 1474 (1987), aff'd, 3 FCC Rcd 866 (1988), aff'd, Winter Park Communications, Inc. v. F.C.C., 873 F.2d 347 (1989), aff'd, Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997 (1990).

Federal Communications Commission

Docket No. GC 95-172 Exhibit No. 9

Presented by Joint

Disposition } Identified X
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Reporter JS

Date 6-25-96