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

In re Applications of	)	
	)	
MARTIN W. HOFFMAN,	)	
TRUSTEE	)	File No. BRCT-881201LG
	)	
For Renewal of License of	)	
Station WHCT-TV, Hartford, Connecticut	)	

TO: The Commission

PETITION TO DISMISS APPLICATION

1. Shurberg Broadcasting of Hartford ("SBH") hereby petitions the Commission to promptly dismiss the above-captioned application. As set forth below, that application cannot legitimately be said to constitute a bona fide proposal entitled to any further consideration whatsoever.

2. As the Commission is aware, SBH is an applicant (File No. BPCT-831202KF) for a construction permit for a new television station to operate on Channel 18 in Hartford. SBH's application was accepted for filing in February, 1991. See Broadcast Applications, Report No. 14926, Mimeo No. 11679, released February 8, 1991. SBH's application is mutually exclusive with the above-captioned application for renewal of the license of Station WHCT-TV, Channel 18, Hartford. Therefore, SBH has standing to file the instant petition.

3. When SBH's application was accepted, Astroline Communications Company Limited Partnership ("Astroline"), the licensee of Station WHCT-TV, had been in a Chapter 11 bankruptcy proceeding attempting to reorganize itself since late 1988.

However, in April, 1991, Astroline's bankruptcy proceeding was converted to a Chapter 7 liquidation proceeding. Control of Astroline's assets was transferred to a Trustee-in-Bankruptcy ("Trustee"), who ceased station operations. See BALCT-910506KH. In his application for consent to that transfer, the Trustee candidly and expressly acknowledged that he "does not intend to, and is not authorized, to operate WHCT or to present any programs during the pendency of the Chapter 7 case". Id., Exhibit No. 1. Thus, the Trustee cannot be said to be prosecuting the pending renewal application for the purpose of, in fact, operating the station in any manner.

4. Consistent with this posture, since assuming his role in April, 1991, the Trustee has filed multiple requests for authority to keep the station off the air while he attempted to arrange a sale of the station. With the exception of his most recent such request, which was filed in March, 1992 and is still pending, all of those requests were granted. As a result, the station has been off the air for almost two years.

5. In March, 1992, SBH alerted the Mass Media Bureau to the fact that the Trustee had apparently lost control of all of the tangible assets of Astroline's estate, and that it therefore appeared virtually impossible for Station WHCT-TV ever to resume operation (even though, as noted above, the Trustee had already advised the Commission that he did not in any event intend to resume operation). SBH urged that the Bureau deny the

Trustee's request to remain dark and cancel the license. [1/] In May, 1992, SBH clarified its request to reflect that, as a technical matter, the Trustee still maintained control of Astroline's assets, even though they were subject to potential foreclosure by a secured creditor which had obtained leave from the Bankruptcy Court to foreclose. Still, SBH argued, there remained virtually no chance that the station would recommence operation, and cancellation of the license was again urged.

6. No action has been taken on SBH's March, 1992 request.

7. SBH has recently learned that, as of October 16, 1992, all of Astroline's physical assets were acquired by the secured creditor referred to above. Included as Attachment A hereto is a copy of a pleading filed in Bankruptcy Court by counsel for that creditor; that pleading plainly reflects that that creditor has taken control of the assets. See Attachment A at ¶8. SBH understands that those assets include the station's studio and transmitter buildings (and related real estate previously owned by Astroline), its tower, and all transmission and program origination equipment. [2/]

[1/] To the best of SBH's knowledge, the Trustee never responded to SBH's request at the Commission. Instead, the Trustee filed a motion with the Bankrupcty Court in Hartford seeking to have SBH, undersigned counsel, and undersigned counsel's law firm held in contempt of court for supposedly violating the automatic stay imposed by Section 362 of the Bankruptcy Act. That motion was denied by the Bankruptcy Judge in May, 1992.

[2/] To the best of SBH's knowledge, the Trustee has not to date advised the Commission of this change in circumstances. But the

(continued...)

8. As a result, while the Trustee may technically remain as the "licensee" of the station, he in fact holds nothing more than a bare license -- no transmitter, no tower, no real estate, no equipment, just a bare license. And as a practical matter, he actually holds a good deal less than that: because of the pendency of SBH's application, the Station WHCT-TV license could not be renewed before a comparative renewal proceeding with SBH. Of course, as the subject of a long-unresolved bankruptcy, the station cannot in any event claim to be financially qualified. But questions of financial viability aside, the "station" no longer owns or operates or leases or otherwise controls in any way the fundamental elements necessary for the operation of any station. As a result, it cannot legitimately be said to have a grantable renewal application. [3/]

[2/] (...continued)
loss of all of the station's physical assets must be deemed a "substantial change" in the Trustee's situation. As such, the change was required to be reported to the Commission pursuant to Section 1.65 of the Commission's Rules, which requires the reporting of substantial changes as to any "matter which may be of decisional significance in a Commission proceeding involving the pending application."

[3/] Another factor undermining the Trustee's position here is the fact that the Trustee's renewal application is the subject of an earlier petition to dismiss, filed by SBH on August 2, 1991, which has yet to be acted on. The basis for that petition is the fact that the Trustee failed to file the required hearing fee on or before July 15, 1991. Since the Commission was absolutely clear and unequivocal in giving notice that the penalty -- even for renewal applicants -- for failure to timely file a hearing fee would be dismissal, that alone should be sufficient to warrant immediate dismissal of the pending renewal application. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157 (1990), recon. gtd. in part,
(continued...)

9. Thus, the Trustee is not now able, as a practical matter, to put the station back on the air even if he had the legal authority to do so from the Bankruptcy Court (which authority, it bears repeating, the Trustee does not now have and has not, to the best of SBH's knowledge, sought). Moreover, he is not in a position to sell the station to anyone who might immediately return it to operation, for all the Trustee could now sell is a bare license, not an on-going operation or even a set of assets capable of initiating operation. Under these circumstances, SBH submits that the Commission can and should simply cancel the outstanding license, pursuant to Section 73.1750 of the Commission's Rules, and grant SBH's application. [4/]

[3/] (...continued)
6 FCC Rcd 3403 (1991) at, e.g., 3409 ("*Failure to make the hearing fee payment in a timely manner will result in the dismissal of the underlying pending application.*" [italicized emphasis in original]); 3403 ("We wish to emphasize that this hearing fee payment requirement also applies to renewal applicants that face a comparative challenge"); and 3408, Appendix A, which reads in relevant part:

> **IF A COMMERCIAL APPLICANT HAS BEEN ACCEPTED FOR FILING IN A PUBLIC NOTICE RELEASED PRIOR TO JULY 1, 1991, APPLICANT MUST PAY ITS HEARING FEE ON JULY 15, 1991.**
>
> **This hearing fee payment requirement also applies to *renewal applicants* where a public notice announcing the acceptance for filing of a competing application was released prior to July 1, 1991.**

[All-caps, boldface, italicized emphasis all in original].

In view of the fact that the renewal application is already subject to dismissal for failure to timely file a hearing fee, the value of the "license" underlying that application is clearly diminished.

[4/] Cancellation of the license pursuant to Section 73.1750 is by no means unheard of. Indeed, by letter dated April 10, 1991, then-counsel for Astroline, apparently recognizing the practical reality (continued...)

10. The Commission's ultimate, statutory obligation is to the public interest. Here, the public interest is not served by Commission acquiescence in keeping a station off the air unnecessarily; rather, the Commission should be taking steps designed to assure the earliest possible utilization of the channel, not its continued silence.

11. For the better part of a decade the Commission's clearly stated policy has been that

> the effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest. . . . [N]ew service should be provided to the public in the most efficient, expeditious manner possible.

Hillebrand Broadcasting, Inc., 1 FCC Rcd 419, 61 R.R.2d 633, 634 (1986). See also, e.g., James C. Rogers, III, 2 FCC Rcd 5536, 63 R.R.2d 1530 (1987); Kerrville Radio, 2 FCC Rcd 3441, 63 R.R.2d 701, 702 (1987); Warren Price Communications, Inc., 2 FCC Rcd 7409, 7410 (¶6), 64 R.R.2d 493 (Rev. Bd. 1987), rev. denied, 4 FCC Rcd 1992, 66 R.R.2d 13 (1989), recon. denied, 5 FCC Rcd 2906, 67 R.R.2d 1202 (1990). The relief sought by SBH is completely consistent with this policy; by contrast, any further delay by the Commission in granting that relief would be dramatically, and inexplicably, inconsistent with that policy. Dismissal of the Trustee's renewal application would clear the

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[4/] (...continued)
of the station's untenable situation, advised the Commission pursuant to Section 73.1750 of the discontinuation of the station's operation and of the fact that "[t]he station's license and other instruments of authorization will be forwarded to the Commission shortly."

way for prompt grant of SBH's application [5], an action which represents the only real hope of providing service on Channel 18 to the Hartford audience. [6]

WHEREFORE, for the reasons stated, Shurberg Broadcasting of Hartford petitions the Commission to promptly dismiss the above-captioned application.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

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Counsel for Shurberg Broadcasting of Hartford

December 14, 1992

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[5] For the record, SBH is committed to commencing construction and operation of its proposed station at the earliest possible time following favorable final action on its application. Under a best case scenario, grant of SBH's application might permit restoration of broadcast service on Channel 18 within 90 days of such a grant.

[6] As a technical matter there is pending one more application for the Channel 18 authorization. That application (File No. BPCT-890201KK) was filed on behalf of Gloria Stanford. However, Ms. Stanford did not file any hearing fee and has failed repeatedly to respond to pleadings. Her application may therefore be dismissed as well, whether for failure to file her fee, see Note 2, above, or for failure to prosecute.

ATTACHMENT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP Debtor	In Chapter 7 Case No. 88-21124 (RLK)
CITY OF HARTFORD Plaintiff VS. ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP Defendant	Motion No. November 4, 1992

MOTION TO COMPEL TRUSTEE TO MAKE PAYMENT TO APPLICANTS PURSUANT TO THE JANUARY 23, 1992 ORDER OF THIS COURT

Robert and Martha Rose, by their undersigned counsel, hereby move this Court to compel the Trustee to comply with this Court's Order of January 23, 1992 approving the compromise of the Movants' claim against the Trustee in this case for the following reasons:

1. On or about May 2, 1991, Robert and Martha Rose filed a motion for relief from the automatic stay seeking relief to enforce their contractual and legal rights in and to the tangible

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personal and real property of the Debtor, Astroline Communications Company Limited Partnership, including its accounts receivable, pursuant to a security agreement and mortgage deed.

2. On or about September 10, 1991, the Trustee filed an Answer and Affirmative Defenses to the Roses' motion.

3. To resolve the dispute between the Roses and the Trustee, the parties entered into a Stipulation Regarding Motion For Relief From Stay, a copy of which is attached hereto as Exhibit A.

4. On or about December 13, 1991, the Trustee filed a Motion For Approval of Compromise of Claim, which sought this Court's Approval of the Stipulation between the parties.

5. On January 23, 1992, this Court entered an Order, attached hereto as Exhibit B, approving the compromise of claim as set forth in the Stipulation.

6. Among other things, this Court's Order permitted the Roses to commence an action to foreclose their mortgage on the debtor's real property and to foreclose or otherwise take steps to obtain possession of the debtor's personal property subject to their security interest. The Order also required the Trustee to

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pay the Roses one-third (1/3) of the Trustee's cash on hand, less three percent (3%) "on the earlier of: (i) the date on which the Trustee sells the real property known as 18 Garden Street, Hartford, Connecticut and/or tangible personal property that is subject to the security interest of Robert and Martha Rose in accordance with the terms of the aforesaid Stipulation, or (ii) if there be no such sale, January 15, 1992 or such later date as may be agreed upon by the parties."

7. The Trustee failed to sell the aforementioned real property and/or personal property of the debtor by January 15, 1992.

8. With the acquiescence of the Roses, the Trustee retained possession of the aforementioned property and continued to attempt to sell it until October 16, 1992 when possession of the property was transferred to the Roses.

9. The Roses have demanded that the Trustee pay them one-third (1/3) of the Trustee's cash on hand as of October 16, 1992, but the Trustee has refused to make such payment.

10. The Trustee's refusal to pay the Roses one-third (1/3) of the cash on hand as of October 16, 1992 violates this Court's Order approving the compromise of the Roses' claim.

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11. The Roses request an order compelling the Trustee to pay them forthwith one-third (1/3) of the Trustee's cash on hand as of October 16, 1992 pursuant to this Court's order dated January 23, 1992.

Respectfully submitted,
Robert and Martha Rose

By _____
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Their Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of December, 1992, I caused copies of the foregoing "Petition to Dismiss Application" to be placed in the U.S. mail, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

The Honorable Alfred C. Sikes,
Chairman
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554
(BY HAND)

The Honorable James H. Quello,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 802
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(BY HAND)

The Honorable Sherrie Marshall,
Commissioner
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The Honorable Andrew C. Barrett,
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The Honorable Ervin S. Duggan,
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/s/ Harry F. Cole
Harry F. Cole