

Ref Rm.

MM 97-128

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MAR 18 1992

Federal Communications Commission
Office of the Secretary

BECHTEL & COLE
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ATTORNEYS AT LAW
SUITE 250
1901 L STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 833-4190

HARRY F. COLE

TELECOPIER
(202) 833-3084

March 18, 1992

HAND DELIVERED

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 WHCT-TV, Channel 18, Hartford, Connecticut

Dear Mr. Pendarvis:

I am writing on behalf of Shurberg Broadcasting of Hartford ("SBH") to protest any further extension of the outstanding authority to keep Station WHCT-TV off-the-air. ^{1/} That authority was first granted by letter (Ref. 8940-ECM) dated June 5, 1991, and was most recently extended by letter (Ref. 8940-ECM) dated on or about January 28, 1992. The authority is presently scheduled to expire on April 17, 1992. As discussed below, it is not clear whether (and if so, when) any further extension of the authority might be sought.

On April 9, 1991 -- almost one full year ago -- Station WHCT-TV ceased operation. By letter dated April 10, 1991, counsel for Astroline Communications Company Limited Partnership ("Astroline") 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

^{1/} As the Commission is well aware, SBH is an applicant for a construction permit for a new television station on Channel 18 in Hartford. SBH's application, which has been accepted for filing (see Public Notice, Broadcast Application, Report No. 14926, Mimeo No. 11679, released February 8, 1991), is mutually exclusive with the pending application for renewal of the license of Station WHCT-TV.

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shortly." See Attachment A.

The station's license, however, was not turned in. The license of Station WHCT-TV was assigned to a Trustee in Bankruptcy pursuant to an order of the bankruptcy court converting the then-pending Chapter 11 voluntary reorganization proceeding to a Chapter 7 liquidation proceeding. See BALCT-910506KH. In his application for consent to that assignment, 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. As noted above, and as the Trustee candidly and expressly acknowledged to the Commission in a letter dated April 19, 1991, the station had already ceased operation on April 9, 1991. In that letter the Trustee requested authority to remain dark; that request was granted.

Since then, the Trustee has filed multiple ex parte requests for extension of its authority to stay dark. The precise basis asserted for each of these requests varies to some degree from one request to the next, but the thrust of each request is that the Trustee believes that he is entitled to keep the station off the air for as long as he would like in order to attempt to sell the license as just one of multiple assets of the bankrupt's estate and, thus, maximize the value of that estate. It appears that the Trustee would have the Commission believe that he will be selling a licensed (if not operating) station, equipment and all. The Commission's grants of these requests all appear to have been premised on the belief that some such sale might actually occur and that the station would, as a result, eventually return to operation as a result of the Trustee's efforts.

The trouble is that available records indicate that the bankrupt's estate amounts, at this time, to nothing more than the bare license. The station's lease for its transmitter site was terminated almost a year ago. See Attachment B hereto. Thus, the station presently is not able to operate from the site specified in its license and, of course, it has no authority from the Commission to operate from any other site. As noted above, the station has been off-the-air for almost a full year already; thus, it has no on-going business or "goodwill" which might be

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deemed an intangible "asset" of any sort. Additionally, on January 23, 1992, the Bankruptcy Court approved a claim -- asserted by secured creditors Martha and Robert Rose ("the Roses") -- covering all of the bankrupt's "tangible personal property", i.e., the station's physical assets but not its license. See Attachment C hereto (which SBH understands to be a complete copy of the Bankruptcy Court's January 23, 1992 order). As a result of the Bankruptcy Court's action, while the Trustee may remain in control of the mere "license" itself, the station's physical assets have already effectively passed into other hands.

Thus, any notion that the Trustee may be in a position to sell an on-going station is nothing but fantasy: the station's former physical assets are out of the Trustee's control and, even if they weren't, the Trustee has no authorized transmitter site from which he (or his hypothetical buyer) might operate. SBH has further been informally advised, in conversations with Mrs. Rose and the Roses' counsel, that the Roses have no present plans to attempt to utilize the station's assets in an effort to operate the station in some manner; to the contrary, it appears that the Roses are considering selling some or all of the station's assets to non-broadcasting concerns. See Attachment D. In other words, the station has been off-the-air for almost one full year, control of the bits and pieces of the station's physical plant has been handed off by the Bankruptcy Court to third parties who apparently do not intend to use them in connection with restoration of service to Hartford, and there exists absolutely no realistic likelihood that Station WHCT-TV will ever operate again: as a practical matter, Station WHCT-TV has permanently discontinued its operation.

Under these circumstances, the Commission's Rules call for the voluntary surrender of the station's license. Section 73.1750 of the Rules provides that:

The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

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This, of course, is precisely what Astroline's counsel properly indicated should and would be done almost a year ago.

As noted above, the Trustee's repeated requests for extension of its authority to remain dark have not been served on SBH or its counsel. Further, despite SBH's diligence, the Commission's publicly available records have contained no reference to those requests until after they have been granted. As a result, SBH has been effectively precluded from objecting to any of the previous requests. In order to avoid any further repetition of this scenario, SBH is submitting the instant objection as a precautionary matter well in advance of the expiration of the Trustee's current authority to remain dark.

Consideration of this objection is important because, otherwise, the Commission would likely be unaware of the actual circumstances surrounding the bankruptcy proceeding. Obviously, the Trustee's repeated suggestions that the station may somehow be returned to the air are completely unreliable. Previously, because the Trustee's requests have been lacking in any detailed information about the status of the bankruptcy proceeding and because SBH (and other knowledgeable parties) have not had any real opportunity to comment on the Trustee's earlier requests, the Commission has presumably had no reason not to grant those requests. Now, however, in the face of documentary demonstration that the station will not be able to return to the air, the Commission cannot simply rubberstamp any further requests by the Trustee.

In reviewing this extraordinary situation, the Commission must be governed by the public interest. To the extent that the assets of the bankrupt licensee might be used to satisfy creditors' claims, they have already been used for precisely that purpose, and so are no longer available. Thus, any interest which the Commission might arguably have in assisting creditors is simply not a material consideration here.

By contrast, what is highly relevant and material here is the interest of the audience in Hartford, which has been deprived of this television service for almost a year already. Further extension of the authority to stay dark would prolong that sorry situation for no legitimate reason: notwithstanding

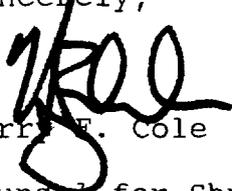
BECHTEL & COLE
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any vague, impotent claims the Trustee has made or might make, it appears clear that the Trustee is and will remain unable to assure the station's return to the air. Under these circumstances, prolonging the termination process disserves the public and promotes no other valid interest.

SBH recognizes that this request may be somewhat unusual. But the recent history of Station WHCT-TV is itself unusual, if not unique. 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 unnecessarily off the air; the Commission should be taking steps designed to assure the earliest possible utilization of the channel, not its continued silence. Accordingly, SBH submits that any further request for authority to stay dark should be denied and the Station WHCT-TV license should be cancelled. At a minimum, SBH requests that, if any further request for authority to stay dark is filed, SBH should be notified of that request promptly and provided with a copy thereof, and action thereon should be withheld for at least 15 days in order to provide SBH with an opportunity to address whatever representations may be set forth therein.

Sincerely,



Harry F. Cole

Counsel for Shurberg Broadcasting
of Hartford

Courtesy copy: Roy J. Stewart, Chief (By Hand - Room 314)
Mass Media Bureau
Barbara A. Kreisman, Chief (By Hand - Room 702)
Video Services Division
Emma Mebane (By Hand - Room 709)

cc: Martin W. Hoffman, Esquire

ATTACHMENT A

**BAKER
&
HOSTETLER**
COUNSELLORS AT LAW

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APR 10 1991

Federal Communications Commission
Office of the Secretary

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036 • (202) 861-1500
FAX (202) 861-1783 • TELEX 2357278
WRITER'S DIRECT DIAL NUMBER (202) 861-1690

April 10, 1991

REC'D MASS MED BUR

APR 15 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

VIDEO SERVICES

Re: Station WHCT-TV - Hartford, Connecticut

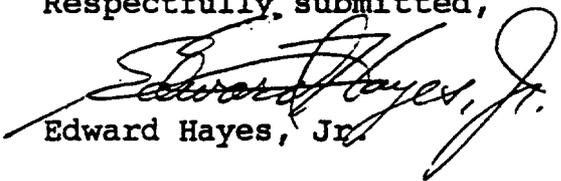
Dear Ms. Searcy:

Astroline Communications Company Limited Partnership, Debtor-In-Possession, through counsel and pursuant to Section 73.1750 of the Federal Communications Commission's Rules, 47 CFR §73.1750, notifies the Commission that it has discontinued operation as of April 9, 1991.

On April 9, 1991, the Bankruptcy Court in Hartford, Connecticut granted a motion to convert the proceeding to a bankruptcy matter under Chapter 7 of the bankruptcy laws and ordered the liquidation of the station's assets. The station's license and other instruments of authorization will be forwarded to the Commission shortly.

Should there be any further questions, kindly contact the undersigned.

Respectfully submitted,


Edward Hayes, Jr.

80920-85-001
1262-2667

ATTACHMENT B

NOTICE OF LEASE TERMINATION

THIS NOTICE, made and executed as of this 19th day of April, 1991, by ASTROLINE CONNECTICUT, INC., a Connecticut corporation ("Lessor").

W I T N E S S E T H

WHEREAS, ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, a Massachusetts limited partnership with an office in Hartford, Connecticut ("Lessee") and ASTROLINE COMPANY, a Massachusetts limited partnership with an office in Reading, Massachusetts ("AC"), entered into a lease dated October 1986 (the "Lease") for that certain parcel of real property with the improvements thereon, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises"), a notice of which was dated October 22, 1986 and recorded in Volume 182, Page 429 of the Avon Land Records and Volume 1143, Page 208 of the West Hartford Land Records; and

WHEREAS, AC deeded said property to Lessor by that certain Quitclaim Deed dated April 2, 1987, and assigned the Lease to Lessor by Assignment of Lease dated April 2, 1987; and

WHEREAS, the parties hereto amended the Lease by an "Amendment of Lease" dated as of June 30, 1989; a Second Amendment of Lease dated as of September 22, 1989 and recorded in Volume 227, Page 211 of the Avon Land Records and in Volume 1449, Page 90 of the West Hartford Land Records; a Third Amendment of Lease dated October 24, 1989, and recorded in Volume 228, Page 547 of the Avon Land Record and Volume 1471, Page 108 of the West Hartford Land Records; a Fourth Amendment of Lease dated November 24, 1989, and recorded in Volume 229, Page 696 of the Avon Land Records and Volume 1466, Page 152 of the West Hartford Land Records; a Fifth Amendment of Lease dated December 22, 1989, and recorded in Volume 231, Page 231 of the Avon Land Records and Volume 1477, Page 39 of the West Hartford Land Records; a Sixth Amendment of Lease dated March 22, 1990 and recorded in Volume 233, Page 58 of the Avon Land Records and Volume 1492, Page 110 of the West Hartford Land Records; a Seventh Amendment of Lease dated May 22, 1990 and recorded in Volume 235, Page 32 of the Avon Land Records and Volume 1507, Page 197 of the West Hartford Land Records; an Eighth Amendment of Lease dated July 22, 1990 and recorded in Volume 237, Page 21 of the Avon Land Records and Volume 1521, Page 22 of the West Hartford Land Records; a Ninth Amendment of Lease dated October 24, 1990 and recorded in Volume 246, Page 48 of the Avon Land Records and Volume 1540, Page 131 of the West Hartford Land Records; a Tenth Amendment of Lease dated November 24, 1990 and recorded in Volume 240, Page 923 of the Avon Land Records and Volume 1545, Page 206 of the West Hartford Land Records; an Eleventh Amendment of Lease dated December 22, 1990 and recorded in Volume 241, Page 941 of the Avon Land Records and Volume 1550, Page 3 of the West Hartford Land Records; and a

Twelfth Amendment of Lease dated January 22, 1991, and recorded in Volume 242, Page 456 of the Avon Land Records and Volume 1553, Page 313 of the West Hartford Land Records; and a Thirteenth Amendment of Lease dated February 20, 1991 and recorded in Volume 243, Page 250 of the Avon Land Records and Volume 1557, Page 343 of the West Hartford Land Records; and a Fourteenth Amendment of Lease dated as of March 22, 1991, and recorded in Volume 243, Page 941 of the Avon Land Records and Volume 1563, Page 73 of the West Hartford Land Records; and

WHEREAS, Lessor desires to terminate the Lease pursuant to Section II of the Lease, as amended, which states that the Lease can be terminated by ninety (90) days written notice by either party; and

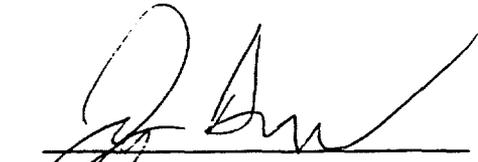
WHEREAS, Lessor desires to give notice of the termination of the lease term.

NOW THEREFORE: Lessor hereby provides as follows:

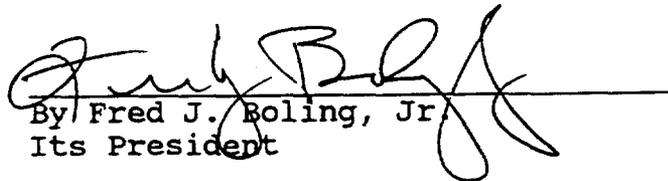
1. The Lease, as amended, is hereby terminated as of July 22, 1991 (the "Termination Date"), as if said date were originally set forth in the Lease, as amended, as the termination date of the term therein.
2. The Notice of Lease is hereby terminated as of the Termination Date.

IN WITNESS WHEREOF, the Lessor has caused this instrument to be executed as of the date written above.

LESSOR
ASTROLINE CONNECTICUT, INC.



Sandra Hawkins



By Fred J. Boling, Jr.
Its President

STATE OF *Massachusetts*)
COUNTY OF *Middlesex*)

ss.

April ²¹, 1991

Personally appeared Fred J. Boling, Jr., President of Astroline Connecticut, Inc. as aforesaid, signer of the foregoing instrument, and acknowledged the same to be his free act and deed as such President, and the free act and deed of said corporation, before me.

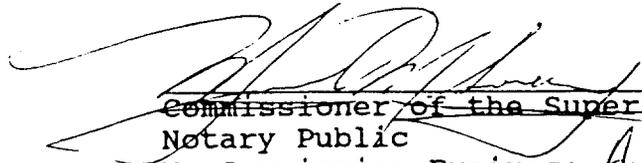

~~Commissioner of the Superior Court~~
Notary Public
My Commission Expires: *Apr. 12, 1993*

EXHIBIT A
NOTICE OF TERMINATION

A certain piece or parcel of land together with all buildings and improvements constructed and/or situated thereon as of the Termination Date, partially located in the Town of Avon, Connecticut and partially located in the Town of West Hartford, Connecticut, known and designated as Parcels "B", "C" and "D" on a certain map or survey entitled: "Map Showing Land Owned by, Astroline Company, a Massachusetts Limited Partnership, Deercliff Road, Avon/West Hartford, Connecticut, Scale 1" = 200', February 1987, Prepared By Neriani Surveying, Simsbury, Connecticut", which map or survey has been filed with both the Office of the Town Clerk of Avon, Connecticut and the Office of the Town Clerk of West Hartford, Connecticut to which reference may be had.

Received April 23, 1991 4:10 P.M.
Registered in TOWN OF AVON
and Volume 245 Page 62
Charles B. Johnson Town Clerk

A TRUE COPY OF ORIGINAL
Charles B. Johnson
TOWN CLERK

ATTACHMENT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

in re:

Chapter 7 Proceeding

ASTROLINE COMMUNICATIONS
COMPANY LIMITED PARTNERSHIP

No. 88-21124

Debtor

ROBERT ROSE AND MARTHA ROSE

Plaintiffs

v.

Motion #91-566M

ASTROLINE COMMUNICATIONS
COMPANY LIMITED PARTNERSHIP

Defendant

ORDER

DATED AT HARTFORD, CT THIS 23RD DAY OF 199

Upon the foregoing Motion for approval of Compromise of Claim, it having been presented to the Court and after notice and a hearing, it is hereby

ORDERED: that the compromise of claims by and between the estate and Robert and Martha Rose as set forth in the Stipulation Regarding Motion For Relief From Stay Filed by Robert and Martha Rose be and is hereby approved; and, it is further

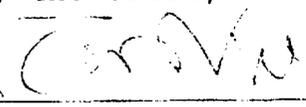
#451

ORDERED: that the automatic stay be and is hereby modified to permit Robert and Martha Rose to commence an action in the Superior Court to foreclose their mortgage on 18 Garden Street, Hartford, Connecticut and to foreclose or otherwise take steps to obtain possession and title to all tangible personal property that is subject to their security interest, provided that Robert and Martha Rose shall not take any action that will divest the estate of title to 18 Garden Street, Hartford, Connecticut and of title to the tangible personal property that is subject to their security interest until after January 15, 1992, and it is further,

ORDERED: the automatic stay be and is hereby modified to permit the Trustee to turn over to Robert and Martha Rose an amount equal to one-third of the trustee's cash on hand, less three (3%) percent, 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, and, it is further,

ORDERED: the lien of Robert and Martha Rose on the remaining two-thirds of the trustee's cash on hand as of the aforesaid date be and is hereby avoided pursuant to 11 U.S.C. §§510(c) and 547(b) and said lien to said extent be and is hereby preserved for the benefit of the estate pursuant to 11 U.S.C. §§510(c) and 551.

By the Court,


Robert L. Krechevsky
Chief U.S. Bankruptcy
Judge

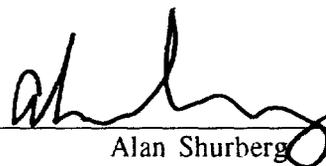
ATTACHMENT D

DECLARATION

Alan Shurberg, under penalty of perjury, hereby declares the following to be true and correct of his own personal knowledge and belief:

1. I am the sole principal of Shurberg Broadcasting of Hartford ("SBH"), an applicant for authority to construct and operate a new commercial television station on Channel 18 in Hartford, Connecticut. I am preparing this Declaration for submission to the Federal Communications Commission in connection with SBH's objection to any extensions of the outstanding authorization permitting Station WHCT-TV, Hartford, to remain off-the-air.

2. My review of the records of the on-going bankruptcy proceeding involving the assets of the former licensee of Station WHCT-TV, Astroline Communications Company Limited Partnership, has revealed that on January 12, 1992, the Bankruptcy Court issued an order approving a claim against virtually all of Astroline's assets (but not including the WHCT-TV license). That claim was asserted by secured creditors Martha and Robert Rose. Within the last four weeks I have spoken with both Mrs. Rose and the Roses' counsel in the bankruptcy action to determine what plans, if any, the Roses have for the use or disposition of those assets. I have been advised that the Roses have no present plans to utilize the station's assets in an effort to operate Station WHCT-TV in any manner. To the contrary, I was advised that the Roses are considering selling some or all of the station's assets to non-broadcasting concerns. I was also advised that no agreement had been reached between the Roses and the Trustee in Bankruptcy regarding any possible sale of the assets to any buyer which the Trustee might produce; indeed, the Roses' counsel told me that he had already initiated foreclosure action on the assets.


Alan Shurberg

Date: 3/18/92