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

In re Applications of	)	
	)	
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, DEBTOR-IN-POSSESSION	)	File No. BRCT-881201LG
	)	
For Renewal of License of Station WHCT-TV, Hartford, Connecticut	)	

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AUG 19 1991

VIDEO SERVICES

TO: Roy J. Stewart, Chief
Mass Media Bureau

OPPOSITION TO "REQUEST FOR ACCEPTANCE OF HEARING FEE LATE"

1. Shurberg Broadcasting of Hartford ("SBH") hereby opposes the "Request for Acceptance of Hearing Fee Late" filed by Martin W. Hoffman, Trustee in Bankruptcy of Astroline Communications Company Limited Partnership ("Astroline").

2. The facts underlying Astroline's Request are quite simple. Despite unbelievably clear notice provided to all the world well in advance of the July 15, 1991 deadline, and despite its own documented knowledge of the existence of all the predicate facts necessary to trigger the fee requirement [1/], Astroline did not file a hearing fee by that deadline. More than

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[1/] As clearly and expressly set forth in Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157 (1990), recon. gtd. in part, 6 FCC Rcd 3403 (1991), where applications mutually exclusive with a pending renewal application had been accepted for filing prior to July 1, 1991, all such applicants -- including the renewal applicant -- were required to file a hearing fee by July 15, 1991. Astroline knew of the acceptance of competing applications in February, 1991: Astroline filed petitions to deny those applications on the "B" cut-off date in March, 1991. And Astroline similarly knew that it had a renewal application pending.

two weeks after the deadline, SBH checked with the Commission's Fee Office and determined that no hearing fee had been filed by Astroline. During an informal conversation initiated by Astroline on August 1, SBH independently confirmed that no hearing fee had been filed. Accordingly, on August 2, 1991, SBH petitioned to dismiss, inter alia, Astroline's renewal application for failure to file a hearing fee. [2/]

3. One week later -- i.e., almost a month after the July 15 deadline -- Astroline tendered its Request, accompanied by a hearing fee. In support of its Request, Astroline's sole argument was, in essence, that Astroline's current Trustee-in-Bankruptcy was not aware that the Commission required licensees in Astroline's position to file a hearing fee on or before July 15, 1991 or find themselves dismissed. But that response is legally and factually meritless.

4. As a legal matter, as demonstrated in SBH's Petition to Dismiss, the Commission made its requirements absolutely crystal clear, with bold-faced italics added for emphasis. Those requirements were duly released by the Commission through its public information office and were duly published in the Commission's official reporter. Astroline -- and all other parties, for that matter -- are therefore charged with knowledge of the rules, and Astroline's profession of

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[2/] In announcing the hearing fee requirement and the deadline for submission of fees, the Commission had unequivocally and emphatically stated that failure to timely file a fee would result in dismissal of the subject application. 6 FCC Rcd at 3409.

ignorance is without legal effect.

5. This is consistent with the well-established principle that ignorance of the law is no excuse. Indeed, even where the Commission has failed to provide clear and express guidance with respect to its rules, and even where Commission personnel have provided applicants with incorrect information on which the applicants relied to their detriment, the Commission and the Courts have sustained dismissal of applications for non-compliance with regulatory requirements. See, e.g., Malkan FM Associates v. FCC, No. 90-1281 (D.C. Cir. June 14, 1991). [3/] Here, the Commission provided, in the well-established official manner of publication, absolutely unequivocal, express, explicit and unmistakable statements of its policy. If Astroline elected for whatever reason to ignore those statements, it did so at its own risk, and it cannot now rely on claims of ignorance.

6. In any event, as a factual matter, Astroline's profession of ignorance is hardly credible. Throughout the more than seven years that Astroline has been before the Commission, it has been ably represented by counsel. As recently as March,

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[3/] Unlike the situation in Malkan FM Associates, Astroline does not appear to be claiming that it was affirmatively misled by any Commission staffmembers. Rather, Astroline relies on the substantially weaker claim that no one bothered to tell Astroline about the fee requirement. See Objection at 4. But it is the obligation of the licensee to acquaint itself with the Commission's Rules. The Commission's ability to regulate would disintegrate if licensees could avoid the consequences of their violations simply by claiming ignorance of the rules. Indeed, a system which would permit such avoidance would effectively encourage licensees to know as little as possible; such a result is surely contrary to the Commission's intentions and the public interest.

1991, petitions to deny were filed against a number of applicants by counsel acting on behalf of Astroline. [4/] Astroline has therefore had continuous access to respected counsel, and it has had knowledge of the pendency of the various competing applications. [5/] If Astroline chose to venture into the thicket of communications law (and, in view of the history of this particular case, into an especially thorny section of that thicket) without first examining its situation very carefully,

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[4/] The fact that those petitions to deny were filed (in March, 1991) demonstrates that Astroline knew that competing applications, including SBH's, had been accepted for filing. Moreover, in the May, 1991, application (File No. BALCT-910506KH) for consent to the involuntary assignment of the license to the Trustee-in-Bankruptcy, the Trustee specifically noted (at Paragraph 8 to Form 316) the pendency of Astroline's renewal application. Since the pre-July 1, 1991 acceptance for filing of applications mutually exclusive with a pending renewal application is the sole factual trigger for the hearing fee requirement, Astroline's various submissions to the Commission reflect an unequivocal admission that Astroline had all the knowledge that was necessary to establish the applicability of that requirement to Astroline.

[5/] Even if Astroline's previous communications counsel has discontinued its representation for whatever reason (and there is no suggestion of that in Astroline's "Objection"), at a minimum Astroline's current Trustee-in-Bankruptcy knew when he assumed control of Astroline that Astroline's posture before the Commission might not be a simple one. Under those circumstances, every possible effort could and should have been made to assure compliance with the rules by determining what administrative ramifications any of the peculiarities of the case's history might entail. Whether such effort consisted of self-education, guidance from former communications counsel, or retention of alternate communications counsel, it is clear that it was incumbent on Astroline to make such an effort. Astroline asserts merely that it "made reasonable inquiry as to what . . . steps . . . to take to preserve Astroline's license", Astroline "Objection" at 4, although the precise nature and extent of that "reasonable inquiry" is nowhere described. And, regardless of whatever that inquiry might have involved, it was apparently far from complete: the fact remains that Astroline did not file its hearing fee in a timely manner.

Astroline has itself, and no one else, to blame.

7. Moreover, Astroline has been in bankruptcy for several years, during which period its creditors retained their own independent communications counsel to represent their interests, which are largely identical to the interest in "the debtor's estate" which Astroline is now representing, see Astroline "Objection" at 5. Thus, Astroline (or at least its "estate") has been, as a practical matter, doubly represented by communications counsel. Claims of ignorance in the face of such representation are simply incredible.

8. In its "Objection" Astroline refers, without discussion, to "the goal of the comparative hearing process of selecting the best qualified applicant". See Objection at 5. But Astroline fails to recognize that its own extraordinary situation undercuts any argument it might make along those lines. Astroline is now in a Chapter 7 bankruptcy proceeding, the sole purpose of which is the liquidation of Astroline. Astroline is not now operating Station WHCT-TV, as the "Objection" itself acknowledges: the station is dark. Moreover, since Astroline is in the process of liquidation, it cannot be expected that Astroline will ever operate the station at any future time. [6] In fact, it can legitimately be said that, for purposes of any future activity, Astroline as an entity is dead -- while it

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[6] In the application for consent to the involuntary assignment of the license to the Trustee-in-Bankruptcy, it was specifically stated that the Trustee "does not intend to, and is not authorized, to operate WHCT or to present any programs during the pendency of the Chapter 7 case". See BALCT-910506KH, Exhibit 1.

remains a licensee on paper, it no longer functions as a business, it no longer acts as an operating licensee, and, once the liquidation process underway in the Chapter 7 bankruptcy proceeding is completed, it will effectively no longer exist. [7]

9. Thus, it cannot be said in any meaningful sense that Astroline (or Mr. Hoffman, the Trustee-in-Bankruptcy who is charged with overseeing the liquidation process) is a bona fide applicant for authority to continue to operate. In view of this, Astroline cannot legitimately rely on "the goal of the comparative hearing process", since that process assumes that any participating applicants are proposing to operate the facilities specified in their applications.

10. Rejection of Astroline's anemic claims and dismissal of its application would be consistent with the Commission's repeated emphasis on expediting service to the public. Since Station WHCT-TV is off the air and will, by Astroline's admission, remain off the air until the completion of the Chapter 7 bankruptcy proceeding, the situation regarding Channel 18 cannot viewed as a comparative renewal situation where the public enjoys continued service; to the contrary, the public in Hartford is currently being deprived of service. The

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[7] It must be emphasized that Astroline is in a Chapter 7 liquidation proceeding; this is distinct from a Chapter 11 proceeding in which Astroline, as an entity, would merely be seeking to reorganize itself with the hope of continuing to do business. Indeed, despite more than two years of Chapter 11 reorganization efforts, Astroline failed to present any viable reorganization plan -- the result was the conversion of the proceeding to Chapter 7 status for the purpose of liquidating Astroline.

Commission has expressly recognized that "delaying the initiation of new service disserves the public interest" and that "the effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest". Hillebrand Broadcasting, Inc., 1 FCC Rcd 419 (1986). Indeed, it was in part as a result of these considerations that the fee requirement at issue here was imposed in the first place. Thus, it would be contrary to those very strong public interest considerations for the Commission simply to waive the hearing fee requirements here, where such a waiver would not advance any valid public interest and where it would, to the contrary, lead to delay which would be inconsistent with the public interest.

11. Moreover, any waiver of the hearing fee requirement here would serve as precedent to any other applicant which, having failed to timely file its fee, subsequently seeks a waiver based on a claim of ignorance of the Commission's requirements. The Commission should be extremely reluctant to open those floodgates, for to do so would likely result in a rush of similar waiver requests involving not just Channel 18, Hartford, but channels in a variety of services and a variety of markets. Resolution of such requests in turn would consume scarce Commission resources while generating considerable unnecessary confusion and uncertainty for other applicants which had filed their hearing fees in a timely and proper manner. While waiver requests may be entitled to a "hard look", see WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), not every waiver

request must be granted. Where the only asserted justification for waiver is the applicant's claim of ignorance of a clearly articulated, well-publicized rule, a waiver is not appropriate.

12. In light of Astroline's acknowledgement that it failed to comply with the hearing fee requirement, and in light of its wholly inadequate explanation for that failure, no basis exists for waiver of that requirement now. To the contrary, the public interest weighs heavily in favor of dismissing Astroline's application, as that would prevent unnecessary delay and promote expedited initiation of service, while underscoring for all affected parties the importance of compliance with Commission rules. This is especially true in view of the fact that Station WHCT-TV is currently off the air, and is likely to remain so while Astroline is liquidated. Grant of SBH's Petition, rejection of Astroline's "Request", dismissal of all other competing applications, and grant of SBH's application is the only approach available to assure the most expeditious revivification of broadcast service on Channel 18 in Hartford.

Respectfully submitted,

/s/ Harry F. Cole
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August 16, 1991

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of August, 1991, I caused copies of the foregoing "Opposition to 'Request for Acceptance of Hearing Fee Late'" to be placed in the U.S. mail, first class postage prepaid, addressed to the following:

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