MM 97-128

RECEIVED

AUG - 2 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECD MASS MFD BUR
AUG 0 5 1991
VIDEO SERVICES

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	)	
	)	
SHURBERG BROADCASTING OF HARTFORD	)	File No. BPCT-831202KF
	)	
SAGE BROADCAST CORPORATION	)	File No. BPCT-890301KN
	)	
GLORIA W. STANFORD	)	File No. BPCT-890201KK
	)	
For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	

PETITION TO DISMISS APPLICATIONS AND TO GRANT APPLICATION

1. Shurberg Broadcasting of Hartford ("SBH") hereby petitions for the dismissal of the above-captioned applications of Astroline Communications Company Limited Partnership, Debtor-in-Possession ("Astroline") [1/], Sage Broadcast Corporation ("Sage") and Gloria W. Stanford ("Stanford"). SBH also hereby petitions for the simultaneous grant of SBH's application.

2. The applications of SBH, Sage and Stanford -- all of which are mutually exclusive with Astroline's application for

---

[1/] Astroline is the licensee of Station WHCT-TV, Channel 18, Hartford, Connecticut. On May 24, 1991, the Commission granted an application for consent to the involuntary assignment of Astroline's license to Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline. Broadcast Actions, Report No. 21125, Mimeo No. 13308, released May 31, 1991.

renewal of the Station WHCT-TV license -- were accepted for filing by the Commission on February 8, 1991. See Broadcast Application, Report No. 14926, Mimeo No. 11679, released February 8, 1991 (a copy of which is included as Attachment A hereto).

3. In December, 1990, the Commission adopted new rules and procedures for the submission of hearing fees by mutually exclusive applicants. 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); see also Section 73.3572(c)(1) and (2). Among the reforms adopted was the requirement that pending mutually exclusive applicants which had not been designated for hearing prior to July 1, 1991 would be required to file their hearing fees no later than July 15, 1991. 6 FCC Rcd at 3403. In the text of that decision [2/], and in a separate footnote thereto [3/], and in

---

[2/] See 6 FCC Rcd at 3403 ("We wish to emphasize that this hearing fee payment requirement also applies to renewal applicants that face a comparative challenge").

[3/] 6 FCC Rcd at 3409, n.2, which reads in relevant part:

> [T]he date for fee payment . . . of the challenging application will also be the date on which the renewal application must pay its hearing fee. Where the challenging application was accepted for filing in a Public Notice released before July 1, 1991, Appendix A specifies the method of hearing fee payment for both the renewal applicant and the challenger.

an accompanying appendix [4/], the Commission emphasized repeatedly that renewal applicants would be subject to this hearing fee requirement.

4. Since the SBH, Sage and Stanford applications are mutually exclusive with Astroline's renewal application, and since the SBH, Sage and Stanford applications were all accepted for filing in a public notice released prior to July 1, 1991, all four applicants -- SBH, Sage, Stanford and Astroline -- were required to file their respective hearing fees by July 15, 1991. As explicitly and unequivocally emphasized by the Commission,

> *Failure to make the hearing fee payment in a timely manner will result in the dismissal of the underlying pending application.*

6 FCC Rcd at 3409 (italicized emphasis in original).

5. SBH has determined that Sage, Stanford and Astroline have failed to pay their hearing fees. [5/] SBH, by

---

[4/] See 6 FCC Rcd at 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].

[5/] This determination has been made by informal inquiry to the Commission's Fee Office. The determination with respect to Astroline was independently confirmed by Astroline's Trustee-in-Bankruptcy. In any event, the Commission may consult its own records to determine conclusively the correctness of the information which has been provided to SBH concerning the failure of Astroline, Sage and Stanford to tender timely payments.

contrast, timely tendered its fee in proper form. Accordingly, by the terms of the Commission's own language quoted above, it is clear that the applications of Sage, Stanford and Astroline must be dismissed. If those three applications are dismissed, SBH's application will be the sole remaining application for Channel 18 in Hartford [6/]; accordingly, SBH's application can and should be granted simultaneously with the dismissal of the other three applications.

WHEREFORE, for the reasons stated and on the authority of the rules and policies discussed above, SBH hereby petitions the Commission to dismiss the above-captioned applications of Astroline, Sage and Stanford and to grant SBH's applications.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Shurberg Broadcasting
of Hartford

August 2, 1991

[6/] See Attachment A hereto, which lists the universe of four then-pending competing applicants. The fourth application included on the list -- that of Lynette Ellertson -- was dismissed on June 5, 1991 at the applicant's request. See Broadcast Actions, Report No. 21131, Mimeo No. 13437, released June 10, 1991.

ATTACHMENT A

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

11679

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

BROADCAST APPLICATION

Report No. 14926 Released: February 8, 1991

NOTICE IS HEREBY GIVEN that the below-described applications are accepted for filing. These applications were timely filed against the application of Astroline Communications Company Limited Partnership for renewal of the license of Station WHCT-TV, channel 18, Hartford, Connecticut. Petitions to deny the below-described application may be filed no later than the close of business on March 18, 1991. Since the time within which competing applications may be filed against an application for renewal of license is established by Section 73.3516(e) of the Commission's Rules and the license of broadcast station in Connecticut expired on April 1, 1989, competing applications were required to be on file by the close of business on March 1, 1989. Consequently, no competing applications may now be filed.

BPCT-890301KN	Hartford, Connecticut SAGE BROADCASTING CORPORATION Channel 18 Proposed the existing facilities of station WHCT-TV
BPCT-890301KM	Hartford, Connecticut LYNNETTE ELLERTSON Channel 18 Proposed the existing facilities of station WHCT-TV
BPCT-890301KK	Hartford, Connecticut GLORIA W. STANFORD Channel 18 ERP(Vis): 158 kW; HAAT: 619.9 ft. (189 m.)
BPCT-831202KF	Hartford, Connecticut SHURBERG BROADCASTING OF HARTFORD, INC. Channel 18 ERP(Vis): 5,000 kW; HAAT: 188.7 m. (619 ft.)

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of August, 1991, I caused copies of the foregoing "Petition to Dismiss Applications and to Grant Application" to be placed in the U.S. mail, first class postage prepaid, addressed to the following:

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 314
Washington, D.C. 20554
(BY HAND)

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 702
Washington, D.C. 20554
(BY HAND)

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

Thomas M. Holleran
Deputy Associate Managing Director
Office of the Managing Director
Federal Communications Commission
1919 M Street, N.W. - Room 848
Washington, D.C. 20554
(BY HAND)

Martin Hoffman, Esquire
363 Main Street
Hartford, Connecticut 06106
Trustee-in-Bankruptcy for
Astroline Communications Company
Limited Partnership
(BY FEDERAL EXPRESS)

James M. Weitzman, Esquire
Kaye, Scholer, Fierman, Hays & Handler
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005
Counsel for Sage Broadcasting Corporation

Gloria W. Stanford
340 E. Washington Blvd.
Unit 005
Pasadena, California 91104

/s/ Harry F. Cole
Harry F. Cole