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

FEB - 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
MARTIN W. HOFFMAN,)
TRUSTEE)
For Renewal of License of)
Station ~~WHCT~~-TV, Hartford, Connecticut)

File No. ~~ESCT-881201LG~~

TO: The Commission

CORRECTED ^{1/} REPLY OF SHURBERG BROADCASTING OF HARTFORD
TO "TRUSTEE'S OBJECTION"

1. Shurberg Broadcasting of Hartford ("SBH") hereby replies to the "Trustee's Objection" filed by Martin W. Hoffman. Mr. Hoffman's "Objection" is, in effect, an opposition to SBH's Petition to Dismiss Mr. Hoffman's above-captioned application for renewal of the license of Station WHCT-TV, Hartford. As set forth in detail below, in his "Objection" Mr. Hoffman concedes SBH's factual assertions, and offers no valid substantive argument against SBH's legal assertions. Under the circumstances, then, dismissal of his application is clearly warranted.

2. In his "Objection", Mr. Hoffman advances two separate arguments. First, he asserts that SBH has no standing to oppose Mr. Hoffman's application. Second, he asserts that SBH has not alleged "sufficient facts".

^{1/} SBH's Reply was originally filed on January 29, 1993. However, as a result of inadvertent oversight, the attachments referenced in the Reply were omitted from the pleading as filed. This "Corrected Reply" consists of the original Reply (with its text unchanged) and the attachments which were referenced therein.

3. With respect to Mr. Hoffman's standing argument, it suffices to say that SBH is a competing applicant (File No. BPCT-831202KF) for Channel 18 in Hartford. This means that SBH's application (which has been accepted for filing by the Commission) and Mr. Hoffman's application are mutually exclusive by virtue of electronic interference. Such mutual exclusivity plainly accords standing to one such applicant to challenge the application of the other. See, e.g., NBC v. FCC (KOA), 132 F.2d 545 (D.C. Cir. 1942), aff'd, 319 U.S. 239 (1943). ^{2'}

4. While Mr. Hoffman concedes that "electronic interference" is an established basis for standing, Objection at 4, he seems not to realize that mutually exclusive applications derive their mutual exclusivity from precisely such electronic interference. As a result, even though he acknowledges that such interference does confer standing, he simply ignores the fact that that acknowledgement completely guts his standing argument. In any event, SBH is unquestionably a party in interest with standing to challenge Mr. Hoffman's application.

5. With respect to his second argument, Mr. Hoffman's approach is similarly odd. He concedes the accuracy of SBH's

^{2'} Mr. Hoffman's standing argument is especially bizarre in view of the extended history of this case. As the Commission (and, presumably, Mr. Hoffman) know, SBH has been seeking the Channel 18 construction permit for approximately 10 years. Its efforts have taken SBH from the Commission to the U.S. Court of Appeals for the District of Columbia Circuit, to the U.S. District Court for the District of Columbia, and ultimately to the United States Supreme Court. At no time has the Commission (or any other party or forum, for that matter) ever even suggested, much less held, that SBH lacks standing.

factual assertions: according to Mr. Hoffman, virtually all he presently holds in the way of assets are the station's instruments of authorizations "since the tangible assets, i.e. the television station at 18 Garden Street, equipment, etc., are currently in the possession of secured creditors." Objection at 3, ¶7. Moreover, he concedes that he himself is not seeking renewal of the station's license so that he may operate the station, but rather so that he may sell it to some supposed third party. See Objection at 5 ("the Trustee seeks to renew the licenses in order to assign them to a third party").

6. Having admitted the validity of SBH's factual assertions, Mr. Hoffman attempts to sidestep the consequences of those admissions by claiming that he believes that his efforts might result in earlier resumption of operation by Channel 18 than would grant of SBH's application. That claim misses the point several times over.

7. Regardless of what Mr. Hoffman may believe, the fact is that he himself has absolutely no authority to put the station back on the air (as he himself has expressly acknowledged). Moreover, despite the fact that he has repeatedly represented to the Commission that a sale of the station may be imminent, those representations have invariably proved to be completely inaccurate.^{3/}

^{3/} For example, on October 9, 1992, Mr. Hoffman advised the Commission that he was negotiating with a particular party, whose offer Mr. Hoffman was "strongly considering". According to Mr. Hoffman at that time, "if an agreement is reached, it will be reached within a very short period of time". See Attachment A hereto. But on December 28, 1992 -- almost three months later --

8. Further, the practical likelihood of anyone buying the station from the Trustee at this point is near zero. After all, putting aside the pendency of SBH's mutually exclusive application, it is possible that Mr. Hoffman in fact has nothing at all to sell in view of the fact that there is pending a Petition to Dismiss Mr. Hoffman's application because of his failure to tender a timely hearing fee. If that Petition were to be granted, Mr. Hoffman's renewal application would be dismissed, leaving Mr. Hoffman with nothing to sell. It is therefore understandable that the supposed buyers which Mr. Hoffman attempts to conjure up appear to be staying away from him in

^{3/}(...continued)

Mr. Hoffman again advised the Commission that he was negotiating with the same party, and that he was "strongly considering" that party's offer, and that "if an agreement is reached, it will be reached within a very short period of time." See Attachment B hereto. It bears noting that the same, or nearly identical, boilerplate language appears in Mr. Hoffman's letters to the Commission over the last two years.

Moreover, one week before Mr. Hoffman's December 28, 1992 representations to the Commission concerning his supposed negotiations, the station's assets were apparently advertised as being for sale in the pages of Broadcasting magazine from a company in Pennsylvania (based on the area code listed in the ad). See Attachment C hereto. Further, in January, 1993 SBH obtained a brochure listing all of the assets of the station as being for sale through Maze Corporation (located in Alabama, and therefore presumably distinct from the source of the Broadcasting ad), which describes itself as the "exclusive brokers" for the transaction. See Attachment D hereto. That document is particularly interesting, as it suggests that the assets' seller does not contemplate that those assets will be used where they are presently situated (i.e., "Buyer is responsible for removal of equipment.").

It is difficult, if not impossible, to square these items with Mr. Hoffman's rosy predictions about the likelihood of a sale "within a very short period of time". It would appear that Mr. Hoffman's representations concerning the likelihood of a sale of the station are less than reliable, to say the least. This is especially true in view of the fact that he has supposedly been attempting to sell the station for almost two years already, without success.

droves.

9. Additionally, Mr. Hoffman cannot claim that a sale of the station would benefit the creditors of the bankrupt former licensee (or, conversely, that dismissal of his application would harm such creditors). As noted above, the secured creditors have already foreclosed on the station's tangible assets, in return for which they have relinquished any further claims against the estate. Thus, to the extent that the bankrupt's estate contained assets which might be used to pay off creditors, those assets have already been used for just that purpose. In effect, no property remains in the estate which can legitimately be dedicated for that purpose. ^{4/}

10. This is not to say, of course, that any remaining unsatisfied creditors are without recourse. SBH has determined that other sources of assets, thus far apparently unexplored by Mr. Hoffman, may be available. The bankrupt former licensee was a supposedly limited partnership named Astroline Communications Company Limited Partnership ("Astroline Communications"). But Astroline Communications was but one of a number of entities ("the Astroline Entities"), all organized by the same group of individuals, which used the name "Astroline" in their name -- for example, one of Astroline Communications' limited partners was "Astroline Company". Moreover, SBH has obtained documents which

^{4/} While the station's instruments of authorization technically remain in the estate, it is a fundamental principle that those instruments do not constitute "property" in any conventional sense. See, e.g., 47 U.S.C. §§301, 307(c); see also, e.g., Monroe Communications Corporation v. FCC, 900 F.2d 351, 359 (D.C. Cir. 1990) (Silberman, J., concurring) (reflecting that renewal applicants have no property interest in renewal of license).

indicate that some (if not all) of the individuals who organized the Astroline Entities may have used the name "Astroline" to apply to all of the various Astroline Entities more or less interchangeably.

11. These factors are significant because, under the law of Massachusetts (i.e., the jurisdiction in which Astroline Communications was organized), a limited partner whose name is used in the name of the limited partnership becomes liable to creditors of the limited partnership, notwithstanding that partner's supposedly "limited" status. See 109 Mass. Ann. Laws §§2(2) and 19(d). ^{5/} Certainly the use of the term "Astroline" in the name of Astroline Communications triggers that provision with respect to "Astroline Company", which was supposedly a limited partner of Astroline Communications. Arguably, this effect is even farther reaching in light of the plethora of entities featuring "Astroline" in their names. If SBH is correct in its understanding of the underlying legal principle, then the creditors of Astroline Communications should be able to reach the

^{5/} The statute contains some limited exceptions which do not appear relevant to the instant situation. Section 19(d) of Chapter 109 of the Laws of Massachusetts provides that

[a] limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subclause (i) of clause (2) of section two, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Subclause (i) of clause (2) of section two, referenced in that quotation, proscribes the use of a limited partner's name in the name of the limited partnership unless "it is also the name of a general partner or the corporate name of a corporate general partner."

assets of the various Astroline Entities (and, very likely, the assets of any and all of the individual principals of those Astroline Entities) to satisfy their claims. Thus, the Commission need not be concerned about the fate of any as-yet-unsatisfied creditors of Astroline Communications. ^{6/}

12. In summary, far from undermining SBH's motion, Mr. Hoffman's "Objection" provides support for the dismissal of the above-captioned application. By his own admission, Mr. Hoffman holds no tangible assets with which he (or any buyer from the bankrupt's estate) might recommence operation of the station. And, Mr. Hoffman's boilerplate (and historically inaccurate) claims concerning possible buyers notwithstanding, there is no reason to believe that anyone is likely to buy the licenses from the estate; to the contrary, as discussed above, there is substantial reason to believe that nobody in his or her right mind would be interested in trying to buy them.

13. Under these circumstances, the Commission's statutory mandate to operate in the public interest leaves it only one option: the Commission can and should dismiss Mr. Hoffman's application and grant SBH's application, in order to promote the earliest recommencement of broadcast operation on Channel 18. As the Commission itself has very recently stated,

When a licensee discontinues operations for a long period of time, the public is harmed through diminished

^{6/} For that matter, it does not appear from the records of the bankruptcy proceeding that Mr. Hoffman has even yet made any effort to obtain the assets of even Astroline Communications' general partners, who are unquestionably liable for the partnership's obligations irrespective of whether the partnership was, in fact, a bona fide "limited" partnership.

service. This harm is compounded when the licensee is unable or unwilling to restore service and permanently discontinues operations but does not provide that information to the Commission so that the frequency might be used by another party. Allowing such licensees to preserve their exclusive right to use the frequency precludes the provision of service to the public by another interested party that would resume station operations. It also hinders the Commission's maximum utilization of the electromagnetic spectrum in the public interest.

The Commission has historically regarded as paramount its role under the Communications Act to ensure that licensees broadcast in the public interest. . . . Unjustified prolonged suspension of station operations disserves the public interest. . . .

Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations, FCC 92-557, released December 30, 1992, at ¶¶5-6. Having delineated the public interest ramifications of prolonged suspension of station operations in these stark terms, the Commission must recognize that Mr. Hoffman's temporizing has been and continues to be contrary to the public interest: his application should be dismissed promptly, and SBH's application should be granted to permit prompt restoration of service on Channel 18 for the benefit of the Hartford audience.

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

February 2, 1993

ATTACHMENT A

Law Offices of
MARTIN W. HOFFMAN
363 MAIN STREET
HARTFORD, CONNECTICUT 06106

MARTIN W. HOFFMAN
HANK D. HOFFMAN*
WALTER J. ONACEWICZ

Telephone (203) 525-4287
Telecopier (203) 727-9481

Also admitted in N.Y.

October 9, 1992

Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

Attention: TV Branch

RE: WHCT-TV Channel 18, Hartford, CT

Gentlemen:

As you know, I am the duly appointed, qualified and acting trustee of the estate of Astroline Communications Company Limited Partnership and the holder of the license for WHCT-TV Channel 18, Hartford, Connecticut.

The Commission has, on three occasions to date, granted the Trustee's requests for special temporary authority to remain dark pursuant to section 73.1740 of the Commission's Rules. On March 24, 1992, I requested another extension until July 17, 1992 and on June 26, 1992, I once again requested a further extension for authority to remain dark until November 4, 1992.

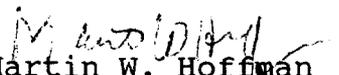
At this time, the Trustee is negotiating with Partel, Inc. who has offered a proposal to the Trustee, which the Trustee is strongly considering. The Trustee is also discussing the potential sale of whatever rights he has in said asset to one other party. It is the understanding of the Trustee that if an agreement is reached, it will be reached within a very short period of time. However, it will be necessary for the potential purchaser to proceed with the assignment of the License and, therefore, the Trustee is requesting a further extension of time to remain dark.

October 9, 1992

Therefore, in order to effectuate a sale of the estate's assets for their maximum value, the Trustee requests that the Commission further extend the special temporary authority to remain dark for an additional period of seventy-two (72) days after November 4, 1992, that is, until January 15, 1993 to provide the Trustee with sufficient time to complete a sale of the estate's assets and to assign the estate's interest in the license.

Thank you for your attention in this matter.

Very truly yours,


Martin W. Hoffman
Trustee in Bankruptcy
Attorney for the Trustee

MWH/kcs

cc: Emma Mebane
Clay C. Pendarvis

ATTACHMENT B

Law Offices of
MARTIN W. HOFFMAN
363 MAIN STREET
HARTFORD, CONNECTICUT 06106

MARTIN W. HOFFMAN
HANK D. HOFFMAN*
WALTER J. ONACEWICZ

Telephone (203) 525-4287
Telecopier (203) 727-9481

**Also admitted in N.Y.*

December 28, 1992

Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

Attention: TV Branch

RE: WHCT-TV Channel 18, Hartford, CT

Gentlemen:

As you know, I am the duly appointed, qualified and acting trustee of the estate of Astroline Communications Company Limited Partnership and the holder of the license for WHCT-TV Channel 18, Hartford, Connecticut.

The Commission has, on three occasions to date, granted the Trustee's requests for special temporary authority to remain dark pursuant to section 73.1740 of the Commission's Rules. On March 24, 1992, I requested another extension until July 17, 1992 and on June 26, 1992, I also requested a further extension for authority to remain dark until November 4, 1992. On October 9, 1992, I once again requested a further extension for authority to remain dark until January 15, 1993.

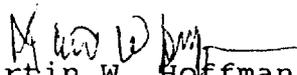
At this time, the Trustee is negotiating with Partel, Inc. who has offered a proposal to the Trustee, which the Trustee is strongly considering. The Trustee is also discussing the potential sale of whatever rights he has in said asset to three other parties. It is the understanding of the Trustee that if an agreement is reached, it will be reached within a very short period of time. However, it will be necessary for the potential purchaser to proceed with the assignment of the License and, therefore, the Trustee is requesting a further extension of time to remain dark.

December 28, 1992

Therefore, in order to effectuate a sale of the estate's assets for their maximum value, the Trustee requests that the Commission further extend the special temporary authority to remain dark for an additional period of ninety (90) days after January 15, 1993, that is, until April 15, 1993 to provide the Trustee with sufficient time to complete a sale of the estate's assets and to assign the estate's interest in the license.

Thank you for your attention in this matter.

Very truly yours,


Martin W. Hoffman
Trustee in Bankruptcy
Attorney for the Trustee

MWH/kcs

cc: Emma Mebane
Clay C. Pendarvis

ATTACHMENT C

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EARLY DEADLINE NOTICE

Due to the Holiday Season, the deadline for the Jan. 4, 1993 issue is Wednesday, Dec. 23, 1992 at noon.

Also, there will be no Dec. 28, 1992 issue.
Happy Holidays

**BROADCASTING'S
CLASSIFIED RATES**

All orders to place classified ads & all correspondence pertaining to this section should be sent to: BROADCASTING, Classified Department, 1705 DeSales St., N.W., Washington, DC 20036. For information call (202) 659-2340 and ask for Mitzi Miller.

Payable in advance. Check, money order or credit card (Visa, Mastercard or American Express). Full and correct payment must accompany all orders. All orders must be in writing by either letter or Fax 202-293-3278. If payment is made by credit card, indicate card number, expiration date and daytime phone number.

Deadline is Monday at noon Eastern Time for the following Monday's issue. Earlier deadlines apply for issues published during a week containing a legal holiday. A special notice announcing the earlier deadline will be published. Orders, changes, and/or cancellations must be submitted in writing. NO TELEPHONE ORDERS, CHANGES, AND/OR CANCELLATIONS WILL BE ACCEPTED.

When placing an ad, indicate the **EXACT** category desired: Television, Radio, Cable or Allied Fields; Help Wanted or Situations Wanted; Management, Sales, News, etc. If this information is omitted, we will determine the appropriate category according to the copy. NO make goods will be run if all information is not included. No personal ads.

Rates: Classified listings (non-display). Per issue: Help Wanted: \$1.60 per word, \$32 weekly minimum. Situations Wanted: 80¢ per word, \$16 weekly minimum. All other classifications: \$1.60 per word, \$32 weekly minimum.

Word count: Count each abbreviation, initial, single figure or group of figures or letters as one word each. Symbols such as 35mm, COD, PD, etc., count as one word each. A phone number with area code and the zip code count as one word each.

Rates: Classified display (minimum 1 inch, upward in half inch increments). Per issue: Help Wanted: \$138 per inch. Situations Wanted: \$69 per inch. All other classifications: \$138 per inch. For Sale Stations, Wanted To Buy Stations, Public Notice & Business Opportunities advertising require display space. Agency commission only on display space. Frequency rates available.

Blind Box Service: (In addition to basic advertising costs) Situations wanted: No charge. All other classifications: \$15 per ad per issue. The charge for the blind box service applies to advertisers running listings and display ads. Each advertisement must have a separate box number. BROADCASTING will not forward tapes, transcripts, portfolios, writing samples, or other oversized materials; such materials are returned to sender. Do not use folders, binders or the like.

Replies to ads with Blind Box numbers should be addressed to: Box (letter & number), c/o BROADCASTING, 1705 DeSales St., NW, Washington, DC 20036.

The publisher is not responsible for errors in printing due to illegible copy— all copy must be clearly typed or printed. Any and all errors must be reported to the Classified Advertising Department within 7 days of publication date. No credits or make goods will be made on errors which do not materially affect the advertisement.

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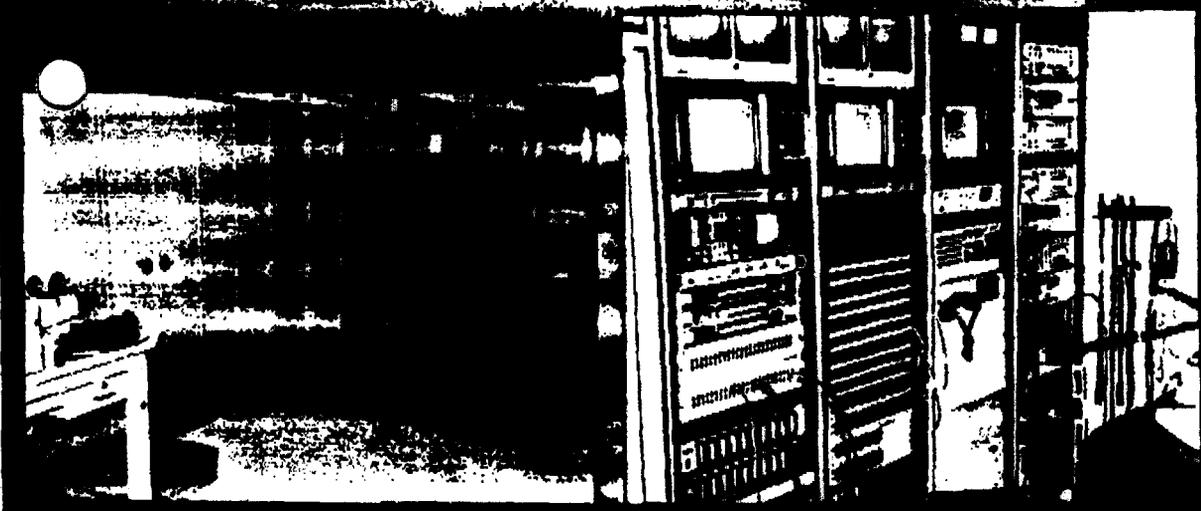
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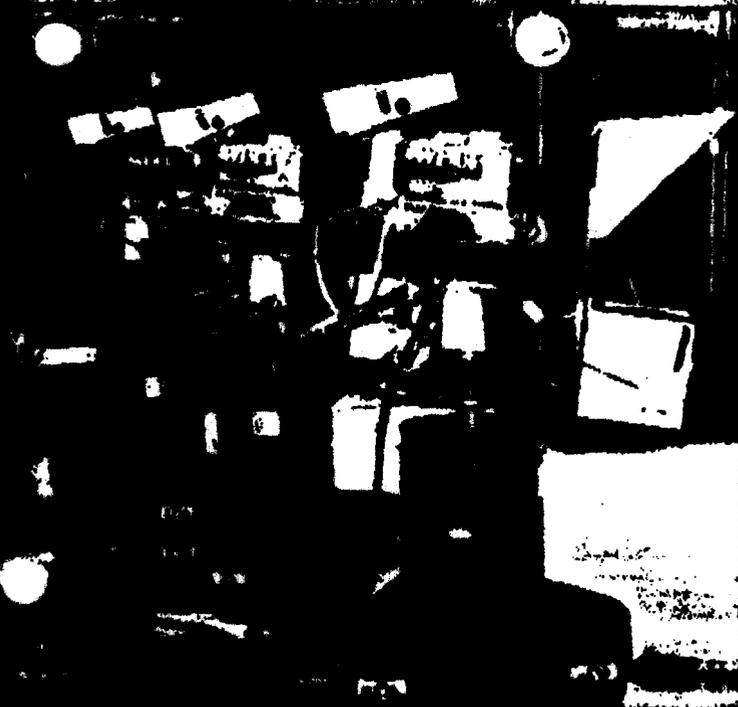
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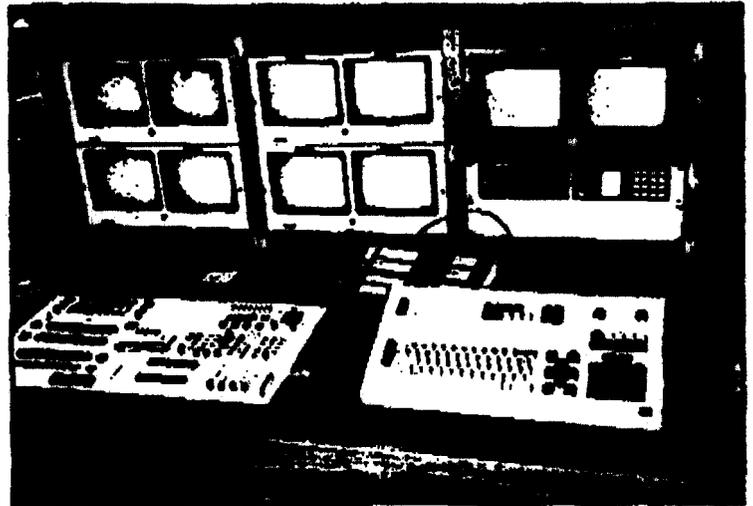


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A 5% deposit required for all binding offers which is fully refundable if unacceptable. Seller reserves the right to refuse any and all offers. All equipment is sold "where is, as is", with no warranties given or implied. Buyer is responsible for removal of equipment. All other terms are negotiable.

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- 10 - Sony VPR-3000 Umatic decks

MASTER CONTROL

- Utah-Scientific MC-502SM 30x3 switcher
- 3-M 40x30 stereo routing switcher
- Adda ESP-II 600 frame still store
- An array of peripheral equipment and monitors

MACHINE CONTROL

- Custom machine control system for automation, VTR's, telecine, etc.

MASTER CLOCK

- ESE ES-160 master clock with impulse driver, 6 remote display units

TELECINE

- Ikegami 970 film camera w/BEI 16MM projector, plus an extended inventory of test, monitors, and related items

TERMINAL

- Grass Valley 8500 series audio & video DA's, frame sync, patch bays, Tek 1410R color sync gen., GV auto changeover, TBC's, much more

PRODUCTION CONTROL A

- Ampex AVC-23N 30x2 switcher w/AVC audio and ACE editor interface
- Ampex ACE VTR editor
- Ampex ADO-2000 2 channel DVE
- Harrison Pro-7 36-position audio console
- Otari MX-70 1" eight track audio tape recorder
- An extended inventory of related items such as amps, speakers, cart machines, EQ's, etc.

PRODUCTION CONTROL B

- Grass 1680 10XN switcher
- Ramsa audio console
- An array of related equipment

CUTS ONLY EDIT SUITE

- Convergence 202T editor w/Pana AU-300 "M" type VTR's and related equipment

GRAPHICS

- Ikegami ITC-730A camera w/CCU
- Bencher stand w/dual quartz lights
- Related equipment

STUDIO EQUIPMENT

- 4 - Ikegami ITC-730AP Plumbicon color camera systems w/ITE support systems and accessories
- QTV & Otari teleprompter system
- E/V sentry speakers
- Misc. microphones, etc.
- Sony PVM-1910 color monitors

ENG

- Pana AU-220 M format portable VTR's
- Ikegami ITC-730 AP camera systems
- ITE tripods & heads
- Misc. batteries, cables & lights

LIGHTING

- Colortran D192, 2.4K dimmers (50)
- 36 channel patchman console
- Complete 40' x 40' lighting grid system
- 48 plus Colortran & Mole fixtures
- All electrical panels & related
- Cyclorama including 80' track, corners and 18 x 40 gray curtain

CUSTOM CONSOLES & FURNITURE

- 7 - Custom consoles for master control, production A & B, audio, and graphics.
- 13 - DRHD 7700 racks w/strips, doors, panels

VIDEO TAPE RECORDERS

- 5 - Sony 5800/5850 Umatic decks
- 1 - Sony RM-440 controller
- 4 - Ampex VPR-80/TBC-80 w/test & monitors
- 1 - Ampex VPR-6/TBC-6 w/test & monitor

TEST

- Each room is fully outfitted with sufficient Tek, Leader, and other brand name waveform, vector, and monitors

TRANSMITTER

- Townsend TA-120TA channel 18 transmitter with 2 - 60kw visual amps, 1 - 60 kw aural amp, 3 - 60 KW klystrons, dual exciters, 3 beam supplies, a large inventory of relay monitor, test, and optional items

TRANSMITTER TEST

- Tek 7L14 spectrum analyzer
- Tek 1430 noise set
- Tek 1405 sideband analyzer

MICROWAVE

- 4-Harris Farinon FV-7 7Ghz w/d audio dishes, waveguide, access
- 2 - Macom 23Ghz duplex system w/dual audio

TOWER

- Stainless G-8 625' guyed tower w/lighting

ANTENNA

- Harris TWS-30 Wavestar channel antenna, Omni pattern, 240 KW, on tower w/800' waveguide

OFFICE FURNITURE & EQUIPMENT

- For approximately 5 executive offices, conference room and 20 workstations
- Includes Canon & IBM copiers, IBM typewriters, computer traffic control system
- Complete in-house computer network

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of February, 1993, I caused copies of the foregoing "Corrected Reply of Shurberg Broadcasting of Hartford to 'Trustee's Objection'" to be placed in the U.S. mail, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

The Honorable James H. Quello,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554
(BY HAND)

The Honorable Sherrie Marshall,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 826
Washington, D.C. 20554
(BY HAND)

The Honorable Andrew C. Barrett,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554
(BY HAND)

The Honorable Ervin S. Duggan,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 832
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(BY HAND)

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
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Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
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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)

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

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


/s/ ~~Harry F. Cole~~
Harry F. Cole