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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In re Applications of	)	
	)	
Martin W. Hoffman,	)	
Trustee-in-Bankruptcy for	)	File No. BRCT-881201LG
for Astroline Communications	)	
Company Limited Partnership	)	
	)	
For Renewal of License of Station WHCT-TV,	)	
Hartford, Connecticut	)	
	)	
and	)	
	)	
Astroline Communications	)	
Company Limited Partnership,	)	
Proposed Assignor	)	
and	)	File No. BALCT-930922KE
	)	
Two If By Sea Broadcasting	)	
Corporation,	)	
Proposed Assignee	)	
	)	
For Consent to the Assignment of License of	)	
Station WHCT-TV, Hartford, Connecticut	)	

TO: The Commission

PETITION TO DISMISS OR DENY APPLICATIONS FOR RENEWAL AND ASSIGNMENT OF LICENSE OF STATION WHCT-TV, AND PETITION FOR IMMEDIATE GRANT OF APPLICATION OF SHURBERG BROADCASTING OF HARTFORD

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

November 3, 1993

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SUMMARY

The above-captioned applications should be dismissed or denied because they relate to nothing more than a bare license: the station in question, Station WHCT-TV, Hartford, Connecticut, has been off the air for more than two and one-half years already; what's more, more than a year ago the station's equipment and other physical assets were foreclosed upon by creditors and transferred out of the bankrupt licensee's estate. As a result, what the above-captioned applications propose is the assignment of but a bare license, nothing more, nothing less.

The Communications Act clearly and unequivocally precludes the creation of any property rights in any Commission-issued instruments of authorization. The Commission, for at least 25 years, has effectuated that statutory mandate, and has consistently declined to permit the assignment of "bare licenses". The same result is required here.

That result would also be consistent with multiple other Congressional and Commission policies. It would permit the clearing out of an inactive licensee and the recommencement of service by an applicant which has waited, patiently and diligently, for some ten years for the opportunity to serve the Hartford audience. Further, it would permit the avoidance of unnecessary delay and dedication of scarce Commission resources to a variety of matters which would have to be considered and resolved if the station's license is not simply cancelled.

Moreover, the requested relief would not interfere or be otherwise inconsistent

with the Commission's general interest in attempting to accommodate communications policy with other Federal regulatory policies. And, in any event, since the "bare license" policy is one of statutory mandate (rather than Commission discretion under the broad "public interest" standard), that policy cannot legitimately be subordinated, by the Commission, to any other policies.

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1. Shurberg Broadcasting of Hartford ("SBH") hereby formally [1] petitions for the dismissal or denial of the above-captioned applications seeking (a) the renewal of the license of Station WHCT-TV, Channel 18, Hartford, Connecticut, and (b) consent to the assignment of that license to Two If By Sea Broadcasting Corporation ("TIBS"). [2] Moreover, since SBH is an applicant (File No. BPCT-831202KF) for a construction permit to operate a new television station on Channel 18 in Hartford [3], and since dismissal of the pending application for renewal of Station WHCT-TV would eliminate the sole remaining competing application for the Channel 18 authorization, SBH also hereby seeks immediate grant of SBH's application.

INTRODUCTION

2. When SBH filed its application in December, 1983 -- almost ten years ago -- the licensee of Station WHCT-TV was Faith Center, Inc. ("Faith Center"). Notwithstanding the pendency of SBH's application, Faith Center was allowed to assign the station's license to Astroline Communications Company Limited Partnership ("Astroline"), a

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[1] SBH specifically and expressly advises the Commission and all parties hereto that SBH intends the instant pleading to be a "formal opposition" within the meaning of the Commission's *ex parte* rules, 47 C.F.R. §§1.1200 *et seq.*

[2] The assignment application was accepted for filing by public notice issued October 4, 1993. *See* Broadcast Applications, Report No. 15638, released October 4, 1993, at 11. Thus, this petition is timely with respect to that application. Moreover, by letter (Ref. 1800E1-ECM) dated March 15, 1993, the Commission advised the Trustee and SBH that issues previously raised by SBH concerning, *inter alia*, the "sale of a 'bare' license" "should be raised and considered in connection with an actual sale application". Accordingly, to the extent that that argument is directed to both the renewal and the assignment applications, that argument is timely presented herein.

[3] SBH's application has been accepted for filing by the Mass Media Bureau, *see Broadcast Applications*, Report No. 14926, Mimeo No. 11679, released February 8, 1991. As a competing applicant for authority to operate on Channel 18 in Hartford, SBH plainly has standing to challenge the above-captioned applications.

self-described minority-controlled entity, pursuant to the Commission's minority distress sale policy in 1985. That decision was initially reversed by the United States Court of Appeals for the District of Columbia Circuit in 1989, but was ultimately affirmed by the Supreme Court in 1990.

3. In October, 1988 (while the case was awaiting decision at the Court of Appeals), Astroline went into bankruptcy. For approximately two and one-half years it operated as a debtor-in-possession under the bankruptcy rules. However, in April, 1991, its bankruptcy proceeding was converted to a liquidation proceeding under Chapter 7 of the bankruptcy law. At that point Martin W. Hoffman ("the Trustee") was appointed to serve as trustee-in-bankruptcy, in effect to stand in Astroline's stead for purposes of selling off Astroline's estate. In approving the appointment of the Trustee, the Bankruptcy Court specifically declined to authorize the Trustee to operate the station. Accordingly, since April, 1991 -- more than two and one-half years -- Station WHCT-TV has been off the air.

4. In October, 1992 -- more than a year ago -- a secured creditor obtained possession and control of Astroline's "real property" as well as its "personal property subject to [the creditor's] security interest". A copy of a formal pleading, filed with the Bankruptcy Court, reflecting this (at ¶¶6 and 8) is included as Attachment A hereto. SBH understands that the personal property subject to that foreclosure included the station's studio and transmitter buildings, its tower, and all transmission and program origination equipment.

5. In September, 1993, the Trustee filed the above-captioned assignment application proposing to sell the station's license to TIBS. Since the Trustee has no other physical assets (*e.g.*, buildings, transmitters, antennas, cameras, production consoles,

microphones, etc.) to convey, the purchase agreement clearly reflects that, in effect, all that is proposed to be sold is the station's license. [4/]

I. Pursuant to Clear Statutory Mandate, The Commission Cannot Permit -- And Historically Has Not Permitted -- The Sale Of A "Bare License" Such As Is Proposed Here.

6. For more than 25 years it has been well-established that a licensee can***not*** sell merely a bare license. *E.g., Donald L. Horton*, 11 R.R.2d 417 (1967); *Bonanza Broadcasting Corp.*, 11 R.R.2d 1072 (1967); *Radio Station KDAN, Inc.*, 12 R.R.2d 584 (1968); *Edward B. Mulrooney*, 13 R.R.2d 1028 (1968); *E. Al Robinson*, 33 R.R.2d 593 (1975); *Omega Cellular Partners*, 5 FCC Rcd 7624 (Mobile Services Division 1990). This policy is derived directly from the statutory mandate that Commission-issued instruments of authorization do not and cannot constitute "property" in which a licensee can be said to hold any interest. *E.g.*, 47 U.S.C. §301 ("no [broadcast] license shall be construed to create any right, beyond the terms, conditions and periods of the license").

7. And for more than 25 years the Commission has been faithful to that express ***statutory*** mandate. In *Horton*, a licensee which had been off-the-air for

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[4/] The only non-license item listed in the "Purchase and Assignment Agreement" is a lease for the station's former transmitter site. A copy of that lease is included in the Astroline/TIBS assignment application and is included as Attachment B hereto. As the Commission will note, Paragraph II of that lease specifies that the lease is for one year terms only, terminable "by ninety (90) days written notice by either party". The lessor has previously given notice of termination and counsel for the lessor advised the Bankruptcy Court on April 15, 1993 that his client intended then to terminate that lease. Thus, even if the lease were somehow deemed to be an asset of some sort, it is not an asset which would enable its purchaser to recommence operation of the station. Indeed, since the lease provides the lessee with access only to the land, but not the tower which is already on the land (and which, as a physical asset of the bankruptcy estate was apparently foreclosed upon by creditors), and since the land may not be suitable for construction of a second tower, it is not at all clear that the lease, in and of itself, is useful for ***any*** purpose related to the station.

approximately 18 months sought to sell its station. The full Commission denied both the proposed assignment and the licensee's request for authority to stay off-the-air. The full Commission stated that

> the station had been silent [for approximately 18 months] and the licensee could not activate the station in the foreseeable future. . . . Of necessity, the license of the station must therefore be declared forfeit. . . . The fact that an assignment application was pending cannot alter this conclusion, especially since the licensee had little to transfer beyond his license. The Commission will not permit a price to be placed on the transfer of a bare license.

11 R.R.2d at 419-420.

8. Nearly identical facts were presented in *Bonanza*. There the full Commission followed its decision in *Horton*, stating

> the assignor's own statement makes clear that it has no equipment to operate the broadcast station, is unable to activate [the station] in the foreseeable future, and is seeking to assign a bare license. . . . We have previously stated that the "Commission will not permit a price to be placed on the transfer of a bare license." [citing *Horton*]. We will therefore dismiss the assignment application. . . . In light of its inability to return to the air within a reasonable time, the request to remain silent will be denied and the license of [the station] declared forfeit.

11 R.R. 2d at 1073.

9. The *KDAN* case stated the same policy in connection with the proposed assignment of a station which had been off-the-air for approximately 20 months, and the assets of which had already been foreclosed upon:

> The "Purchase Agreement" [for the proposed assignment] listed the [station's] license as the sole subject matter of the conveyance. No other property was listed; indeed, the [assignor/licensee] had no other assets to convey, all the corporation's real and personal property having been sold at the foreclosure sale. The pending assignment thus contemplates little more than the sale of a naked license. Commission policy bars such a sale.

12 R.R.2d at 586 (footnotes omitted). Accordingly, the full Commission dismissed the

proposed assignment and declared the license forfeit. *Id.*

10. In *Mulrooney* the full Commission again addressed a similar set of facts:

> [N]o equipment with which to operate th[e] station exists to assign . . . with the license. Not only will the Trustee [in Bankruptcy] be unable to resume operation of the station, but in liquidating assets he too will be unable to assign anything but the bare license and, as we have said, this cannot be done for any consideration and thus no benefit would be derived for creditors. A broadcast license is not an "asset" of the bankrupt's estate which automatically passes to the trustee. Jurisdiction over a broadcast license's disposition remains exclusively with this Commission. . . .

13 R.R.2d at 1029. Again, the full Commission declared the station's license forfeit.

11. The same happened in *Robinson*:

> It is apparent that [the licensee] now ha[s] only a bare license, without the physical assets necessary to resume broadcast operation. . . . A bare license is not an asset which can be assigned for consideration. . . . [I]t appears that [the licensee is] not in a position to resume operation at any time within the foreseeable future. Under these circumstances, the license is reduced to a nullity and its cancellation becomes a ministerial act not subject to the notice and hearing provisions of [the Communications Act].

33 R.R.2d at 595-596.

12. This longstanding line of cases retains vitality to this day. In 1990, it was reaffirmed in the following language in *Omega*:

> It is well established that a license is not an asset of the licensee and does not give any property rights in the license itself. . . . Moreover, where a licensee has defaulted to its creditors, where it has no physical plant with which to offer service, and where it has allowed the station to remain dark, the Commission will not permit transfer of the bare license.

5 FCC Rcd at 7624, ¶7 (citing, *inter alia*, *KDAN* and *Bonanza*).

13. Clearly, the Astroline/TIBS application is inconsistent with this longstanding statutory policy. The parties to that application propose the sale of nothing more than a bare license, without any on-going station operation or even any capacity to

recommence operation in the foreseeable future. Under such circumstances, as the full Commission stated in *Robinson*,

> the license is reduced to a nullity and its cancellation becomes a ministerial act not subject to the notice and hearing provisions of [the Communications Act].

33 R.R.2d at 595-596. That is precisely the result which SBH urges here: Station WHCT-TV, off the air for more than two and one-half years already, stripped of its real and personal assets, no longer exists except as a Commission instrument of authorization which, by Congressional dictate, can*not* be deemed to entail any property rights in and of itself. The Commission must therefore cancel that license, dismiss the Trustee's pending renewal application, and dismiss the Astroline/TIBS assignment application. [5/]

II. The Relief Proposed By SBH Is Consistent With Multiple Other Important Congressional And Commission Policies.

14. Cancellation of the license and dismissal of the captioned applications would be consistent not only with the statutory mandate discussed above, but also with several other important Congressional and Commission policies.

15. First, the Commission itself has recognized that

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

Unjustified prolonged suspension of station operations disserves the public

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[5/] SBH underscores that the cancellation of the license can and should be undertaken as a purely ministerial act, without the need for any hearing or other proceedings. The Commission has expressly established that as the proper course to follow. *See Robinson, supra.*

interest. . . .

Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations ("*Renewal Reporting Requirements*"), 8 FCC Rcd 49 (1992) at ¶¶5-6. This reflects the Commission's determination that two more provisions of the Communications Act -- the "public interest" mandate of, *e.g.*, Section 309(a) and the "spectrum efficiency" mandate of, *e.g.*, Section 307(b) [6] -- both counsel against allowing dead stations to preclude the use of their assigned frequencies by others ready, willing and able to do so. In the instant case, SBH has been seeking, for approximately ten years already, to operate a television station on Channel 18 in Hartford. Cancellation of the license of Station WHCT-TV (which has already been off the air for more than two and one-half years and which has had no real property or physical assets with which to recommence operation for more than a year), and grant of SBH's long-pending application, would be completely consistent with the Commission's stated policy. By contrast, any result which would permit the ghost of WHCT-TV to continue to preclude SBH's use of Channel 18 would be completely *in*consistent with that policy. [7]

16. Second, cancellation of the license and grant of SBH's application would permit the Commission to avoid extensive consideration of matters relating to Astroline and the manner in which Astroline came to be licensee of Station WHCT-TV in the first place.

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[6] Both of these statutory provisions are, of course, distinct from the "no property rights" provisions which underlie the "bare license" argument discussed above. That is, there are multiple statutory provisions which, independently of one another, support the relief which SBH is hereby seeking.

[7] It should be noted that the Commission's interest in clearing out the dead wood of non-operating stations reaches situations (such as the instant one) involving licensees in the hands of a trustee in bankruptcy. *See H. Gibbs Flanders, Jr., Trustee*, 8 FCC Rcd 2759 (1993). *See also Mulrooney*, *supra*.

As mentioned above, Astroline acquired the station pursuant to the Commission's minority distress sale policy. *See Faith Center, Inc.*, 99 F.C.C. 2d 1164 (1984). That policy required that Astroline be a minority-controlled entity at least 20% of which was owned by minorities. Of course, Astroline repeatedly and consistently represented to the Commission, the Court of Appeals, and the Supreme Court that it was, in fact, a minority-controlled entity qualified to avail itself of the minority distress sale policy.

17. As it turns out, however, those representations were demonstrably false.

18. SBH has obtained documents from Station WHCT-TV and related sources which demonstrate the following:

-- Non-minority participants in Astroline (who were presented to the Commission as "limited" partners) held themselves out to be Astroline's ***general*** partners in formal documents establishing a relationship between Astroline and a financing bank.

-- Astroline's checks were often signed by Astroline's supposedly limited, non-minority, partners. This is not surprising, because Astroline's checking accounts were with a bank located in Reading, Massachusetts, the site of the operations of Astroline's supposedly limited, non-minority, partners' other business concerns.

-- the ownership interest in Astroline held by Richard Ramirez, the minority person who supposedly controlled 70% of Astroline's voting equity and 21% of its overall equity, was in fact significantly less than that level (and possibly less than 1%). Of course, in 1987 Astroline was telling the Commission and the Court of Appeals a completely different story concerning Mr. Ramirez' supposed role in Astroline.

-- Astroline's finances were in fact controlled ***not*** by Mr. Ramirez, but rather by Astroline's supposedly limited, non-minority partners, through a system which required, *inter alia*, that Astroline's checks be prepared by employees of the non-minority persons, that those checks be personally reviewed by one of the non-minority persons, and that in many instances those checks be signed by one of the non-minority persons.

SBH intends to provide copies of these documents to the Commission at such appropriate time as may present itself, or at such earlier time as the Commission may direct.

19. But, in any event, the Commission doesn't have to take SBH's word for this. The following quotation is taken from a pleading filed ***by the Trustee*** (*i.e.*, Astroline's surrogate here) in the bankruptcy proceeding:

> [Astroline's non-minority principals], to protect their investment in [Astroline] which exceeded $20 million, retained tight control of [Astroline's] finances in various ways, including, but not limited to, the following: (i) check documentation and requests were prepared in Connecticut by employees of [Astroline] and mailed from [Astroline's] Connecticut office to [the non-minority principals'] offices in Massachusetts; (ii) [Astroline's] check requests were also prepared by [the non-minority principals'] employees; (iii) Astroline's check requests were personally reviewed and approved by either [of two named non-minority principals]; and (iv) Astroline's checks were signed by [either of those two named non-minority principals].
>
> [Astroline's non-minority, supposedly limited, partners] were involved in the daily operations and acted as general partners of [Astroline] in various ways, including, but not limited to, the following: (i) they consulted with and directed Ramirez with respect to the daily operations including multiple daily calls between Astroline's Connecticut office and [the non-minority principals'] Massachusetts office and regular courier deliveries between [Astroline's] Connecticut office and [the non-minority principals'] Massachusetts office; ; (ii) they signed documents and contracts on behalf of [Astroline]; (iii) they negotiated contracts on behalf of [Astroline]; (iv) they directed the construction of [Astroline's] transmitting tower. . .; and (v) they directed attorneys for [Astroline] in connection with litigation strategies and directly paid various legal bills.
>
> Moreover, the business and assets of [the non-minority principals were commingled with the business and assets of Astroline in various ways, including, but not limited to, the following: (i) [Astroline's] checks contained as [Astroline's] address, the address of [the non-minority principals'] Massachusetts offices; (ii) [the non-minority principals] provided various accounting services to [Astroline], for which [Astroline was never charged]; (iii) [the non-minority principals] exercised an option to purchase [Astroline's] transmitter site which option was purchased by and belonged to [Astroline] and [the non-minority principals] never reimbursed [Astroline] for the price of the option.

See Attachment C hereto (copy of Complaint filed in June, 1993 on behalf of the Trustee in the bankruptcy proceeding) at ¶¶25-27. In other words, the Trustee himself -- who stands in the place of Astroline and who holds Astroline's broadcast license as a trustee of Astroline -- has conceded that Astroline was ***not*** a minority-controlled entity.

20. Thus, it may be safely said that Astroline acquired the license of Station WHCT-TV on the basis of blatant and repeated misrepresentations to the Commission and the courts. The Commission cannot ignore or condone such misconduct, especially here, where the Trustee is, in effect, still standing in the place of the wrong-doer, Astroline. If the station's license were not to be cancelled under the "bare license" line of cases discussed above, the Commission would have to address the extremely serious questions of fraud and misrepresentation which underlay the initial grant of the license to Astroline (and the Commission's fervent, and successful, defense of that grant all the way to the Supreme Court [8/]).

21. Third, cancellation of the license would permit the Commission to avoid an otherwise necessary hearing into the basic qualifications of TIBS' dominant principal, Micheal L. "Mike" Parker. Mr. Parker, and applicants and licensees associated with

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[8/] In its brief to the Supreme Court, the Commission advised the Court that the minority distress sale policy was available to limited partnerships as long as "the general partner is a minority who holds at least a 20 per cent interest in the partnership, and who will exercise 'complete control over the station's affairs'". Commission Brief in *Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford*, Case No. 89-700, at 9. Since the Commission supported the Astroline application before the Court, the Commission was clearly representing to the Court that Astroline did meet those threshold qualifications. The Commission can now see that, in fact, Astroline did ***not*** meet those standards. Rather than exercise "complete control over the station's affairs", Mr. Ramirez appears to have exercised, at most, negligible control. While it might not be mandatory to do so, it may nevertheless be appropriate for the Commission to alert the Court to these newly-discovered facts, so that the Court can assess their impact (if any) on the Court's disposition of the case.

Mr. Parker, have been the subject of serious questions concerning their conduct (or, more aptly, misconduct) before the Commission. *See Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988); *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4090, ¶16 (Rev. Bd. 1988). [9] Indeed, Mr. Parker's name is so familiar that even the Review Board has been moved to comment on even a mere reference to Mr. Parker in the record of a case. *See Doylan Forney*, 3 FCC Rcd 6330, 6331-2 at ¶9 and 6338 at n.1 (Rev. Bd. 1988). The existence of these questions raises consequent questions about the fitness of Mr. Parker and TIBS to become the licensee of Station WHCT-TV. Such questions would have to designated for hearing, litigated, and fully resolved favorably to Mr. Parker and TIBS before the proposed assignment could be granted. [10]

22. By contrast, cancellation of the license -- and, as a result, dismissal of the assignment application -- would obviate the need for any such hearing at this time. SBH submits that avoidance of unnecessary hearing proceedings (and the consequent conservation of scarce Commission resources) is a valid factor to be considered here.

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[9] In *Mt. Baker*, the full Commission concluded, with respect to the conduct of a permittee in which Mr. Parker was a principal, that "the facts clearly indicate an effort to deceive the Commission." *Mt. Baker, supra*, 3 FCC Rcd 4777, ¶8. In *Religious Broadcasting*, the Review Board concluded that an applicant for which Mr. Parker was supposedly a mere consultant was, in fact, "a travesty and a hoax" and "a transpicuous sham". According to the Board, the "true kingpin" behind that fraudulent applicant was none other than Mr. Parker. *Religious Broadcasting, supra*, 3 FCC Rcd 4085, ¶¶16, 18.

[10] SBH stresses that it is not hereby seeking the designation of the Astroline/TIBS application for hearing relative to Mr. Parker's qualifications. As discussed in the text above, no such hearing will be necessary if the WHCT-TV license is simply cancelled, as mandated by the statutory "bare license" policy. SBH merely notes the questions concerning Mr. Parker because the avoidance of a hearing on those issues (through cancellation of the license and dismissal of the assignment application) would clearly be desirable. Of course, SBH reserves the right to formally seek designation of basic qualifying issues against TIBS and/or Mr. Parker at some appropriate time in the future, should an appropriate occasion therefor arise.

23. Thus, not only is the relief sought by SBH plainly mandated by the express language of the Communications Act and longstanding, consistent Commission precedent derived therefrom but that relief would also advance a number of other important Commission policies and interests.

III. The Relief Proposed By SBH Is Not Inconsistent With The Commission's Interest In Accommodating Other Federal Regulatory Policies, Including Bankruptcy Policies.

24. While cancellation of the license and dismissal of the above-captioned applications would be consistent with a variety of Congressional and Commission policies and interests, those actions would ***not*** be inconsistent with any other governmental policies. SBH is mindful that the Commission seeks to apply its own policies in a way which is consonant with other Federal governmental policies, such as those controlling bankruptcy actions. *See, e.g., LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974). The relief sought by SBH would be so consonant.

25. First and foremost, to the extent that Astroline had any assets which were subject to claims by creditors, it is clear that those assets have ***already*** been disposed of for the benefit, and to the satisfaction, of creditors. All that is left in the estate is the license -- and, as is ***statutorily*** mandated, that license is not "property" or an asset which can be, by itself, be sold or conveyed. Thus, cancellation of the license will not diminish the value of the estate's legitimate assets, since those assets have already been transferred out of the estate.

26. Second, the estate's creditors are further protected by the fact that they

can seek payment not only from Astroline (*i.e.*, the limited partnership entity), but also from its various principals. Importantly, for the reasons reflected in Attachment C hereto (the Trustee's Complaint), the Astroline principals who are subject to such claims apparently include ***all*** of the partners, *i.e.*, both Mr. Ramirez ***and*** the various non-minority, supposedly limited partners. In other words, a number of potential sources of repayment are available. [11/]

27. And finally, it should be emphasized that the interplay of communications and bankruptcy policies does ***not*** require -- or even necessarily permit -- the subordination of statutorily-mandated communications policies in favor of general equitable consideration of creditors' interest. After all, Congress has been stunningly and repeatedly clear that a bare license is ***not*** an asset. *See* 47 U.S.C. §§301, 309(h). It would be inappropriate -- and ***unlawful*** -- for the Commission to ignore that statutory language simply in the interest of possibly assisting creditors in some way, shape or form. Granted, where Congress has accorded the Commission discretion in an area, the Commission may utilize that discretion (subject to certain basic principles of administrative law). But where Congress has unequivocally instructed the Commission that licenses are ***not*** to be deemed to be "property" with any value of their own, the Commission has no choice but to act in accordance with that instruction, even if the result is alleged to adversely affect, in some way, creditors' claims -- and SBH again stresses that no such allegation could legitimately be made here, where the

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[11/] SBH understands that at least two of those potential sources are ***already*** the subjects of default judgments, meaning that, at least in theory, creditors can look to either or both of those two sources for payment of their claims ***irrespective of whether or not the license is cancelled.*** Included as Attachment D hereto is a copy of the default judgment issued by the Bankruptcy Court.

estate's assets have apparently already been disposed of.

28. Thus, the policy set out in *Larose* and its progeny, pursuant to which the Commission seeks, where possible, to accommodate the interests of non-communications Federal regulatory policies (such as those of the bankruptcy laws) does not and cannot require the Commission to elevate those non-communications policies over conflicting communications policies, particularly where the conflicting communications policies have been enacted by Congress and codified in the Communications Act. Here, the "bare license" policy is statutory in nature. Additionally, the Commission policy of removing non-operating licensees so that others may utilize the inactive frequencies has been characterized by the Commission itself as a "paramount" consideration under the statutory "public interest" standard. *See Renewal Reporting Requirements, supra*. By contrast, there is no compelling basis, statutory or otherwise, for subordinating those policies in favor of the proposed renewal and assignment. Under the circumstances presented here, the Commission has already accommodated the interests of bankruptcy law sufficiently by being extraordinarily lenient in allowing the Trustee to keep the station off the air for more than two and one-half years. No further accommodation is either necessary or appropriate.

CONCLUSION

29. For some ten years, SBH has diligently pursued the goal of a construction permit to operate on Channel 18. Over the course of that decade, it is fair to say, SBH has suffered a variety of disadvantages, political and otherwise. At all times, though, SBH has sought to advance its arguments diligently and responsibly, and to prosecute its application in full compliance with the Commission's rules and policies.

30. By contrast, SBH's various opponents have tended to be less than honest and less than diligent. As discussed above, from the very inception of this case, Astroline appears to have engaged in gross and repeated misrepresentations, misrepresentations on which the Commission itself relied before the Court of Appeals and the Supreme Court -- and this despite the fact that SBH consistently challenged Astroline's obviously questionable claims of "minority control", claims which the Commission signed onto hook, line and sinker.

31. The Commission is now presented with yet one more opportunity to close out this sorry proceeding and expedite new service to the Hartford audience which has gone without Channel 18 for more than two and one-half years. The Commission can simply apply the well-established statutory proscription against the sale of a "bare license", cancel the WHCT-TV license, dismiss the two above-captioned applications, and grant SBH's application, which is the only remaining, timely-filed, accepted-for-filing application for Channel 18 in Hartford. This could be accomplished with extraordinarily little burden to the Commission, to the public, or to the parties.

32. The only alternative, as discussed above, would require, at a minimum, a full hearing on Mr. Parker's qualifications and consideration of the effect of the now-available evidence of Astroline's misrepresentations. Such a hearing would require dedication of Commission and private resources, could last several years, and would likely lead to precisely the same net result that SBH is advocating here. Moreover, while that scenario would be playing itself out, the public in Hartford would still be without service.

33. In addressing the responsibilities of government attorneys (including

counsel for administrative agencies), the Court of Appeals has noted that:

> the American Bar Association's Model Code of Professional Responsibility expressly holds a "government lawyer in a civil action or administrative proceeding" to higher standards than private lawyers, stating that government lawyers have "the responsibility to seek justice," and "should refrain from instituting or continuing litigation that is obviously unfair." Model Code of Professional Responsibility EC 7-14 (1981).
>
> ***Government lawyers, we have no doubt, should also refrain from continuing litigation that is obviously pointless, that could easily be resolved, and that wastes Court time and taxpayer money.***

Freeport-McMoRan Oil & Gas Company v. FERC, 962 F.2d 45, 47 (D.C. Cir. 1992) (emphasis added). SBH submits that that standard can and should be applied here. No legitimate purpose would be served by permitting the WHCT-TV license to linger on in its more-dead-than-alive posture; indeed, very substantial legitimate interests would be ***undermined*** by such action -- including the statutory prohibition against the creation of property rights in licenses, the "paramount" public interest in expediting efficient use of frequencies, and the Commission's undeniable interest in discouraging fraud and misrepresentation by its regulatees. By contrast, all of those legitimate interests would be ***unquestionably*** and ***unequivocally advanced*** by the relief sought by SBH. Under the standard articulated in *Freeport-McMoRan*, the result here is obvious: any further litigation in this case is obviously pointless, the case could be easily resolved without such further litigation, and substantial waste of agency and court time and taxpayer money could be avoided.

34. Accordingly, SBH urges the Commission to, at long last, pound a stake in the heart of this unfortunate proceeding by cancelling the license of Station WHCT-TV,

dismissing the above-captioned applications, and granting the application of SBH for a construction permit for a new station on Channel 18 in Hartford.

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

November 3, 1993

Attachment A

"Motion to Compel Trustee to Make Payment
to Applicants Pursuant to the January 23, 1992
Order of this Court",
filed November 4, 1992
with the U.S. Bankruptcy Court
for the District of Connecticut
in Case No. 88-21124 (RLK)
Astroline Communications Company Limited Partnership,
Debtor

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.	Motion No.
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP Defendant	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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