

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

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**JUN - 9 1997**

Federal Communications Commission  
Office of Secretary

In re Applications of ) MM Docket No. 97-128  
)  
Martin W. Hoffman, Trustee-in-Bankruptcy for ) File No. BRCT-881201LG<sup>1</sup>  
Astroline Communications Company )  
Limited Partnership )  
)  
For Renewal of License of )  
Station WHCT-TV, Hartford, Connecticut )  
)  
and )  
)  
Shurberg Broadcasting of Hartford ) File No. BPCT-831202KF  
)  
)  
For Construction Permit for a New )  
Television Station to Operate on )  
Channel 18, Hartford, Connecticut )

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To: Administrative Law Judge  
John M. Frysiak

**MASS MEDIA BUREAU'S COMMENTS ON  
PETITION FOR LEAVE TO INTERVENE**

1. On May 29, 1997, Two If By Sea Broadcasting Corporation ("TIBS") filed a petition for leave to intervene in the above-captioned proceeding. The Mass Media Bureau submits the following comments.

2. This proceeding concerns the 1988 license renewal application of Martin W. Hoffman ("Hoffman"), Trustee-in-Bankruptcy for Astroline Communications Company

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<sup>1</sup> The Memorandum Opinion and Order and Hearing Designation Order, FCC 97-146, released April 28, 1997 ("HDO") incorrectly specifies the file number of the 1988 renewal application for WHCT-TV as BRCT-881202KF. The correct file number is BRCT-881201LG, and the Bureau will henceforth use that file number in its pleadings. The Bureau respectfully suggests that the caption of this proceeding be corrected accordingly.

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Limited Partnership ("Astroline"), for renewal of license for Station WHCT-TV, Hartford, Connecticut. The basic issue in this proceeding is whether Astroline misrepresented facts to the Commission and Federal Courts in connection with statements made concerning its status as a minority-controlled entity. Such misrepresentations would have occurred, if at all, prior to May 24, 1991, when Hoffman became licensee. See HDO at para. 4. Hoffman and Astroline have the ultimate burden of proof. TIBS seeks to purchase the station from Hoffman under the bankruptcy laws and has filed an application to have the license of Station WHCT-TV assigned to it. TIBS argues that it should be allowed to intervene in this proceeding pursuant to either Section 1.223(a) or Section 1.223(b) of the Commission's Rules.

3. With respect to Section 1.223(a), TIBS submits that it is a party in interest in this proceeding because, as the proposed assignee of Station WHCT-TV, it "has a direct, definite, and substantial economic interest in the outcome of the renewal hearing." Petition at 4. Specifically, TIBS states that, in accordance with the Bankruptcy Court's order of June 8, 1993, it has spent \$90,000 for the assignment of the tower site lease and real property taxes due on the land covered by the lease. Additionally, TIBS' president, Micheal L. Parker, declares under penalty of perjury that TIBS has expended "hundreds of thousands of dollars and hundreds of hours of effort" in furtherance of the sale of the station and that denial of Hoffman's application will preclude the assignment and result in loss of TIBS' investment. TIBS argues that the Commission has previously allowed intervention when an entity has a definite economic interest in a licensee's viability, citing Image Radio, Inc., 12 RR 2d 671 (Hearing Examiner), aff'd 13 FCC 2d 59 (Rev. Bd. 1968); Minnesota Microwave, Inc., 1 RR

2d 928 , 929 (Rev. Bd. 1964); and Pine Tree Media, Inc., 9 FCC Rcd 2770 (Rev. Bd. 1994).

4. With respect to Section 1.223(b), TIBS argues that, unlike Hoffman, it can play a substantial role in this proceeding. TIBS contends that because Hoffman does not have first-hand knowledge of any relevant facts, he is not in a position to readily explain Astroline's alleged misconduct. Moreover, given Hoffman's status as bankruptcy trustee, TIBS argues that the Commission can expect that it will receive only limited adversarial development of the underlying facts. Likewise, TIBS submits that Astroline will not be able to assist in the development of a proper record. In this regard, TIBS observes that Astroline has not filed a notice of appearance in this proceeding. Finally, TIBS argues that in the event Astroline principals sought intervention, they would not necessarily have the same interests as TIBS since they would no longer have a proprietary interest in the station but would focus on their individual interests, conduct and reputation, which may or may not equate to defending Hoffman's renewal application. By contrast, TIBS submits that defending Hoffman's application is its only interest.

5. Within specified circumstances not at issue here, Section 1.223(a) of the Commission's Rules essentially permits intervention as a matter of right to any person who qualifies as a party in interest. That concept appears in both subsections (d) and (e) of Section 309 of the Communications Act of 1934, as amended. In NAB Petition for Rulemaking, 82 FCC 2d 89, 93-96 (1980) ("NAB"), the Commission observed in discussing parties in interest in conjunction with the filing of petitions to deny that "anyone with a right

to appeal a Commission decision should be able to present his claims to the agency before the decision is made." NAB, 82 FCC 2d at 95. Additionally, the Commission stated that it must apply judicial standing principles in determining whether an entity qualifies as a party in interest. Thus, an entity must demonstrate that it may be "aggrieved" or "adversely affected" by an adverse decision. To do so, the entity must allege a threatened or actual injury to itself, "whether economic, aesthetic or otherwise [footnote omitted], that is likely to be prevented or redressed by a favorable decision. [footnote omitted]" NAB, 82 FCC 2d at 96.

6. Although the case law in this area is not entirely consistent or clear,<sup>2</sup> it does not appear that TIBS has a sufficient stake in the renewal application to qualify as a party in interest in this proceeding. In this regard, not all of TIBS' alleged expenditures will be affected by denial of Hoffman's application. Specifically, TIBS' \$90,000 expenditure for the assignment of the tower site lease and real property taxes due on the land covered by the lease will be unaffected in that TIBS will continue as lessee regardless of who holds the WHCT-TV license. Moreover, TIBS' other expenditures are unspecific, may well be related to its own difficulties as a prospective assignee (see FCC 97-25, released January 30, 1997, recon. dismissed as moot, HDO at n. 7), and were made with the knowledge that Shurberg had raised the issue to be explored in this proceeding. Thus, the instant situation is distinguishable from the situation addressed by the Review Board in Pine Tree Media, Inc.,

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<sup>2</sup> Compare the cases cited by TIBS with Arizona Mobile Telephone Co., 80 FCC 2d 87 (Rev. Bd. 1980) and Hertz Broadcasting of Birmingham, Inc., 46 FCC 2d 350 (Rev. Bd. 1974), where the Board denied intervention to licensee creditors which argued that denial of the licenses at issue would have an adverse impact on them. Indeed, in Hertz, the Board stated that while "[a]ll creditors of a corporation have an interest in its survival, . . . grant [of party status] . . . with the concomitant rights to submit evidence, and call and cross examine witnesses would . . . render the hearing process too unwieldy." Hertz, 46 FCC 2d at 352.

because the Hearing Designation Order and Notice of Forfeiture in that proceeding expressly contemplated that the licensee's "successors or assigns" would be interested parties. See Pine Tree Media, Inc., 8 FCC Rcd 7591, 7593 (1993). Here, in contrast, the HDO discussed at length TIBS' application but did not make TIBS a party to this proceeding. In sum, there are no equitable considerations which argue in favor of TIBS being accorded party in interest status. Accordingly, the Bureau submits that TIBS should not be allowed to intervene in this proceeding as a matter of right under Section 1.223(a).

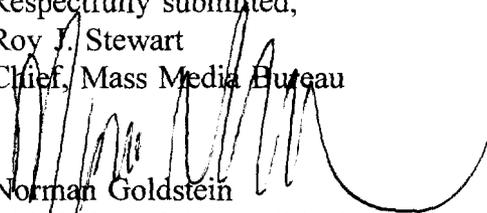
7. Moreover, TIBS does not qualify for intervention under Section 1.223(b). To so qualify, a petitioner must show, among other things, how the petitioner's participation will assist the Commission in the determination of the issues in question. Here, TIBS has shown nothing more than a willingness to develop evidence. It has no first-hand knowledge of the facts likely to be significant in resolving the designated issues, and it does not possess any relevant materials. See Hertz, 46 FCC 2d at 352. To allow TIBS to intervene would simply introduce an unnecessary party who may complicate the proceeding and delay the ultimate outcome. The presiding judge should exercise his discretion by keeping TIBS out.<sup>3</sup>

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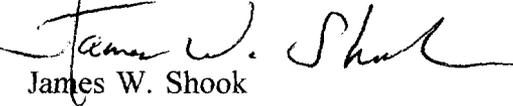
<sup>3</sup> To the extent that TIBS wishes to assist Hoffman in his efforts to obtain license renewal, it is perfectly free to do so.

8. Accordingly, the Bureau opposes TIBS' petition for leave to intervene.

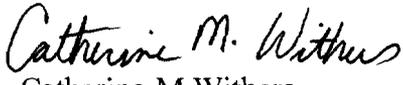
Respectfully submitted,  
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June 9, 1997

**CERTIFICATE OF SERVICE**

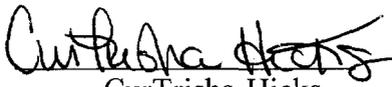
CurTrisha Hicks, a secretary in the Complaints and Political Programming Branch, Mass Media Bureau, hereby certifies that she has on this 9th day of June, 1997, sent by regular first class U.S. mail, copies of the foregoing "Mass Media Bureau's Comments on Petition for Leave to Intervene" to:

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