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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Applications of	)	MM Docket No. 97-128
	)	
Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership	)	File No. BRCT-881201LG
	)	
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	)	

To: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO MOTION FOR WAIVER AND APPLICATION FOR REVIEW

1. On September 25, 1997, Richard P. Ramirez ("Ramirez")[1] filed a motion for waiver and application for review. The Mass Media Bureau submits the following opposition.

2. This proceeding concerns the 1988 license renewal application of Martin W. Hoffman ("Hoffman"), Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership ("Astroline"), for renewal of license for Station WHCT-TV, Hartford, Connecticut. See Memorandum Opinion and Order & Hearing Designation Order, 12 FCC

[1] By Memorandum Opinion and Order, FCC 97M-109, released June 20, 1997 ("MO&O"), Ramirez was made a party to this proceeding. The MO&O observed that Ramirez was a general partner of Astroline during the period in question and that he has first-hand knowledge regarding the control and operation of Astroline. The MO&O further noted that Astroline had not filed a notice of appearance and no longer exists.

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Rcd 5224 (1997) ("HDO"). In light of apparent discrepancies between Astroline's representations concerning its ownership structure and locus of control on the one hand and documents "related to Astroline's relationship with a financing bank" and other matters related to Astroline's ownership and operations on the other hand, see HDO at paras. 3, 5, 7 and 11, the Commission specified the following issue:

> (1) To determine whether Astroline misrepresented facts to the Commission and the Federal Courts, in connection with statements it made concerning its status as a minority-controlled entity. HDO at para. 15.

The Commission designated the issue notwithstanding Astroline's bankruptcy and the fact that denial of Hoffman's renewal application might harm the interest of innocent creditors. HDO at para. 11.

3. On July 25, 1997, Ramirez filed a "Petition for Emergency Relief and Stay of Proceedings." Therein, Ramirez asked for deletion of the misrepresentation issue specified against Astroline. Basically, Ramirez argued that litigation in the bankruptcy proceeding had already determined that Ramirez, and not his non-minority partners, had controlled Astroline. In denying the petition, the presiding judge correctly observed that he had no authority to reconsider the HDO and that, in any event, Ramirez had failed to demonstrate that deletion of the issue was appropriate since the bankruptcy proceeding had not adjudicated whether Ramirez' ownership interest had dropped below 21% during his tenure as managing partner of Astroline. See Memorandum Opinion and Order, FCC 97M-140, released August 21, 1997. Ramirez then requested leave to appeal, which was denied by the presiding judge. See Order, FCC 97M-158, released September 18, 1997.

4. In his latest pleading, Ramirez requests that the Commission waive Section 1.301

of the Commission's Rules in order to consider the merits of his appeal. Ramirez asserts that this proceeding involves "basic and far reaching considerations of public policy and vital concerns relating to the public interest," quoting Communications Satellite Corp., 32 FCC 2d 533, 535 (1971). Specifically, Ramirez contends that the presiding judge failed to consider the bankruptcy court's "resolution of the issue of Ramirez' ownership interest in and control of" Astroline, thereby contravening "the public's interest in the finality of judgements and violat[ing] the principle of full faith and credit." Motion at pp. 2-3.

5. The Bureau disagrees. The litigation referenced by Ramirez focused on whether a limited partner of Astroline, Astroline Company (and its general partners), was liable as a general partner for certain debts "for having participated in the control of [Astroline's] business substantially the same as in the exercise of a general partner." In re Astroline Communications Co. Ltd., 188 B.R. 98, 100 (Bank. Ct. D. Conn. 1995) ("ACCL"). After a trial, the bankruptcy court concluded that "Astroline Company's activities in connection with the Debtor do not meet the standard of substantially the same as the exercise of the powers of a general partner." ACCL, 188 B.R. at 105. As accurately represented by Ramirez, the bankruptcy court's decision was essentially affirmed by the United States District Court and the Second Circuit Court of Appeals. Indeed, in its decision, the appellate court stated that "[t]he Bankruptcy Court's factual findings, which are not challenged as clearly erroneous, demonstrate that whatever the extent of their control over the Debtor's finances, the Limited Partners did not participate in and did not exercise any quantum of control over numerous and significant aspects of the Debtor's business. Their control of the Debtor was not "substantially the same as the exercise of the powers of a general partner." See Mass. Gen.

Laws § 19." In re Astroline Communications Co., Limited Partnership, Debtor, Docket Nos. 96-5112(L), 5118(XAP), April 17, 1997, 111 F.3d 123 (Table), 1997 WL 187334 (2d Cir. (Conn.)).

6. As discussed in the HDO at para. 2, the Commission's minority distress sale policy allows the sale of a broadcast station to a minority-controlled entity. To qualify as a minority-controlled entity under the minority distress sale policy, Astroline's minority owners not only had to have legal control but also at least a 20 percent ownership interest. Faith Center, Inc., 99 FCC 2d 1164, 1173 (1984). As Ramirez observes, the bankruptcy litigation focused extensively on the question of who controlled Astroline. However, other than to observe that Ramirez initially held a 21% interest in Astroline, the bankruptcy court made *no* findings relative to Ramirez' ownership interests in Astroline (as well as those of other minority group members). Thus, irrespective of the impact of the bankruptcy court's decision on the instant proceeding, that decision did not address, much less decide, all relevant matters regarding compliance with the Commission's minority distress sale policy. Hence, to the extent questions exist concerning the percentage of Ramirez' ownership of Astroline, Ramirez did not demonstrate that deletion of the misrepresentation issue was appropriate. Specifically, Ramirez has yet to demonstrate whether his ownership interest in Astroline remained above 20 percent during the period 1984-1991. If, as Astroline's federal income tax filings suggest, Ramirez owned less than 1 percent of Astroline while Astroline was representing otherwise to the Commission, it may well be that misrepresentations were made to the Commission and the courts. To dispel that question, Ramirez, as well as those involved in their preparation, execution and filing, must directly address and explain the differences between the documents

submitted to the Internal Revenue Service on the one hand and the Commission and federal courts on the other hand.

7. Ramirez also contends that the Commission must overturn the presiding judge's determination that the MobileMedia Corp. ("MobileMedia") decision[2] did not warrant stay of this proceeding. The Bureau disagrees. In MobileMedia, the Commission granted a 10 month stay of that proceeding to allow the applicant/licensee to make a showing under the Commission's Second Thursday[3] doctrine. The Commission concluded the requested stay was warranted because Second Thursday was applicable to publicly traded corporations. Further, the Commission noted that withholding Second Thursday relief posed a danger of severe harm to a multitude of innocent creditors. MobileMedia, at ¶ 13. In the instant case, the Commission fully considered Second Thursday (see ¶ 11 in the HDO) and determined that a hearing should take place notwithstanding the interests of innocent creditors.

8. Accordingly, the Bureau opposes Ramirez' motion for waiver and application for review.

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[2] FCC 97-197, released June 6, 1997.

[3] See Second Thursday Corp., 22 FCC 2d 515, recon. granted, 25 FCC 2d 112 (1970). Under Second Thursday, a licensee in bankruptcy may assign its license if the individuals charged with misconduct will have no part in the proposed operations and will either derive no direct benefit from grant of the assignment or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors.

Respectfully submitted,
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October 7, 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 7th day of October, 1997, sent by regular first class U.S. mail, copies of the foregoing "Mass Media Bureau's Opposition to Motion for Waiver and Application for Review" to:

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