

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

In re Applications of)
)
 RAINBOW BROADCASTING COMPANY) GC Docket No. 95-172
) File No. BMPCT-910625
 For an extension of time) File No. BMPCT-910125KE
 within which to construct) File No. BTCCT-911129KT
)
 and)
)
 For an Assignment of its)
 construction permit for)
 Station WRBW(TV), Orlando, Florida)
)
 In re Application of)
)
 RAINBOW BROADCASTING LIMITED,)
 Assignor)
 and) File No. BAPCT-971023IA
)
 UNITED TELEVISION, INC.,)
 Assignee)
)
 For consent to the assignment of)
 the construction permit of)
 Station WRBW(TV), Orlando, Florida)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Commission

OPPOSITION TO
"MOTION FOR CONSOLIDATION OF PROCEEDINGS"

1. P & LFT, LLC ("P & LFT") ^{1/} hereby opposes the "Motion for Consolidation of Proceedings" submitted by Rainbow Broadcasting Company ("RBC") and Rainbow Broadcasting, Limited ("RBL") on December 10, 1997.

2. As the Commission is aware, RBC's above-captioned applications for extension of the construction permit of

^{1/} P & LFT is the licensee of Station WKCF(TV), Clermont, Florida, and is already a party to the docketing proceeding listed in the caption above.

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Station WRBW(TV), Orlando, and assignment of that permit to RBL were designated for hearing in 1995, Rainbow Broadcasting Company, 11 FCC Rcd 1167 (1995). That designation followed the decision of the U.S. Court of Appeals remanding those applications to the Commission for further consideration of what the Court found to be substantial and material questions concerning both RBC's qualifications and the validity of RBC's extension application. Press Broadcasting Company, Inc. v. FCC, 59 F.3rd 1365 (D.C. Cir. 1995). The Commission concurred that such substantial and material questions existed, since the Commission designated those questions for hearing pursuant to Section 309 of the Communications Act.

3. The hearing was held, the Presiding Administrative Law Judge issued his decision in April, 1997, and timely exceptions to that decision were filed separately by Press Broadcasting Company, Inc. (P & LFT's predecessor-in-interest) and by the Commission's own Separate Trial Staff. While the Initial Decision concluded that RBC's applications could be granted, the timely filing of exceptions automatically stayed the effectiveness of that decision. Section 1.276(d) of the Commission's Rules. The exceptions are currently pending before the Commission.

4. Notwithstanding the fact that neither RBC nor RBL presently has anything it can sell, RBL submitted an application, in October, 1997, for consent to the assignment of the station's construction permit to United Television, Inc. ("United"). On December 5, 1997, P & LFT submitted a Petition to Dismiss or Deny

that application, pointing out the undeniable fact that there is nothing for RBL to sell, and suggesting therefore that the RBL/United application should be dismissed without prejudice to its re-submission in the event that RBL is ever finally deemed to be a qualified permittee with a validly-extended construction permit. In apparent reaction to P & LFT's Petition, RBC and RBL filed their Petition for Consolidation of Proceedings on December 10.

5. The Petition for Consolidation and the RBL/United application are based on the incorrect assumptions that RBL is the permittee of Station WRBW(TV) and that RBL therefore has something which it can assign. As discussed above, RBL is not now the permittee of the station, and the validity of the station's permit has yet to be established. Those factors being so, RBL's application to sell the permit to United reflects nothing more than RBL's own wishful thinking.

6. It would be completely inappropriate for the Commission to accept and consider the RBL/United application at this time, as such action would reflect nothing less than a prejudgment of the issues under consideration in the RBC hearing. The history of this particular proceeding has already been marked by enough oddities and irregularities; at this point it is best for the Commission to complete its review of the record of the RBC hearing free from the extraneous and fundamentally irrelevant considerations presented by the RBL/United application. Dismissal of the RBL/United application would be without prejudice to its resubmission if and when circumstances permit

such resubmission. As matters now stand, however, the prevailing circumstances preclude consideration of the application.

7. No one would be harmed in any way by dismissal of the RBL/United application without prejudice. As the RBC/RBL Motion seems to acknowledge, both RBL and United recognize that Commission review of the RBC hearing matter must be completed before RBL could conceivably have anything to sell. Thus, neither RBL nor United could legitimately have expected to be entitled to consideration of an assignment application prior to the completion of such review. That being the case, dismissal of the application cannot be deemed to be contrary to their legitimate expectations or their reasonable interests.

8. By contrast, acceptance and consideration of the RBL/United application could easily lead to unnecessary confusion which is already characteristic of this proceeding. For example, as noted above (and in the very caption of the Hearing Designation Order), it is clear that, to the extent any permit may be said to exist here, RBC would be the permittee. And yet, in their Motion to Consolidate, RBC and RBL contend that RBC does not even exist! But if that is the case, then presumably the above-captioned applications should be dismissed with prejudice, as the supposed permittee/assignor (i.e., RBC) does not exist. ^{2/}

^{2/} This bizarre situation has been aggravated by the Commission's failure to comply with statutory mandate when it designated this proceeding for hearing. As discussed above and at length in the Press decision by the Court of Appeals, serious questions exist with respect both to RBC's application for
(continued...)

9. It is possible that (the supposedly non-existent) RBC and RBL now claim that RBC is non-existent because they believe that that may somehow make it more difficult for the Commission to rule against the RBC/RBL applications. The RBC/RBL Motion to Consolidate is certainly consistent with this bootstrap approach. In that Motion they are asking the Commission to ignore the fact that RBL doesn't even own the permit yet (assuming, arguendo, that there is even a permit to own). Instead, they are asking the Commission to endorse the fiction which RBC/RBL are trying to create, i.e., that RBL is the legitimate holder of an authorization which it can assign to a third party.

10. But any attempt to paint the Commission into a corner along those lines is doomed to failure, since the record of this case is crystal clear: RBC was the permittee when the permit expired, RBC was the applicant which sought an extension of the permit, and substantial and material questions exist concerning

^{2/}(...continued)

extension of its permit and to RBC's application to assign the permit to RBL. The Communications Act is clear that the Commission can do only one of two things with respect to applications. The Commission can grant an application, if there are no substantial and material questions concerning that application; but if there are such questions, then the Commission can only designate the application for hearing.

When an application is initially granted, but subsequently found to be ungrantable without a hearing (as occurred here), any actions taken pursuant to the erroneous grant must be undone, even if that result requires the cessation of operation commenced under color of the initial (later overturned) grant. Folkways Broadcasting Co., Inc. v. FCC, 379 F.2d 447 (D.C. Cir. 1967). While the Commission failed to require such undoing here -- a point which Press has squarely raised in, inter alia, its Exceptions -- that failure cannot change the fact that neither RBC nor RBL can, consistently with the Act and judicial decisions under the Act, claim to be the permittee or lawful operator of the station at this point.

RBC's basic qualifications to be a permittee. Thus, RBC (to the extent that it continues to exist at all -- and RBC/RBL are advising that RBC does not in fact exist) cannot be said to have assigned its permit to anyone (including RBL) at this point, and any application by RBL proposing to sell the permit to anyone else is meaningless.

11. The agency proceedings surrounding the RBC applications for extension and assignment have often taken on an unreal Alice in Wonderland quality, an unreal quality which was remedied (and only temporarily) by the decision of the Court of Appeals. Considering the RBL/United assignment application -- or even suggesting that such consideration might be appropriate -- would exacerbate the unreality. As P & LFT has previously argued, the appropriate course here is for the Commission simply to dismiss the RBL/United application without prejudice to its resubmission if and when circumstances permit.

Respectfully submitted,


/s/ Harry F. Cole
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December 24, 1997

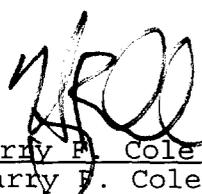
CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 24th day of December, 1997, I have caused copies of the foregoing "Opposition to 'Motion for Consolidation of Proceedings'" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

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