

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

AUG 24 1998

Federal Communications Commission
Office of Secretary

In re Applications of)	MM DOCKET NO. 97-128
)	
MARTIN W. HOFFMAN,)	
Trustee-in-Bankruptcy for Astroline)	File No. BRCT-881201LG
Communications Company Limited)	
Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	
)	
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 Honorable John M. Frysiak
Administrative Law Judge

**PARTIAL OPPOSITION OF SHURBERG BROADCASTING OF HARTFORD
TO "MOTION FOR RESCHEDULING OF HEARING DATES"**

1. Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH") hereby partially (as set forth below) opposes the "Motion for Rescheduling of Hearing Dates" submitted in the above-captioned proceeding on August 20, 1998 by Martin W. Hoffman, Richard P. Ramirez and Two If By Sea Broadcasting Corporation (collectively, the "Moving Parties"). As set forth below, no valid basis for any further extension of the procedural dates in this case is warranted. However, if a need exists to accommodate a particular religious holiday, SBH submits that the date of commencement of the hearing schedule can and should be advanced somewhat without undue hardship on any of the parties.

2. The Moving Parties claim that rescheduling is necessary because:

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(a) the transcripts of depositions being conducted by SBH "will not be available for some time" (Motion at 2);

(b) "because of the ongoing depositions, the parties have not been able to prepare any stipulations that may expedite the case" (*id.*); and

(c) the hearing is currently scheduled to begin on a Jewish holiday.

The Moving Parties conclude that "the requested rescheduling . . . is due in large part to the delayed discovery undertaken by SBH", *id.* The Moving Parties suggest delaying the hearing until mid-November because scheduling the hearing for October would interfere with the ability of some counsel to attend conventions.

3. The first two reasons advanced by the Moving Parties are clearly bogus. Undersigned counsel has spoken with the reporting company which is preparing transcripts of the depositions, and has been advised that transcripts are normally available within 10 days of the deposition. Transcripts can be ordered for delivery even sooner than that. Moreover, the depositions which have been conducted thus far have not been at all lengthy -- the longest lasted only 4-1/2 hours, others have lasted less than one hour; in other words, the transcripts will not take long to prepare. So the prompt availability of transcripts should not be a problem by any means.

4. Moreover, SBH is frankly surprised that the Moving Parties suggest that the depositions are of such moment that they warrant delaying the hearing, since neither TIBS nor Mr. Hoffman has chosen even to attend any of the depositions thus far. If the Moving Parties really believed that the depositions were so important, SBH would have expected those parties actually to show up at the depositions.

5. Finally, it must be noted that the Moving Parties themselves have taken no

depositions, nor have they engaged in any other discovery herein. The reasonable conclusion to be drawn from this inactivity is that the Moving Parties believe that they have all the information necessary to present their case. That being the case, no need at all exists to extend any deadlines herein.

6. The second stated reason -- the possibility of stipulations -- is also somewhat puzzling. As indicated during the informal telephone conference with the Presiding Judge and all parties on August 5, 1998, SBH understands that the parties hereto have agreed in principle to stipulate to the authenticity of materials -- exhibits, testimony, pleadings and decisions -- from the Hartford bankruptcy proceeding relating to Station WHCT-TV. During the August 5 conference call SBH described this understanding and asked the Presiding Judge whether he had any objection to such an approach to evidence. As undersigned counsel recalls, the Presiding Judge indicated he had no problem with such a stipulation. No other party hereto suggested any objection to such a stipulation.

7. The only task that remains, then, is to commit that stipulation to writing. SBH had understood that counsel for Mr. Hoffman was preparing such a stipulation and expected to circulate it more than a month ago. SBH has never been advised that the deposition schedule is interfering in any way with that process, and SBH is at a loss to understand how any delay in that process could be linked in any way with SBH's depositions, particularly since Mr. Hoffman's counsel has not attended any of the depositions and also since the stipulation relates not to any new testimony which might be developed during the depositions, but only to the ability of the parties to rely on the historical record already developed in the Hartford bankruptcy case.

8. SBH takes exception to the Moving Parties' effort to blame SBH for the delay

the Moving Parties are seeking. This case was designated for hearing in April, 1997, more than 16 months ago. The procedural dates presently in effect were set forth in an Order, FCC 98M-57, released on May 22, 1998, three months ago. On June 30, SBH filed a Status Report, advising the Presiding Judge, *inter alia*, that SBH intended to proceed (a) to complete discovery within the time frame set out in the May 22, 1998 Order and (b) to be ready to commence the hearing on September 29, 1998.

9. Since that time, SBH has diligently proceeded with its discovery efforts. SBH has reviewed additional boxes of documents, re-reviewed boxes of documents culled from its earlier document production requests, conducted depositions, and sought and obtained certain admissions. Only two previously noticed depositions remain to be completed, and those are presently scheduled for August 25 (Dan Alpert) and August 27 (Dale Harburg).

10. Meanwhile, the Moving Parties have undertaken *NO* discovery whatsoever herein.

11. During the August 5, 1998 conference call SBH advised the Presiding Judge and the parties that, with the exception of a limited number of non-party depositions ^{1/}, SBH would complete all of its discovery by August 14 (the deadline established in the May 22 Order) and would exchange its direct case exhibits on August 31 (also the deadline established in the May 22 Order). While the conference call was not transcribed, undersigned counsel recalls that, with the exception of counsel for Mr. Ramirez, no other party objected. Mr. Ramirez did not object to the maintenance of the existing deadlines, but rather to the

^{1/} While these depositions will be completed technically after the August 14, 1998 close of discovery, they were noticed well before that deadline. During the informal telephonic conference on August 5, 1998, counsel for SBH specifically requested leave to complete these remaining depositions prior to August 31, and such leave was, to the best recollection of undersigned counsel, granted.

fact that SBH would be conducting a limited number of depositions between August 14 and August 31.^{2/} Thus, it comes as a surprise that the Moving Parties would suggest, after the close of discovery, that some adjustment of the hearing schedule may be necessary.^{3/}

12. SBH does recognize that religious holidays are matters which may deserve attention.^{4/} But in the present situation those holidays may be easily accommodated with

^{2/} Counsel for Mr. Ramirez asserted that SBH's depositions might somehow interfere with Mr. Ramirez's preparation of direct case exhibits. Again, though, since Mr. Ramirez has undertaken no discovery and is, therefore, presumably satisfied with his own informational base, the scheduling of SBH's discovery efforts cannot be seen to be interfering in any way with Mr. Ramirez's preparation for hearing. And in any event, Mr. Ramirez has no burdens in this case, and therefore is under no obligation to make any presentation at all on August 31. Mr. Hoffman, by contrast, does have a burden of proceeding -- and yet, Mr. Hoffman did not object to SBH completing its depositions after August 14 but before August 31.

^{3/} SBH suspects that the Moving Parties may be seeking to delay the instant hearing as a strategic matter relative to their efforts, initiated last July before Judge Krechevsky in the Hartford bankruptcy proceeding, to (a) challenge the validity of SBH's application (and therefore, presumably, SBH's standing herein) and (b) secure some ruling from Judge Krechevsky concerning whether Astroline committed fraud on the Commission. As to the first point, of course, the full Commission has already stated that SBH's application is grantable, *see HDO*, and the Commission has thus far taken no action on the various efforts of TIBS and Mr. Hoffman to undermine that statement. As to the second point, the question of whether Astroline engaged in misrepresentation to the Commission and/or the courts is an issue peculiarly within the authority and expertise of the Commission to resolve; that issue has already been designated in the instant proceeding (and is currently scheduled for hearing beginning on September 29). The last-minute attempts by TIBS and Mr. Hoffman to open a second front before the Bankruptcy Court are, in SBH's view, nothing more than harassment which will be rejected by the Bankruptcy Court. Still, SBH believes that it will in any event be most advisable to proceed with the instant hearing as promptly as possible, to avoid any possible conflict, scheduling or otherwise, with the Bankruptcy Court.

^{4/} Of course, since the Jewish holidays in question were readily ascertainable back in May, when the current hearing schedule was announced by the Presiding Judge, any parties could have raised the problem of religious holidays then. The same was true as of June 30, when SBH advised the Presiding Judge and the parties of its intention to adhere to the current hearing schedule. The same was true as of August 5, when all the parties participated in a conference call with the Presiding Judge concerning, *inter alia*, scheduling. Prior to their August 20 motion the Moving Parties never expressed any concern at all about religious

(continued...)

only a slight advancement of the hearing schedule, rather than the two-month postponement proposed by the Moving Parties. The hearing is presently scheduled to start on Tuesday, September 29. SBH understands that Yom Kippur is observed on September 30. If the Moving Parties are concerned about Yom Kippur, the hearing can be commenced on September 28, continued on September 29^{5/}, adjourned for Yom Kippur, and then reconvened on October 1.

13. If the Moving Parties believe that that schedule will still not permit completion of the hearing, SBH suggests that the trial could be scheduled to begin on Wednesday, September 23. Rosh Hashanah is observed on September 21 and 22. Thus, the hearing schedule could be adjusted so that the hearing commences on Wednesday, September 23 and proceeds through Tuesday, September 29. If the hearing has not been completed by then, it can be adjourned for the one-day observance of Yom Kippur, and then reconvened on Thursday, October 1. In other words, a total of seven hearing days would be available between September 23 and Friday, October 2.

14. The proposed advancement of the hearing date -- whether by one day, to September 28, or by six days, to September 23 -- should not adversely affect any party. The Moving Parties do not suggest that any extension of the already-past discovery deadline is necessary, so presumably they have completed whatever efforts they may deem necessary to

^{4/}(...continued)

holidays. The lateness of the date on which the Moving Parties have seen fit to raise the matter of religious holidays, and their failure to raise that matter earlier, raises some question as to the sincerity of the Moving Parties.

^{5/} Undersigned counsel, who is not Jewish, understands that celebration of Yom Kippur technically begins at sundown on September 29. Even if that were deemed to require adjournment of the hearing somewhat earlier than usual on September 29, it would still permit progress of at least one-half day or more of hearing on that day.

prepare whatever direct case they intend to submit. Thus, adhering to the current exhibit exchange date of August 31 would apparently not prejudice them at all.

15. While the advancement of the hearing date would reduce the amount of time originally provided between exhibit exchange and the hearing itself, that reduction would also not appear to prejudice anyone. In the Motion, the Moving Parties propose only a two-week period between exhibit exchange (proposed as November 3) and the hearing (proposed as November 17). From this it may be concluded that the Moving Parties believe that two weeks is sufficient. But SBH's proposed advancement of the hearing date would provide even more time than that -- more than three weeks, from the presently scheduled exhibit exchange date of August 31 to September 23, the earlier of the two hearing dates proposed herein. Thus, the Moving Parties cannot complain of inadequate time between direct case exchange and the hearing itself.

WHEREFORE, for the reasons stated, Shurberg Broadcasting of Hartford opposes the rescheduling of hearing dates proposed by the Moving Parties, but suggests that, as an alternative, in order to accommodate the observance of certain religious holidays, the following hearing dates be adopted:

Exchange of direct case exhibits	August 31, 1998
Notification of witnesses for cross-examination	September 14, 1998
Commencement of hearing	September 28 or 23, 1998

In view of the latest of the Moving Parties proposed readjustment of the procedural schedule herein, SBH proposes that the Presiding Judge convene an on-the-record hearing conference

as soon as possible -- ideally on Tuesday, August 25, 1998 ^{6/} -- in order to resolve these matters.

Respectfully submitted,



/s/ Harry F. Cole

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August 24, 1998

^{6/} If a conference is scheduled for August 25, SBH requests that it be scheduled in the afternoon, so as not to interfere with the deposition of Mr. Alpert, which is scheduled to commence at 10:00 a.m.

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of August, 1998, I caused copies of the foregoing "Partial Opposition of Shurberg Broadcasting of Hartford to 'Motion for Rescheduling of Hearing Dates'" to be hand delivered to the following:

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