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

Federal Communications Commission
Office of Secretary

In re Applications of)	MM DOCKET NO. 97-128
)	
Martin Hoffman, Trustee-in-Bankruptcy)	File No. BRCT-881201LG
for 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)	

To: The Commission

**MASS MEDIA BUREAU'S EXCEPTIONS TO
INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK**

Respectfully submitted,
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May 17, 1999

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Mass Media Bureau's Exceptions to Initial Decision

1. The Mass Media Bureau, pursuant to Sections 1.276 and 1.277 of the Commission's Rules, hereby respectfully submits its exceptions to the *Initial Decision of Administrative Law Judge John M. Frysiak*, FCC 99D-1, released April 16, 1999 ("*ID*").

Statement of the Case

2. This proceeding concerns the application of Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership ("Hoffman" and "Astroline"). Hoffman seeks renewal of license for Station WHCT-TV, Hartford, Connecticut. As reflected by his status as a bankruptcy trustee, Hoffman is the successor in interest to Astroline. Astroline had obtained the license for WHCT-TV as a qualified purchaser under the Commission's minority distress sale policy. Astroline represented to the Commission, and later to the courts, that it was controlled by a minority and that minorities held at least 20% of Astroline's equity. In designating Hoffman's application for hearing, the Commission determined that a substantial and material question of fact existed as to whether Astroline had misrepresented its status as a minority-controlled entity. *Hoffman, Martin W.*, 12 FCC Rcd 5224, 5231 (1997) ("*HDO*").

3. Although the Commission observed that Shurberg Broadcasting of Hartford ("Shurberg") had status as a competing applicant against Astroline's 1988 renewal application, it did not commence a comparative renewal proceeding. In this regard, the Commission noted that comparative renewal proceedings had generally remained frozen in the wake of *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). The Commission therefore opted not to address the comparative merits of the applicants in the instant hearing. Rather, the Commission explicitly

held Shurberg's application in abeyance pending the outcome of this hearing. *HDO*, 12 FCC Rcd at 5226 (para. 4) and 5231, n. 11.

4. The *ID* concluded that Astroline did not misrepresent its status as a minority-controlled entity. The *ID* further concluded that renewal of Hoffman's application would serve the public interest. Finally, the *ID* granted Hoffman's application, despite the pendency of Shurberg's mutually exclusive application. *ID* at para. 79. The Bureau agrees that Astroline did not misrepresent its status and that renewal of Hoffman's application would serve the public interest, but for the need to address the Shurberg application. Thus, Hoffman's application should not have been granted.

Question of Law Presented

Did the *ID* err in granting Hoffman's application?

Argument

The *ID* erred in granting Hoffman's application.

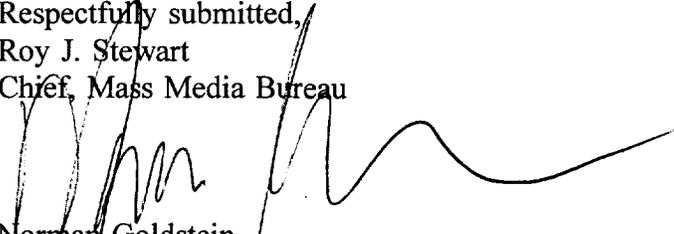
5. In the *HDO*, the Commission recognized that the Hoffman and Shurberg applications were mutually exclusive. In such circumstances, no more than one of them can ultimately be granted. *E.g., Fox Television Stations, Inc.*, 8 FCC Rcd 2361 (Rev. Bd. 1993) (subsequent history omitted). Further, the Commission has determined that pending comparative renewal cases (such as those involving Hoffman and Shurberg) will be decided after a hearing, not by an auction. *Amendment of Parts 1, 73 and 74 - Competitive Bidding*, 13 FCC Rcd 15920, 16004-6 (1998), recon. FCC 99-74, released April 20, 1999. With respect to the Hoffman and Shurberg applications, the Commission expressly declined to commence a comparative proceeding and instead deferred action on the Shurberg application

pending the outcome of the instant hearing. *HDO*, 12 FCC Rcd at 5231 n. 11. Thus, although Hoffman has been found qualified in the instant proceeding, his application cannot be granted until its status vis-a-vis the Shurberg application is directly addressed and resolved in a comparative hearing. Accordingly, the *ID* erred in granting Hoffman's application.

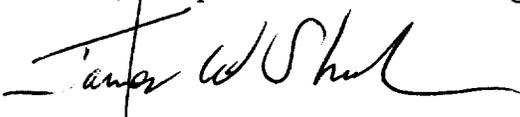
Conclusion

6. Accordingly, the Commission should affirm the *ID*, except with respect to the grant of Hoffman's application.

Respectfully submitted,
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CERTIFICATE OF SERVICE

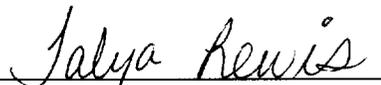
Talya Lewis, secretary of the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has on this 17th day of May, 1999, sent by first class United States mail, copies of the foregoing "Mass Media Bureau's Exceptions to Initial Decision of Administrative Law Judge John M. Frysiak" to:

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