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

JUN - 9 2000

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

To: The Commission

REPLY TO RESPONSE OF ENTRAVISION HOLDINGS, LLC

First Millennium Communications, Inc. ("FMCI") hereby replies to the Response of Entravision Holdings, LLC ("Holdings") to FMCI's Comments on the Joint Request for Approval of Settlement Agreement ("Joint Request") filed by the parties in the above-referenced docket.[1] Holdings' Response does not in anyway detract from the merits of FMCI's Comments or the viability of the relief requested by FMCI. In support of that

[1] Holdings states that its Response was filed pursuant to Section 1.45(b) of the Commission's rules. However, FMCI's comments constituted an informal objection explicitly filed under Section 73.3587 of the Commission's rules. That latter rule states that the "time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section." 47 C.F.R. § 73.3587.

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conclusion, the following is stated:

1. In its Comments, FMCI requested that the Commission defer acting on the Joint Request unless and until the amendment filed by the Two If By Sea Broadcasting Corporation ("TIBS") is amended to change the proposed assignee for the WHCT-TV licenses from Holdings to a new limited liability company formed in accordance with that certain Memorandum of Understanding (the "MOU") of July 1998 by and between FMCI and Holdings' affiliate, Entravision Communications Company, L.L.C. ("ECC"). As FMCI explained in its Comments, the proposed assignment to Holdings for the WHCT-TV licenses would be in violation of the MOU.

2. Holdings contends that FMCI's Comments "bear no relationship" to the Commission's review of the Joint Request, do not "ask for any specific relief," and cannot be considered in any event because "FMCI has no standing to contest the Joint Request." Response at 3, 4. Holdings' assertions misstate the facts and applicable law.

3. To begin with, Holdings is simply wrong in contending that there is no "nexus" between FMCI's complaint and the Joint Request. Response at 4. The Joint Request explicitly asks the Commission to "grant the pending application for consent to the assignment of a license for WHCT-TV, from the Trustee to TIBS, as amended by the simultaneously filed amendment. . . . pursuant to which Entravision Holdings, L.L.C. . . . is substituted for TIBS as the proposed assignee of WHCT-TV . . ."[2] Joint Request at 2. The nexus between the Joint Request and FMCI's Comments could not be more clear:

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[2] A copy of the amendment was attached to the Joint Request.

the parties want to have the WHCT-TV licenses assigned to Holdings, and, as FMCI explained in its Comments, that course of action is prohibited by the MOU. At the same time, again as made clear by FMCI, the parties' settlement need not be disrupted. The parties' purpose can be easily achieved by assigning the WHCT-TV licenses to a new entity controlled by Holdings (or its affiliate) and in which FMCI would have a 10% interest.[3]

4. To be sure, the Commission has generally taken the position that contract disputes are to be decided by the courts rather than the Commission. At the same time, there have been situations where the Commission has deferred action on a settlement agreement to await the outcome of related litigation. *Hanover Radio, Inc.*, 97 FCC2d 675, 677-78 (Rev. Bd. 1984) (stay imposed on implementation of an order approving a settlement agreement to await outcome of separate state court litigation as to whether one of the settling parties is obligated to specifically perform under the settlement agreement). That latter precedent is all the more applicable because the District of Columbia Superior Court has just issued an order granting FMCI summary judgment on all counts on the complaint filed by Entravision Communications Corporation, Holdings' affiliate. Order Treating Defendant's Motion to Dismiss as a Motion for Summary Judgment & Granting Judgment for Defendant, *Entravision Communications Corporation v. First Millennium Communications, Inc.,* Case No. 00ca1428 (S.Ct. D.C. June 3, 2000). In short, there is

[3] The Commission did of course issue a separate Public Notice reflecting the filing of the proposed amendment to assign the WHCT-TV licenses to Holdings. To avoid any ambiguity, FMCI is simultaneously filing its Comments and the Reply under separate cover with a request that they be associated with the specific file number referenced with that Public Notice.

now objective reason to believe that FMCI will prevail on its claims and that Holdings will be precluded from becoming the assignee for WHCT-TV.

5. At a minimum, however, the Commission should be willing to grant FMCI's alternative request to explicitly state that any Commission action approving the assignment to Holdings is not designed to influence and will have no bearing upon the outcome of FMCI's pending court complaint against ECC. That statement would make it clear to all parties, including Holdings, that any Commission approval of Holdings as the assignee is without prejudice to later Commission action (based on any favorable judgment obtained by FMCI in the litigation) requiring the assignment of the WHCT-TV licenses from Holdings to the new limited liability company to be formed under the MOU. Holdings provides no explanation whatsoever as to why that latter relief is inappropriate or beyond the Commission's jurisdiction. There is certainly no authority cited by Holdings to show otherwise.

6. Commission approval of the assignment of the WHCT-TV licenses to Holdings could prejudice FMCI and, to that extent, FMCI does have standing. *See Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 671-73 (D.C. Cir. 1987) (competing applicant for construction permit has standing to challenge grant of other party's application). However, it would not matter if FMCI failed to meet the requirements for standing. Contrary to Holdings' contention, FMCI need not satisfy those requirements in order to obtain the foregoing relief. Section 73.3587 of the Commission's rules explicitly states that "any person" can file an informal objection before action is taken

on any application or any request for an authorization. *E.g. CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13042 (1999). Standing, in short, is not a bar to requesting relief.

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission defer acting on the Joint Request unless and until the TIBS amendment is amended to change the proposed assignee for the WHCT-TV licenses from Holdings to a new limited liability company to be formed in accordance with the MOU.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2000, a copy of the foregoing **REPLY TO RESPONSE OF ENTRAVISION HOLDINGS, LLC** was sent by first-class mail, postage prepaid, to the following parties:

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