

Control, Transfer of, Procedures
License, Assignment of, By Receiver in Bankruptcy
License, Assignment of, Involuntary
License, Assignment of, Procedures

Application for assignment of license granted. A violation of Section 310(d) of the Communications Act of 1934, as amended, requiring prior Commission consent to the transfer of control or assignment of a license, was not disqualifying where an application was promptly filed.

-D.H. Overmyer Telecasting Co. Inc.

FCC 83-224

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

In re Applications of

D. H. OVERMYER TELECASTING CO., INC.
Debtor in Possession - Bankruptcy Court
S.D. New York
(Assignor)
and

File No. BALCT-
810212KF

D. H. OVERMYER TELECASTING CO., INC.
(Assignee)

For the Involuntary Assignment of License of Station WDHO-TV, Toledo, Ohio.

D. H. OVERMYER TELECASTING CO., INC.
(Assignor)
and

File No. BALCT-
810212KG

D. H. OVERMYER TELECASTING CO., INC.
Debtor in Possession - Bankruptcy Court
N.D. Ohio E.D.
(Assignee)

For the Involuntary Assignment of License of Station WDHO-TV, Toledo, Ohio.

FIRST NATIONAL BANK OF BOSTON

For the Involuntary Transfer of Control of **D. H. Overmyer Telecasting Co., Inc.,**

File No. BTC-
810330KE

Debtor in Possession - Bankruptcy Court
N.D. Ohio E.D., Licensee of Station
WDHO-TV, Toledo, Ohio.

MEMORANDUM OPINION AND ORDER

(Adopted: May 12, 1983 Released: May 20, 1983)

**BY THE COMMISSION: COMMISSIONERS FOGARTY, JONES AND SHARP
NOT PARTICIPATING.**

1. The Commission has before it for consideration: (1) the above-captioned applications; (2) a petition for special relief and an informal objection to the application of the First National Bank of Boston, filed by The Overmyer Company, Inc.¹; (3) opposition pleadings filed by the First National Bank of Boston; and (4) various related pleadings.

2. The Overmyer Company, Inc. (TOC) is the parent corporation of D. H. Overmyer Telecasting Co., Inc. (Telecasting), licensee of Station WDHO-TV, Channel 24, Toledo, Ohio. The circumstances leading to the present proceedings began in 1971 when the First National Bank of Boston (FNBB) made a loan to TOC for which the stock of Telecasting, the licensee, was pledged as collateral. In 1975, after notice of default, FNBB acquired ownership of 49% of Telecasting's stock and initiated receivership proceedings in Ohio to acquire ownership of the remaining shares. However, before the matter was resolved, the proceeding was stayed by the actions of TOC and Telecasting, each separately filing for Chapter XI bankruptcy protection in the United States Bankruptcy Court in the Southern District of New York.² Nonetheless, through the efforts of FNBB, Telecasting's bankruptcy proceeding in New York was eventually dismissed. However, on the same day of the dismissal, Telecasting initiated a new Chapter XI proceeding in the United States Bankruptcy Court of the Northern District of Ohio, Eastern Division.³ In this second proceeding, FNBB continued to press its claims to the remainder of Telecasting's stock. On March 25, 1981,

¹ The Overmyer Company captioned the informal objection as a "Petition to Deny (Informal Objection)." However, since Section 309 of the Communications Act of 1934, as amended, does not provide for the filing of petitions to deny against involuntary transfer applications, the pleading will be treated as an informal objection under Section 73.3587 of the Commission's Rules.

² On November 11, 1976, the Commission granted an application (BALCT-603) for the involuntary assignment of the license which occurred when Telecasting entered bankruptcy proceedings. Essentially, the license went from Telecasting, as an independent entity, to Telecasting as a debtor in possession under the court's supervision.

³ Two of the pending applications reflect the change of courts overseeing the Telecasting bankruptcy proceeding. When the New York court dismissed the first proceeding, an application (BALCT-810212KF) was submitted concerning the resulting involuntary assignment of the WDHO-TV license from Telecasting as a debtor in possession in New York to Telecasting as an independent entity. The

the court issued an order recognizing the bank's right to the remaining shares and directed that FNBB begin to oversee the licensee's operation, subject to the court's supervision. FNBB took control of Telecasting almost immediately and, on March 30, 1981, filed the application (BTC-810330KE) seeking Commission consent to the involuntary transfer of control of Telecasting pursuant to the bankruptcy court's order. Thereafter, TOC filed a petition for special relief with the Commission, seeking an order that FNBB relinquish control of Telecasting. TOC also filed an informal objection to FNBB's involuntary transfer application. These requests were opposed by FNBB. Action on the applications and pleadings were deferred pending a decision by the bankruptcy court in Ohio adjudicating all outstanding claims in the Telecasting bankruptcy proceeding. This decision was issued on September 17, 1982, and is currently on appeal. Between FNBB's assumption of control of the licensee and the September 17, 1982 decision of the bankruptcy court, a significant number of pleadings were filed with the Commission by both parties regarding FNBB's involuntary transfer of control application. Since some of the matters raised in these pleadings were rendered moot by the court's decision, the parties were requested by the Commission's staff to submit a summary of those matters still at issue. These summaries were filed on January 6, 1983, and the matters discussed below only address those issues raised or referred to in these documents.

Issues in Contest

3. TOC maintains that FNBB's assumption of control of Telecasting, without the prior consent of the Commission, violated Section 310(d) of the Communications Act of 1934, as amended. It states that FNBB acquired 100% of Telecasting's stock, designated new officers and directors for the licensee and has otherwise exercised *de facto* control over WDHO-TV's operation. Moreover, TOC contends that FNBB is not acting in a representative capacity for the court, such as a receiver, a bankruptcy trustee or even as a debtor in possession. TOC underscores this point by noting that FNBB is not a disinterested party, being one of Telecasting's largest creditors, and arguing further that the bank has a substantial beneficial interest in the Telecasting property. For these reasons, it also contends that the Commission's "short form" involuntary transfer of control procedure was not the proper procedure for FNBB to follow for its acquisition of control. In TOC's view, a substantial change in ownership occurred which required utilization of the Commission's "long form" procedure, especially since FNBB was allegedly acting in its own behalf,

second application (BALCT-810212KG) reflects the involuntary assignment of the license to Telecasting as a debtor in possession under the bankruptcy court in Ohio.

and not for the protection of all creditors. TOC would thus distinguish the present case from other situations involving the court appointment of receivers or trustees. It would further distinguish this case from the appointment of a debtor in possession, since in such situations there is no real change in control. Consequently, TOC argues the present proceeding constitutes a sham, designed to avoid the procedural and substantive requirements of the Commission's "long form" application process.

4. TOC further maintains that FNBB was deliberately attempting to circumvent the Commission's jurisdiction by acquiring control through the bankruptcy court. It alleges FNBB knew that the Commission's prior consent was required for a change in control because of the bank's prior involvement in the communications industry and by the explicit terms of the stock pledge agreement by which Telecasting's shares were held as collateral. TOC further states that the bankruptcy court improperly impinged on the Commission's responsibilities. Citing *Radio Station WOW v. Johnson*, 326 U.S. 120 (1945), TOC argues that the Commission has exclusive jurisdiction over the disposition of licenses, which the bankruptcy court failed to observe in ordering the transfer of control. TOC avers that if the court's action is left unchallenged, a precedent will be established which will allow scores of similar court effectuated changes in control. While recognizing that under *La Rose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974), the Commission is under some duty to accommodate federal bankruptcy policy, TOC maintains that *La Rose* does not permit a bankruptcy court to order a change in control without the prior consent of the Commission. It thus argues that a decision such as *La Rose*, which urges reconciliation between the Communications Act and federal bankruptcy statutes, is irrelevant to FNBB's deliberate and illegal assumption of control. TOC argues that the present proceeding involves more than questions of local contract or debtor/creditor law, but concerns a violation of Section 310(d) of the Communications Act and whether the Commission or a bankruptcy judge will determine who controls broadcast facilities. TOC further maintains that FNBB's request for Commission consent subsequent to the change in control does not resolve the issues.

5. TOC also challenges the underlying basis of the court order which effectuated the transfer. It charges that the foreclosure on Telecasting's stock violated the Uniform Commercial Code. Further, that the bank's assumption of control without Commission consent not only violated the Communications Act, but also the terms of the pledge agreement. TOC additionally argues that the FNBB loan has been repaid through accounts receivable from TOC's other subsidiaries, which the bank has allegedly collected but misappropriated and converted. Citing *Granik v. FCC*, 234 F.2d 682 (D.C. Cir. 1956), TOC argues that the alleged contract violation must be investigated by

the Commission, since any breach would reflect on the public interest and since a grant of the transfer might improperly influence the court. TOC further charges that it was not properly represented at the foreclosure hearing and that the Commission is under no obligation to enforce a court order based on a proceeding depriving a party of its due process rights. Moreover, it alleges that FNBB has refused to cooperate in attempts to arrive at a settlement which would benefit all creditors. TOC also argues that the bank took control while the bankruptcy court's order was still in the process of being appealed, frustrating TOC's ability to get meaningful relief. The unorthodox nature of FNBB's assumption of control, according to TOC, is underscored by the fact that the bank took control on March 25, 1981, and did not file an application for Commission consent until almost a week later, on March 31, 1981. TOC thus contends that the bank's transfer of control application should be designated for hearing. In the meantime, citing *Radio Corpus Christi*, 70 FCC 2d 1555 (1979), it argues that the Commission should issue a cease and desist order, requiring FNBB to relinquish control, and defer further action until all matters can be fully resolved. TOC also points out that the effectiveness of the bankruptcy court's order should be reviewed in light of the United States Supreme Court's decision in *Northern Pipeline Const. v. Marathon Pipe Line Co.*, 102 Sup. Ct. 2858 (1982), which found portions of federal bankruptcy law unconstitutional.

6. TOC additionally maintains that the present circumstances raise questions of whether FNBB has the basic qualifications to be a Commission licensee. TOC contends that the bank's submissions to the Commission contain serious misrepresentations. For example, it points out that FNBB represented in the 1971 loan agreements that Commission consent would be acquired prior to foreclosing on Telecasting's stock, yet the bank failed to do so. TOC also maintains that FNBB practiced deceit by failing to fulfill an offer of a settlement after TOC withdrew its appeal of a bankruptcy court decision. In addition, it contends that FNBB has improperly attempted to influence an applicant seeking a construction permit which would be mutually exclusive with an application for renewal of the WDHO-TV license.⁴ Furthermore, TOC accuses FNBB of not keeping the Commission fully apprised of all relevant circumstances since the operation of the licensee is now under the control of the bank's nominee. Such an alleged change in control, it contends, also required the submission of a "long form" application and the Commission's prior consent. TOC also alleges that the bank has not

⁴ FNBB has submitted an application seeking renewal of the WDHO-TV license. A separate license renewal application has also been filed by TOC which additionally challenges FNBB's license renewal application. These applications are mutually exclusive with other pending construction permit applications for WDHO-TV's frequency.

made a full disclosure regarding the citizenship and other business interests of its principals, information necessary to determine its qualifications. TOC additionally accuses FNBB of not fulfilling upon pledges to find a buyer for the station. Finally, TOC states that the bank delayed capital improvements in the facility, causing poor performance and a temporary loss of service. For all these reasons, TOC maintains that a substantial and material question of fact exists as to whether FNBB is qualified to operate the station.

7. FNBB opposes TOC's challenges to the bank's involuntary transfer of control application. FNBB argues that the matter should be treated as any normal involuntary transfer proceeding. It contends that the change in control took place as a matter of law, through the bankruptcy court's enforcement of the terms of the stock pledge agreement. It further argues that its application should be granted so as to avoid any appearance of a conflict between the Commission and the bankruptcy court. FNBB maintains that a grant would be consistent with the principles established in *La Rose v. FCC, supra*, which require administrative agencies to follow federal policies generally outside their areas of expertise, in order to assure their actions will serve the public interest. More specifically, it contends *La Rose* stands for the proposition that the Commission must accommodate the Bankruptcy Act in its decision, so as to protect the licensee's innocent creditors. It maintains that the Commission generally provides such accommodation by automatically authorizing an involuntary transfer of control upon a court's appointment of a receiver, trustee or debtor in possession. Moreover, it points out that TOC voluntarily submitted itself to the jurisdiction of the court when Telecasting was designated as a "debtor in possession" by that court. FNBB further argues that the court's order placing it in control was particularly important in the present case for three reasons. First, the court had found that TOC and other commonly owned companies were engaging in dishonest acts and attempting to defraud innocent creditors of Telecasting, which activities made it inappropriate that TOC remain in control. Second, under Ohio law, FNBB alleges it was entitled to acquire control under the stock pledge agreement because of the default on its loan. Third, it maintains that the court found the takeover of Telecasting to further the policies of the Bankruptcy Code by protecting the rights of the station's creditors, and that the public interest requires that such a policy be accommodated. The bank would also equate the positions of receiver, trustee and debtor in possession for the purposes of determining control under the Communications Act. Finally, FNBB contends that any further delay in granting the transfer would be harmful to the orderly administration of the Telecasting bankruptcy estate.

Discussion

8. At the outset, we note there is no objection to the grant of two

of the captioned applications (BALCT-810212KF and BALCT-810212KG). These uncontested involuntary assignment applications reflect the change of status of Telecasting from a debtor in possession under the New York Court to the same status under the Ohio Court. Consequently, they will be granted without further discussion so as to assure continuity with respect to the factual occurrences involved in this proceeding. As to TOC's challenge to FNBB's application for the involuntary transfer of control of Telecasting as a debtor in possession to the bank, the first issue presented is whether a grant of the application is warranted in view of alleged mistakes, illegalities and irregularities concerning the bankruptcy court's decision. The second concerns whether the Commission can find FNBB qualified to be a licensee based on the information before it. The remaining issues concern the appropriateness of filing a "short form" application rather than a "long form" and whether the bank violated the Communications Act by assuming control of the licensee without prior Commission consent.

9. As noted above, one objection of TOC to a grant of the bank's involuntary transfer application is on the grounds that the bankruptcy court made serious mistakes of fact and law in ordering the change in control of the licensee. Specifically, TOC claims that the underlying debt to FNBB was paid, making foreclosure on the pledged stock unnecessary; that it was not adequately represented at the bankruptcy hearing; and that the Supreme Court decision in *Northern Pipeline Const. v. Marathon Pipe Line Co.*, *supra*, made the Bankruptcy Court's order ineffective. With respect to these arguments, we have consistently held that the Commission will not generally question the appointment of a bankruptcy trustee or receiver where a court is seeking to protect the creditors of a financially disabled licensee. *E.g.*, *H. Edward Dillon, Receiver*, 42 FCC 2d 203 (1973). We have also held that private contractual disputes are more appropriately resolved by local courts of competent jurisdiction, because the Commission usually lacks the expertise, the resources and the jurisdiction to adjudicate such matters fully. *E.g.*, *Carnegie Broadcasting Co.*, 5 FCC 2d 882 (1966). *See also Regents v. Carroll*, 338 U.S. 586 (1950). In the case cited by TOC, *Granik v. FCC*, 234 F.2d 682 (D.C. Cir. 1956), the court held that parties who had contractual claims to the ownership of a licensed facility possessed standing to file petitions to deny assignment of license applications. The present circumstances, however, do not revolve around a question of standing. Rather, they present a question of what forum can best resolve the issue of whether a bankruptcy court's order was appropriate. We find that such disputes should be left to those tribunals which are specifically charged with reviewing such matters on appeal. Moreover, TOC has not demonstrated that a grant of the bank's application will prejudice its pursuit of appellate relief. The facility will continue to

be under the supervision of the bankruptcy court, which, if instructed by a higher court, can order, subject to the prior consent of the Commission, that control of the facility return to TOC. For these reasons, further inquiry on these matters is not warranted.

10. A second matter raised by TOC concerns whether FNBB possesses the requisite qualifications to be a licensee. With regard to this matter, we note that the Commission's review of an applicant's qualifications in the context of an involuntary transfer application, filed pursuant to the order of a bankruptcy court, is ordinarily limited to the information called for by the "short form" application, FCC Form 316. Under such circumstances, as opposed to proceedings where a new, fully independent licensee is being reviewed, the Commission is only considering a party who will be operating the facility on a temporary basis; *i.e.*, only until the bankruptcy estate is settled and a new licensee can be approved by the Commission. See *Gulf Coast Radio, Inc.*, 45 FCC 1865, 1866 (1965). Moreover, where an entity acquires control in a proceeding such as this, it is doing so only under the supervision of a court. In the present case, FNBB has shown the requisite qualifications to acquire control of TOC in the context of an involuntary, "short form" proceeding. First, neither TOC nor our review of the proceedings has revealed any facts which would raise questions concerning FNBB's candor. We find that the bank's actions and representations only reflect a good faith effort to pursue or protect its interest in the WDHO-TV facility. Consequently, further inquiry into this matter is inappropriate.⁵ We are also satisfied that FNBB meets the citizenship requirements imposed by the Act. First, FNBB has certified that it meets these requirements and TOC has failed to present any facts which dispute this representation.⁶ Moreover, FNBB has indicated that the three people it has placed in charge of the licensee are U.S. citizens.⁷ As a final matter, except for the issues surrounding the bank's alleged improper assumption of control, a matter which is discussed below, the only other facts alleged by TOC which might reflect on the bank's qualifications regard the charge that FNBB failed to make

⁵ On May 26, 1982, attorneys for TOC filed a motion to strike portions of FNBB's pleadings and a motion to censure the bank's attorney under Section 1.24 of the Commission's Rules. TOC's attorneys were responding to allegations regarding the appropriateness of certain legal fees paid by Telecasting to them while TOC was still in control of the licensee. They believed the allegations were personally derogatory. Upon review of the FNBB pleadings, we do not find the allegations in question to be scurrilous or otherwise sufficient to warrant granting the TOC motions.

⁶ This certification was contained in the pending renewal application for WDHO-TV which FNBB submitted on behalf of the licensee (BRCT-820601 VM).

⁷ Additionally, we find no merit to TOC's contention that an application should have been filed to transfer control from FNBB to its "nominees." It appears from the information before us that the "nominees" serve only as employees of the bank. Accordingly, no application was required to be filed.

necessary capital improvements in the WDHO-TV facility, which resulted in a temporary disruption of service. However, considering that the station was in the midst of a bankruptcy proceeding, any major expenditures could have been contrary to the interests of the station's creditors. Furthermore, even though the service was temporarily interrupted for one day, normal operations were quickly restored and TOC reports no further occurrence of such a loss of service. For these reasons, we do not find the incident raises a substantial question as to the bank's qualifications.⁸

11. The remaining TOC objections are that FNBB's use of a "short form" application, rather than a "long form," was inappropriate under the circumstances, and that FNBB violated Section 310(d) of the Communications Act by assuming control of the licensee before acquiring Commission consent. A "long form" transfer or assignment is appropriate where a new party will operate a station on a normal basis and we are thus required under the Act to allow a thirty-day period for public comment before determining whether the change in control would serve the public interest.⁹ See Sections 310 and 308 of the Act. "Short form" approval, in contrast, does not require a thirty-day waiting period and is used only where control is changed as a result of an involuntary court proceeding; the death of a principal; or where there is not a substantial change in ownership. See Section 309 of the Act; and Sections 73.3540 and 73.3541 of the Rules. Although TOC argues otherwise, the present circumstances involve an involuntary transfer necessitating the filing of only a "short form" application. FNBB took control upon the order of the bankruptcy court; it will only remain in control until a regular licensee is approved; and, while it holds control, it will be under the court's supervision. Furthermore, for purposes of the Communications Act, we find it inappropriate to accept TOC's proposition that distinctions should be made between court appointed agents, such as FNBB, and debtors in possession, trustees and receivers. While each designation has its own significance under federal bankruptcy law, they all represent essentially the same basic situation with regard to the control of a licensee; *i.e.*, in each case a licensee is not an independent entity, but subject to the control of a court appointed and supervised officer. Thus, when such an appointment is made or when the person holding the appointment is changed, involuntary, "short form" procedures apply.

12. We turn now to FNBB's alleged premature assumption of

⁸ It appears that TOC also questions FNBB's qualifications under our multiple ownership rules. However, the rules are not applied to involuntary, "short form," transfer situations. See Section 73.636 of the Commission's Rules, Note 8.

⁹ A "transfer of control" takes place where a new party acquires control of a corporate licensee through the purchase of a controlling stock interest in the licensee. An assignment takes place where there is a purchase of the station's assets and the license is assigned to the purchaser who then becomes the licensee.

control. Section 73.3541 of the Rules provides that in the event of the "legal disability" of a licensee, e.g., the appointment of a bankruptcy trustee or receiver, an application on FCC Form 316 (the "short form") will be filed requesting Commission consent to the involuntary transfer or assignment of the subject broadcast license. In the present case, such an application was filed within five days of the court's order placing FNBB in control. Thus, the bank acted promptly in filing its application under the requirements of the rule. What has prevented our prompt disposition of the application in this case has been the unusual maneuverings by FNBB and the Overmyer interests as to the proper court, and the filing of numerous pleadings contesting the involuntary transfer. The time needed to process those pleadings, however, is not a matter that reflects adversely on FNBB. We also note that the court ultimately found that TOC and other co-owned companies were engaged in numerous fraudulent arrangements, whereby funds owned by Telecasting to various creditors were being usurped for the benefit of a TOC principal, Daniel H. Overmyer. In fact, it appears from the court's decision, that these practices may have taken place until FNBB assumed control of the licensee in 1981. To quote from the court's opinion, "This Court has heard evidence of and witnessed fraudulent and deceitful manipulation of facts, corporate fictions and the court system. This Court has never encountered such a systematic distortion of truth and the legal system." *In re D. H. Overmyer Telecasting Co., Inc.*, 23 B.R. 823, 917 (Bkcty. N.D. Ohio E.D. 1982). It ultimately found that, based on misconduct between 1975 and 1981, Overmyer and his various companies were liable for an amount in excess of \$3,400,000, representing funds fraudulently conveyed from the licensee. 23 B.R. at 932-33.¹⁰

13. In *La Rose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974), the U.S. Court of Appeals for the District of Columbia Circuit reversed a Commission order which denied the license renewal application of a broadcast station operating under the control of a bankruptcy receiver. One point emphasized by the court was the need for the Commission to reconcile its policies under the Communications Act with those of other federal laws and statutes. 494 F.2d at 1146, note 2. Moreover, this same need for reconciliation is emphasized by the U.S. Supreme Court in *Radio Station WOW v. Johnson*, 326 U.S. 120, 132 (1945). In the present case, we are faced with a conflict between the efforts of a federal bankruptcy court to protect the interests of defrauded creditors and the enforcement of the prior consent requirements of Section 310(d) of the Act. Given this need for reconciliation and the extraordinary circumstances faced by FNBB,

¹⁰ The Court also found that all dealings between the licensee and either members of Overmyer's family or his companies since 1973 involved conduct defrauding FNBB.

we do not find the bank disqualified as a temporary operator of Station WDHO-TV because it took control of the station prior to receiving the consent of the Commission.¹¹

Conclusion

14. Accordingly, we find that TOC has failed to raise a substantial and material question of fact that a grant of the subject involuntary transfer application would not serve the public interest. Specifically, TOC has failed to raise any question that FNBB does not have the requisite qualifications to be a Commission licensee under an involuntary transfer proceeding. Moreover, we find that a grant of the application, under the circumstances, would, in fact, serve the public interest, convenience and necessity.¹²

15. Accordingly, IT IS ORDERED, That the application (BALCT-810212KF) seeking Commission approval for the assignment of the license of Station WDHO-TV from D. H. Overmyer Telecasting Co., Inc., debtor in possession under the United States Bankruptcy Court, Southern District of New York to D. H. Overmyer Telecasting Co., Inc., IS GRANTED.

16. IT IS FURTHER ORDERED, That the application (BALCT-810212KG) seeking Commission approval for the assignment of the license of Station WDHO-TV from D. H. Overmyer Telecasting Co., Inc., to D. H. Overmyer Telecasting Co., Inc., debtor in possession

¹¹ In so holding, we wish to emphasize that, as a general position, a receiver or trustee should await a grant of its application before assuming control of the station involved. Only the highly unusual circumstances of the present case warrant such a departure. We specifically reject FNBB's contention that it could assume control as a matter of law, through the court's enforcement of a stock pledge agreement.

¹² Daniel H. Overmyer was the controlling stockholder of TOC when most of the activities found to be fraudulent by the bankruptcy court took place. On January 29, 1979, an application (BTCTV-790129LC) was filed seeking Commission consent to the transfer of control of TOC, from Overmyer to Clark Television, Inc. The transferee was wholly owned by the Clark Trust of which Shirley C. Overmyer, the wife of Daniel H. Overmyer, was settlor and trustee, and of which their children were the beneficiaries. FNBB, who had not yet assumed control of the licensee, filed an informal objection to the transfer application alleging that the change in control was part of a course of action designed to evade or frustrate the legitimate claims of creditors. Nevertheless, in a letter dated February 19, 1981, from the Chief of the Broadcast Bureau's Renewal and Transfer Division to FNBB's attorney, the Commission denied the bank's objection and granted the transfer. The letter found that FNBB had failed to show how a grant of the transfer would prejudice the claims of creditors and stated further that the most appropriate means of pursuing such claims would be through a local court of competent jurisdiction. On March 18, 1981, FNBB filed a petition to stay the consummation of the transfer and a petition for reconsideration of the Commission order. As noted previously, a week later, on March 25, 1981, FNBB was ordered to assume control of the licensee by the bankruptcy court. Nonetheless, FNBB's petitions for stay and reconsideration are still pending. However, in light of the court's action and our own determinations in the current proceeding, we find FNBB's petitions are moot.

under the United States Bankruptcy Court, Northern District of Ohio, Eastern Division, IS GRANTED.

17. IT IS FURTHER ORDERED, That the petition for special relief filed by The Overmyer Company, IS DENIED.

18. IT IS FURTHER ORDERED, That the motion to strike and the motion to censure filed by The Overmyer Company, IS DENIED.

19. IT IS FURTHER ORDERED, That the informal objection of The Overmyer Company to the application for the involuntary transfer of control of D. H. Overmyer Telecasting Co., Inc., debtor in possession under the United States Bankruptcy Court, Northern District of Ohio, Eastern Division, from The Overmyer Company to the First National Bank of Boston, IS DENIED.

20. IT IS FURTHER ORDERED, That the application (BTC-810330KE) for the involuntary transfer of control of D. H. Overmyer Telecasting Co., Inc., debtor in possession under the United States Bankruptcy Court, Northern District of Ohio, Eastern Division, from The Overmyer Company to First National Bank of Boston, IS GRANTED.

21. IT IS FURTHER ORDERED, That the Mass Media Bureau shall send, by Certified Mail, Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties named herein.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, *Secretary*