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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 1, 1969

STANFORD LAW LIBRARY

AUG 14 1969

In the Matter of	:	
	:	
A.V.C. CORPORATION	:	
100 West Tenth Street	:	
Wilmington, Delaware 19801,	:	
U. S. COMMUNICATIONS CORPORATION	:	NOTICE OF AND ORDER FOR HEARING
1500 Walnut Street	:	ON APPLICATION PURSUANT TO
Philadelphia, Pennsylvania,	:	SECTION 6(c) FOR EXEMPTION FROM
	:	SECTION 17(e) AND PURSUANT TO
Butcher & Sherrerd	:	SECTION 17(b) FOR EXEMPTION
1500 Walnut Street	:	FROM SECTION 17(a)
Philadelphia, Pennsylvania,	:	
	:	
and	:	
	:	
Joseph L. Castle	:	
1500 Walnut Street	:	
Philadelphia, Pennsylvania	:	
	:	
(812-2320)	:	
	:	
Investment Company Act of 1940	:	

NOTICE IS HEREBY GIVEN that A.V.C. Corporation, a Delaware corporation ("AVC") registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, U. S. Communications Corporation, a Delaware corporation ("USCC") 70%-owned by AVC, Butcher & Sherrerd, a partnership ("B&S"), registered as a broker-dealer, and Joseph L. Castle ("Castle") a partner of B&S, have filed an application for an order: (1) pursuant to Section 6(c) of the Act exempting from the provisions of Section 17(e)(1) and (2) of the Act certain payments to B&S for its services in connection with the establishment of USCC and (2) pursuant to Section 17(b) of the Act exempting the issuance of 2000 shares of common stock of USCC and \$8,000 principal amount of its debentures to Castle in connection with the statutory merger of USCC and Philadelphia Television Broadcasting Company, a Pennsylvania corporation ("WPHL"), in which company Castle had owned stock. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

From May 1, 1967 until February 21, 1968, Mr. Howard Butcher, III ("Butcher") a general partner in B&S, served as a director of AVC.

In January of 1967, Mr. Daniel H. Overmyer ("Overmyer"), through contacts with Castle, who was then an employee of B&S (and since January 1, 1968 has been a partner of B&S) sought the aid of B&S in selling a portion of his warehouse interests. B&S advised Overmyer that financing through his warehouse interests would be less advantageous than some form of financing involving certain of Overmyer's television broadcasting interests in construction permits from the Federal Communications Commission ("FCC") for UHF broadcasting stations in five cities. Overmyer agreed, and B&S presented the matter to a few potential

purchasers before it offered the combined financing to AVC. AVC indicated interest and asked B&S to develop further information and analyses. B&S did so and also participated in the subsequent extensive negotiations between AVC and Overmyer which resulted in agreements whereby \$3,000,000 was to be loaned to Overmyer, and 80% of the stock of his companies owning the television interests was to be purchased by AVC for \$1,000,000. AVC also received a three year option to purchase Overmyer's remaining 20% interest in the television companies at a price to be computed pursuant to a formula up to \$3 million. It appears that the ceiling price will prevail.

Previous to their search for financing for Overmyer, B&S had been trying to obtain further financing for WPHL which was an independent UHF television station in Philadelphia that had been broadcasting for about two years.

B&S thought that a combination of WPHL with the Overmyer television companies under the control of AVC would be desirable since WPHL's experience and management would be of benefit to the Overmyer companies, and the combination would minimize supervisory and management expenses and achieve economies in purchasing and programming.

B&S and Castle assisted in the negotiations which took place between WPHL and AVC which resulted in the creation of USCC, a new company to which AVC assigned its rights under its agreement with Overmyer and into which WPHL would be merged. The stock of USCC would be owned 70% by AVC and 30% by the holders of WPHL stock and \$240,000 of USCC debentures would be issued to the former holders of WPHL preferred stock.

The merger agreement also obligated AVC to furnish certain additional financing for USCC in order to construct and equip the stations and meet initial operating deficits.

The Overmyer transactions and the WPHL merger could not be completed until the FCC had given its approval. In order to prepare the necessary FCC applications and to lay the groundwork for activities that would follow the closings, it was agreed that Castle would make the bulk of his time available to AVC, and to USCC upon its organization, to assist with these matters. Upon the formation of USCC on June 6, 1967, Castle became the Chairman of its Board of Directors and Chief Executive Officer. He remained as Chief Executive Officer until April 1968 and as Chairman of the Board until December 1968. It was understood that compensation for Castle's management services would be included in the fee finally paid to B&S for its services in connection with the transactions. For the six month period following Castle's termination as Chief Executive Officer, i.e., from May 1, 1968 through October 31, 1968, during which period Castle's duties were restricted to those as Chairman of the Board and to miscellaneous advisory services, B&S was paid \$1,000 per month on account of his services. Applicants claim that Castle's services to AVC and to USCC during the period from April 1967 to April 1968 were worth in excess of \$25,000.

The FCC approved the transaction on December 8, 1967. The closing of the Overmyer purchase was held on January 15, 1968 and the closing of the WPHL merger a week later, on January 22, 1968. In addition to the previously mentioned services, B&S also rendered services in connection with the procurement of additional financing for USCC.

Overmyer has paid B&S \$40,000 for its services, and AVC proposes to pay B&S \$100,000 for its services.

Insofar as they are pertinent here, Sections 17(e)(1) and (2) of the Act prohibit B&S, a partnership in which Butcher and Castle are partners, from

accepting from any source any compensation (other than a regular salary or wage from AVC) for the purchase or sale of any property to or for AVC or USCC during the period that Butcher and Castle were affiliated with AVC and USCC, except in the course of B&S's business as a broker, in which case its compensation is limited to 1%, unless the Commission by order in the public interest and consistent with the protection of investors permits a larger commission.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants represent that the fee is fair and reasonable and does not involve overreaching on the part of any person concerned.

At the time WPHL was merged into USCC, Castle owned 1.33 per cent of the common stock of WPHL consisting of 400 shares (200 of Class A and 200 of Class B), and also 400 shares of its \$20 par preferred stock. By operation of the merger, Castle's common stock of WPHL along with that of other WPHL stockholders was converted (on a 5 for 1 basis) into 2,000 shares of the common stock of USCC. Similarly, Castle's holdings of WPHL preferred stock were converted into \$8,000 of debentures of USCC.

Since Castle may be deemed to have been an affiliated person of USCC when the merger agreement between WPHL and USCC was executed, the exchange of Castle's stock in WPHL for securities of USCC, which is an affiliated person of AVC, may be considered a sale of property by an affiliated person of an affiliated person of an investment company to a company controlled by the investment company, which is prohibited by Section 17(a) of the Act unless the Commission exempts the transaction pursuant to Section 17(b) of the Act on finding that:

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and

(3) the proposed transaction is consistent with the general purposes of the Act.

Applicants apply pursuant to Section 17(b) for an exemption of the transaction from Section 17(a) if it should be deemed applicable.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the said application.

IT IS ORDERED, pursuant to Section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and the rules of the Commission thereunder be held on the 25th day of September 1969 at 10:00 a.m., in the offices of the Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person, other than the Applicants, desiring to be heard or otherwise wishing to participate in the proceeding is directed to file with the Secretary of the Commission, on or before the 23rd day of September

1969, his application pursuant to Rule 9(c) of the Commission's Rules of Practice. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses noted above, and proof of service (by affidavit, or, in the case of an attorney-at-law by certificate shall be filed contemporaneously with the request.

IT IS FURTHER ORDERED that any officer or officers of the Commission to be designated by it for that purpose shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under Sections 41 and 42(b) of the Act, and to a hearing officer under the Commission's Rules of Practice.

The Division of Corporate Regulation has advised the Commission that it has made a preliminary examination of the application, and that upon the basis thereof the following matters are presented for consideration without prejudice to its specifying additional matters upon further examination:

(1) Whether B&S, in connection with the Overmyer transaction and the WPHL-USCC merger, acted as a broker and if so whether its proposed compensation from any source for such services exceeds 1% of the purchase or sale price of the securities involved, and if it does whether it is in the public interests and consistent with the protection of investors to permit a larger commission.

(2) Whether in connection with the aforesaid transactions B&S acted as an agent but otherwise than in the course of its business as an underwriter or broker and if so whether it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to exempt the acceptance of compensation for such services by B&S from the provisions of Section 17(e); and

(3) Whether the exchange of securities of USCC for the securities of WPHL held by Castle is a transaction subject to Section 17(a) and if it is whether (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

IT IS FURTHER ORDERED that at the aforesaid hearing attention be given to the foregoing matters.

IT IS FURTHER ORDERED that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this Order by certified mail to the Applicants, and that notice to all persons shall be given by publication of this Order in the Federal Register, and that a general release of the Commission in respect of this Order be distributed to the press and mailed to the mailing list for releases.

By the Commission.

Orval L. DuBois
Secretary