

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)	
)	
INFORUM COMMUNICATIONS, INC.,)	
Assignor)	
)	
and)	File No. BALMD-20010718AAC
)	
TDI ACQUISITION CORPORATION,)	
Assignee)	
)	
For Assignment of Multipoint Distribution Service)	
(MDS) Stations KNSC300, KNSC798, and)	
WMI303, Sarasota, Florida, and of the Sarasota,)	
Florida BTA (MDB408))	

MEMORANDUM OPINION AND ORDER

Adopted: September 5, 2003

Released: September 9, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:¹

I. INTRODUCTION

1. On July 18, 2001, Inforum Communications, Inc. (Inforum) filed an application seeking Commission consent to assign the licenses for Multipoint Distribution Service (MDS) Stations KNSC300, KNSC798, and WMI303, Sarasota, Florida and the Sarasota, Florida Basic Trading Area (BTA) Authorization (MDB408) to TDI Acquisition Corporation (TDI).² On August 31, 2001, Paradise Cable, Inc. (Paradise) filed a Petition to Deny the application.³ For the reasons discussed below, we dismiss the Petition.

¹ Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass-Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

² FCC File No. BALMD-20010718AAC (filed July 18, 2001) (Application). On August 3, 2001, the application was accepted for filing. *See Public Notice*, Report No. 460 (Aug. 3, 2001).

³ Paradise Cable, Inc., Petition to Deny (filed Aug. 31, 2001) (Petition).

II. BACKGROUND

2. As of January 1, 1998, Paradise was the licensee of MDS Stations KNSC300, KNSC798, and WMI303, Sarasota, Florida and the holder of the Sarasota, Florida BTA authorization. Cable Corporation of America (CCA) was the parent company and sole shareholder of Paradise.⁴ John C. Hill was the President of both CCA and Paradise.⁵

3. On March 16, 1998, creditors initiated an involuntary Chapter 7 bankruptcy proceeding against CCA in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (Case No. 98-42078B1) (the Bankruptcy Court).⁶ CCA voluntarily converted the bankruptcy proceeding into a Chapter 11 reorganization on April 14, 1998. On November 17, 1998, Inforum,⁷ CCA, and the Official Committee of Unsecured Creditors (the Committee) drafted a Plan Term Sheet memorializing an agreement whereby Inforum would purchase the subject licenses and the parties would propose that the Bankruptcy Court tailor a confirmed plan of reorganization to reflect the arrangement.⁸ On November 30, 1998, Paradise, CCA, and Inforum entered into a Channel Lease Agreement with an option for Inforum to purchase the subject stations.⁹ The Bankruptcy Court subsequently approved the Channel Lease Agreement.

4. Pursuant to the Plan Term Sheet, Inforum filed the Disclosure Statement and the Creditors' Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code for Cable Corporation of America (Creditors' Plan) on February 1, 1999. The Bankruptcy Court approved the Disclosure Statement on March 9, 1999.¹⁰ On May 12, 1999, the Bankruptcy Court approved the

⁴ *See id.*

⁵ *See Hill v. Inforum Communications, Inc. (In re Cable Corporation of America)* (Bk. Case No. 98-04207-8B1), *Order on Appeal*, No. 8:02-CV-806-T-17-MAP (M.D.FL. Oct. 29, 2002) (*Hill v. Inforum*).

⁶ *See Official Committee of Unsecured Creditors v. SkyLynx Communications, Inc. (In re Cable Corporation of America)* (No. 98-04207-8B1), *Order on Final Evidentiary Hearing*, Adv. No. 00-112 (Bankr. M.D.FL. Oct. 2, 2002) (*Order*).

⁷ At that time, Inforum was operating under the name SkyLynx Communications, Inc. (SkyLynx). We hereinafter refer to SkyLynx and Inforum interchangeably.

⁸ *See* Inforum Opposition, Exhibit B (Plan Term Sheet). The Plan Term Sheet was signed by the parties on December 18, 1998. *See id.* Mr. Hill signed the document on behalf of both CCA and Paradise. *See id.*

⁹ At this time, CCA became unable to continue doing business. Pursuant to the Channel Lease Agreement, Inforum funded operations pending the filing and confirmation of a plan of reorganization. *See Hill v. Inforum* at 2.

¹⁰ *See Hill v. Inforum* at 3.

Creditors' Plan, as amended.¹¹ On June 2, 1999, the Bankruptcy Court denied a Motion for Reconsideration of the Confirmation Order.¹² No appeal was taken.¹³

5. On the effective date of the Confirmation Plan, June 3, 1999, Inforum executed the delivery of 100,000 shares of SkyLynx Pool A Stock and 20,000 shares of SkyLynx Pool B Stock.¹⁴ CCA and Paradise executed and delivered to SkyLynx a Bill of Sale and Equipment Lease on the same date.¹⁵ In addition, the Channel Lease Agreement became final on the effective date.¹⁶ The Confirmation Plan also provided for certain transactions to occur subsequent to that date to effectuate the actual assignment of the licenses to Inforum.¹⁷

6. On July 9, 1999, Paradise applied for Commission consent to assign the subject licenses to Inforum.¹⁸ The application was accepted for filing on July 28, 1999.¹⁹ No comments or objections to the application were filed. The Commission granted the application on October 6, 1999.²⁰ Pursuant to the Commission's Rules, the parties had until November 20, 1999 to consummate the transaction. Inforum thereafter submitted a number of requests to extend the consummation deadline.²¹ On August 18, 2000, the

¹¹ See *Order* at 2. We hereinafter refer to the plan, as confirmed by the Bankruptcy Court on May 12, 1999, as the Confirmation Plan or the Confirmed Plan.

¹² See *Order* at 3. The motion sought a rehearing to allow sufficient time for Sprint Corporation (Sprint) to submit a formal proposal and to explore other possible bids for the assets of the bankrupt estate. See *Hill v. Inforum* at 4. The Bankruptcy Court found the motion to be without merit. See *id.*

¹³ See *Order* at 3. Although no appeal was taken, various parties-in-interest, including Mr. Hill, subsequently sought to have the Confirmation Order revoked or rescinded in the federal courts. The Confirmation Order has been upheld in each instance against such challenges. See generally *Hill v. Inforum* at 8-12.

¹⁴ See *Hill v. Inforum* at 4. On June 4, 1999, the Bankruptcy Court approved a Disbursing Agent. See *id.*

¹⁵ See *Hill v. Inforum* at 4. Mr. Hill signed the Bill of Sale and Equipment Lease. Despite this fact, the Petition alleges that "no officer of Paradise ever executed any document in the nature of a bill of sale effectuating the assignment of the licenses to Inforum." Petition at 9.

¹⁶ See *Hill v. Inforum* at 4. Mr. Hill signed the Channel Lease Agreement. Pursuant to the Channel Lease Agreement, Inforum continued to assume the obligations and pay the debt owed to the Commission with regard to the subject licenses, including those due under an Installment Payment Note (Note) made in the original amount of \$923,440.00. See *Hill v. Inforum* at 4.

¹⁷ See *Hill v. Inforum* at 4. The execution of the Commission's Assignment and Assumption of Installment Payment Plan Note and Security Agreement for Multipoint and/or MultiChannel Distribution Service (MMDS) ("Assumption Agreement") was one such transaction. See *id.*

¹⁸ See FCC File No. BMDAL-990709XV (filed July 9, 1999) (1999 Application). Mr. Hill signed the application on behalf of Paradise.

¹⁹ *Public Notice*, Report No. D-1056 (July 28, 1999).

²⁰ *Public Notice*, Report No. 115 (Oct. 6, 1999).

²¹ Specifically, Inforum filed extension requests with the Video Services Division of the Mass Media Bureau (Division) on November 17, 1999; December 29, 1999; February 2, 2000; March 28, 2000; May 15, 2000; June 30, 2000; and August 15, 2000. The Division granted the requests, respectively, by letters, dated November 30, (continued....)

parties executed the Assumption Agreement²² and forwarded it to the Commission. On October 27, 2000, the Commission was notified that, once it countersigned the Assumption Agreement, “the transaction will be consummated in all respects.”²³ The Commission countersigned the Assumption Agreement on November 7, 2000.²⁴ By letter, dated November 8, 2000, Inforum confirmed receipt of the document.²⁵ No party sought reconsideration of the Commission’s actions with regard to the transaction. On November 16, 2000, Inforum delivered a copy of the Assumption Agreement and the remaining 100,000 shares of stock to the Disbursing Agent.²⁶

7. As discussed below, three federal courts have found that the above acts resulted in the substantial consummation of the Confirmed Plan and have therefore rejected attempts to revoke or rescind the Confirmation Order. Specifically, the Bankruptcy Court,²⁷ the United States District Court for the Middle District of Florida, Tampa Division (District Court),²⁸ and the United States Court of Appeals for the Eleventh Circuit (Eleventh Circuit)²⁹ have issued opinions to that effect. As recently noted by the District Court, “[i]n each of these attempts the Bankruptcy Court, the District Court and/or the Eleventh Circuit . . . , as each may apply, determined that the confirmation of the plan could not and/or should not

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1999; December 29, 1999; February 14, 2000; March 29, 2000; May 16, 2000; July 5, 2000; and August 23, 2000 (thereby extending the consummation deadline to October 1, 2000). We note that counsel representing Paradise before the Commission in this proceeding was served with a copy of each extension request. *See also Order* at 10, n.3 (noting that Paradise’s counsel was copied on all of the extension requests). The Commission thereafter waived the October 1 deadline on its own motion. *See Letter from Sharon Bertelsen, Supervising Attorney, MDS Section, Video Services Division, Mass Media Bureau, FCC, to Howard J. Barr, Esq., Pepper & Corazzini, LLP (dated November 7, 2000).* Paradise’s counsel was served with a copy of the letter and failed to file any objection to the Commission’s action.

²² The Assumption Agreement was signed by Mr. Jeffrey Mathis, as President and CEO of Inforum, on behalf of the assignor and by Mr. David H. Roberts, as Director of Paradise, on behalf of the assignee.

²³ Letter from Howard J. Barr, Esq., Pepper and Corazzini, LLP, to Magalie Roman Salas, Secretary, FCC (Oct. 27, 2000) (Consummation Notice). Mr. Barr and his firm represent Inforum in this proceeding.

²⁴ As noted above, the Commission waived the October 1 deadline on its own motion. *See Letter from Sharon Bertelsen, Supervising Attorney, MDS Section, Video Services Division, Mass Media Bureau, FCC, to Howard J. Barr, Esq., Pepper & Corazzini, LLP (dated November 7, 2000).* Paradise’s counsel was served with a copy of the letter and failed to file any objection to the Commission’s action.

²⁵ Letter from Howard J. Barr, Esq., Pepper and Corazzini, LLP, to Magalie Roman Salas, Secretary, FCC (dated Nov. 8, 2000; filed Nov. 9, 2000).

²⁶ *See Order* at 8; *Hill v. Inforum* at 5. Specifically, Inforum delivered 100,000 shares of SkyLynx Pool A Stock. *See Order* at 8.

²⁷ *See, e.g., Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (No. 98-04207-8B1)), Order on Defendant’s Motion for Summary Judgment*, Adv. No. 99-591 (Bankr. M.D.FL. Dec. 23, 1999).

²⁸ *See, e.g., Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (BK No. 98-04207-8B1)), Order on Appeal*, Docket No. 39 (Adv. No. 99-591) (M.D.FL. Feb. 9, 2001) (affirming summary judgment in favor of SkyLynx).

²⁹ *See Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (BK No. 98-04207-8B1)), Judgment*, Docket No. 40 (Adv. No. 99-591) (11th Cir. Ct. App. July 6, 2001) (dismissing appeal as moot).

be undone. Most importantly, the 11th Circuit determined that the Plan had been substantially consummated and judicial relief was no longer a viable option.³⁰ In its most recent decision, the District Court reiterated that “[t]he Confirmation Order was entered by a court of competent jurisdiction, the Bankruptcy Court, in accordance with due process.”³¹ The District Court therefore emphasized that “[n]o challenge to the Bankruptcy Court’s jurisdiction over the confirmation of the Plan has been, or could be, asserted.”³²

8. On July 18, 2001, Inforum filed the instant application seeking Commission consent to assign the subject licenses to TDI.³³ The application was accepted for filing on August 3, 2001.³⁴ On August 31, 2001, Paradise opposed the application.³⁵ Responsive pleadings were thereafter filed by Inforum, TDI, and Paradise.³⁶

III. DISCUSSION

9. In the Petition, Paradise contends that the prior assignment of the subject licenses from Paradise to Inforum was invalid. The Petition asserts that Inforum failed to fulfill its obligations under the Confirmed Plan because it allegedly “delayed tendering to the CCA shareholders the stock called for by the Court-approved reorganization plan for eleven months.”³⁷ As such, Paradise avers that “Mr. Hill and the other true officers of Paradise” would never have executed the Assumption Agreement or “a bill of sale effectuating the assignment of the licenses to Inforum . . . unless and until Inforum met its obligations under the [Confirmed] Plan. . . .”³⁸ Rather, according to the Petition, the Assumption

³⁰ *Hill v. Inforum* at 6.

³¹ *Hill v. Inforum* at 12.

³² *Id.*

³³ *See* Application.

³⁴ *See Public Notice*, Report No. 460 (Aug. 3, 2001).

³⁵ *See* Petition.

³⁶ *See* Inforum Communications, Inc., Opposition to Petition to Deny (filed Sept. 27, 2001) (Inforum Opposition); TDI Acquisition Corp., Opposition to Petition to Deny (filed Sept. 27, 2001) (TDI Opposition); Paradise Cable, Inc., Consolidated Reply to Oppositions (filed Oct. 16, 2001). As we herein dismiss the Petition, all related responsive pleadings are also dismissed. We note, however, that nearly two months after the close of the pleading cycle, Inforum filed a ten page “Response” on December 4, 2001. *See* Inforum Communications, Inc., Response (filed Dec. 4, 2001). Thereafter, Inforum, TDI, and Paradise filed a substantial number of additional briefs, often introducing new arguments that were not previously raised by the parties in their prior filings. *See, e.g.,* We find that the briefs were untimely filed outside the pleading cycle permitted by the Commission’s Rules. *See* 47 C.F.R. § 1.45. We deny the parties leave to file such pleadings. We further note that, even if we were to grant the parties’ leave to file additional responsive pleadings, parties may not thereby take such leave as an invitation to raise new issues unless specifically permitted to do so. However, as noted below, we will take official notice of pertinent court opinions attached to certain pleadings.

³⁷ Petition at 2.

³⁸ Petition at 9.

Agreement was fraudulently signed on behalf of Paradise, as the assignor, by Mr. Roberts.³⁹ In this connection, Paradise argues that Mr. Roberts is neither an officer nor a director of Paradise. Further, Paradise states that it “was totally unaware that this document had been signed by someone on its behalf and without any authorization.”⁴⁰ It also contends that Inforum failed to timely file the Consummation Notice and to serve Paradise with a copy.⁴¹ Moreover, Paradise asserts that consummation of the assignment could not have occurred prior to the payment of the outstanding arrearage owed on its installment note.⁴² Paradise therefore requests that the Commission, based on the above, declare Paradise to be the actual licensee of the subject licenses.

10. We note that Mr. Hill and other parties-in-interest have unsuccessfully raised similar issues, including those alleging fraud due to the fact that Mr. Roberts signed the Assumption Agreement on behalf of Paradise, in seeking to undo the transaction in federal court.⁴³ Indeed, common facts form the basis for both the instant Petition before the Commission and the various claims asserted by Mr. Hill and other parties-in-interest in federal court. Paradise expressly recognized this when it filed its Petition with the Commission. Paradise conceded that it “will not address those circumstances at any length because the fraud on the Bankruptcy Court is a matter which is now within the Court’s [sic].”⁴⁴ While there are issues of regulatory and communications law that are unique to the Commission, questions as to consummation of assignment, timeliness, fraud, and finality, for example, all rest on common facts which were raised before and decided by the Bankruptcy Court. The District Court emphasized that, despite Mr. Hill’s assertions to the contrary, the Bankruptcy Court, the District Court, and the Eleventh Circuit have already considered and rejected such arguments.⁴⁵

11. Three federal courts have confirmed, after careful consideration of the same facts presented before the Commission, that the actions taken by the parties in this matter resulted in the substantial consummation of the Confirmed Plan and have therefore rejected attempts to revoke or rescind the Confirmation Order.⁴⁶ In its most recent decision, the District Court reiterated that “[t]he

³⁹ Petition at 4. The Petition specifically states that “no officer of Paradise ever executed any document in the nature of a bill of sale effectuating the assignment of the licenses to Inforum.” Petition at 9.

⁴⁰ Petition at 4.

⁴¹ *Id.*

⁴² Petition at 5.

⁴³ *See, e.g., Hill v. Inforum* at 5-12.

⁴⁴ Petition at 2.

⁴⁵ *See Hill v. Inforum* at 10. The District Court specifically noted, for example, that allegations of fraud based on Mr. Roberts’ signature on the Assumption Agreement were previously raised before and found unpersuasive by the Bankruptcy Court, the District Court, and the Eleventh Circuit. *See id.* We find nothing in the record to support the Petition’s assertion that Mr. Roberts lacked legal authority to sign the Assumption Agreement on behalf of Paradise. Specifically, the record shows that when Mr. Roberts signed the Assumption Agreement, he was a director of Paradise and had full authority to execute any documents necessary to effectuate the Confirmed Plan. *See Inforum Opposition*, Exhibits H and I.

⁴⁶ *See Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (No. 98-04207-8B1)), Order on Defendant’s Motion for Summary Judgment*, Adv. No. 99-591 (Bankr. M.D.FL. Dec. 23, 1999); *Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (BK No. 98-04207-8B1)), Order on* (continued....)

Confirmation Order was entered by a court of competent jurisdiction, the Bankruptcy Court, in accordance with due process.”⁴⁷ The District Court therefore emphasized that “[n]o challenge to the Bankruptcy Court’s jurisdiction over the confirmation of the Plan has been, or could be, asserted.”⁴⁸ Under the particular circumstances of this proceeding, and as explained below, it would be inappropriate for us to address the same underlying factual matters considered by the federal courts.

12. To the extent that Paradise addresses the assignment of the subject licenses from Paradise to Inforum, this proceeding is not the proper forum for challenging that assignment. We note that Paradise had actual notice, at the very latest, on December 8, 2000 of the facts that formed the basis for its allegations and that the assignment had been consummated.⁴⁹ If Paradise had intended to request relief from the Commission with respect to the Paradise-Inforum assignment, it should have promptly filed a request for relief with the Commission as soon as it discovered the facts that formed the basis for its request for such relief. Despite the above, Paradise did not request relief from the Commission. In fact, Mr. Hill, former President of Paradise, only noted his objections, in writing, to the assignment of the subject licenses from Paradise to Inforum in a letter to Commission staff dated August 20, 2001 – over eight months after Paradise indisputably could have requested relief from the Commission.⁵⁰ Paradise has never previously sought any sort of relief from the Commission with respect to the first assignment. Moreover, we do not need to address whether Paradise would have been entitled to relief from the Commission if it had requested such relief. Rather, Paradise sought relief from the federal courts instead of the Commission. Having chosen to pursue its claim in federal court, it may not seek relief from the Commission challenging the result reached by the courts. We therefore dismiss the Petition as untimely to the extent that it raises issues with respect to the Commission’s consent to that assignment.

13. The Petition asserts that the pending application to assign the licenses from Inforum to TDI is defective.⁵¹ We find that the petitioner lacks standing to file a petition to deny against the pending application to assign the subject licenses from Inforum to TDI. Section 309(d)(1) of the Communications Act, as amended, permits any “party in interest” to file a petition to deny any application.⁵² To establish standing, a petitioner must show “(1) a distinct and palpable personal injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested.”⁵³ The petitioner bases standing

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Appeal, Docket No. 39 (Adv. No. 99-591) (M.D.FL. Feb. 9, 2001); *Hansen v. SkyLynx Communications, Inc. (In re Cable Corporation of America (BK No. 98-04207-8B1))*, *Judgment*, Docket No. 40 (Adv. No. 99-591) (11th Cir. Ct. App. July 6, 2001).

⁴⁷ *Hill v. Inforum* at 12.

⁴⁸ *Id.*

⁴⁹ See Hill Letter at 1 (“You may recall how shocked I was in our phone conversation on December 8, 2000 when you told me the Transfer was complete and how I objected that no one had asked me to sign the Assumption Agreement.”)

⁵⁰ Letter from John C. Hill, President, Paradise Cable, Inc., to Stephen Svab, Attorney, FCC (dated Aug. 20, 2001) (Hill Letter). The Hill Letter is referenced in and attached to the Petition.

⁵¹ See Petition at 6.

⁵² 47 U.S.C. § 309(d)(1).

⁵³ See Weblink Wireless, Inc., *Memorandum Opinion and Order*, DA 02-3377 (WTB rel. Dec. 6, 2002) at ¶ 11.

upon the contention that Paradise is, in fact, the actual licensee of the subject stations. As noted above, we believe that the Petition is in fact an untimely attempt to seek reconsideration of the assignment of the subject licenses from Paradise to Inforum. Denial of the instant assignment application would not provide Paradise with the relief it seeks because Inforum would remain as the licensee of the stations.⁵⁴ Therefore, Paradise lacks any standing to file the instant Petition. We therefore dismiss the Petition for lack of standing to the extent that Paradise seeks to challenge the instant application to assign the subject licenses from Inforum to TDI.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and Section 21.30 of the Commission's Rules, 47 C.F.R. § 21.30, the Petition to Deny filed by Paradise Cable, Inc., on August 31, 2001 **IS DISMISSED**.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁵⁴ On August 1, 2001, the license automatically cancelled pursuant to Section 1.2110(g)(4) of the Commission's Rules. *See* 47 C.F.R. § 1.2110(g)(4). On October 30, 2001, Inforum filed a petition for reconsideration and a waiver request for late acceptance of BTA installment payment that remains pending before the Commission. *See* Inforum Communications, Inc., Petition for Reconsideration and Waiver Request for Late Acceptance of BTA Installment Payment (dated Oct. 30, 2001). The instant *Memorandum Opinion and Order* does not address or resolve the issues raised by Inforum therein.