

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

In the Matter of
Applications to Transfer Control of Licenses from
Robert F. Broz to William B. Calcutt
File Nos. 0001653360, 0001653396, 0001653424,
0001653450, 0001653472, and 0001689365

ORDER

Adopted: May 13, 2005

Released: May 13, 2005

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us applications for the involuntary transfer of control of licenses held by Alpine-Michigan E, LLC, Debtor-in-Possession ("Alpine-Michigan E, DIP"), Alpine-Michigan F, LLC, Debtor-in-Possession, Alpine-Fresno C, LLC, Debtor-in-Possession ("Alpine-Fresno C DIP"), Alpine-Hyannis F, LLC, Debtor-in-Possession, Alpine-California F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession ("RFB Cellular DIP," and collectively, the "Debtors") from Robert F. Broz ("Broz") to William B. Calcutt, as Receiver ("Calcutt").

1 Application of Alpine-Michigan E, LLC, Debtor-in-Possession, File No. 0001653360 (filed Mar. 4, 2004, amended June 29, 2004, Apr. 28, 2005); Application of Alpine-Michigan F, LLC, Debtor-in-Possession, File No. 0001653396 (filed Mar. 4, 2004, amended Apr. 28, 2005); Application of Alpine-Hyannis F, LLC, Debtor-in-Possession, File No. 0001653424 (filed Mar. 4, 2004, amended Apr. 28, 2005); Application of Alpine-Fresno C, LLC, Debtor-in-Possession, File No. 0001653450 (filed Mar. 4, 2004, amended June 29, 2004, Apr. 28, 2005); Application of Alpine-California F, LLC, Debtor-in-Possession, File No. 0001653472 (filed Mar. 4, 2004, amended Apr. 26, 2005); Application of RFB Cellular, Inc., Debtor-in-Possession, File No. 0001689365 (filed Mar. 19, 2004, amended Mar. 22, 2005, Apr. 20, 2005, Apr. 25, 2005) (collectively, "Applications").

2 Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC (May 5, 2004).

3 Supplement to Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC (May 18, 2004).

4 47 U.S.C. § 310(d).

II. BACKGROUND

2. Alpine–Michigan E, LLC, Alpine–Michigan F, LLC, Alpine–Fresno C, LLC, Alpine–Hyannis F, LLC, Alpine–California F, LLC, and RFB Cellular, Inc. (“Alpine Licensees”) are licensees, controlled by Broz, which hold C- and F-block broadband Personal Communications Services (“PCS”) licenses in parts of California, Massachusetts, and Michigan, and cellular and ancillary microwave licenses in parts of Michigan (“Licenses”).⁵ On August 5, 2003, the Alpine Licensees filed voluntary petitions for bankruptcy relief under Chapter 11 of the Bankruptcy Code (“Chapter 11”),⁶ in the United States Bankruptcy Court Central District of California, Northern Division (“Bankruptcy Court”).⁷ Pursuant to the Commission’s rules,⁸ involuntary applications were filed on September 4, 2003 to assign the Licenses from the Alpine Licensees to the Debtors.⁹ The Commission granted these involuntary applications on October 1, 2003.¹⁰ Broz remained in control of the Debtors after the Chapter 11 filing and involuntary assignment of licenses.¹¹ Broz also controls the Alpine Petitioners, which claim to have an investment in the Debtors.¹²

3. On January 5, 2004, the Bankruptcy Court ordered relief from the Chapter 11 automatic stay to permit the creditors of the Debtors, CoBank ACB (“CoBank”), GSC Partners Gemini Fund Limited, National City Bank, CIT Lending Services Corporation (“CIT”), and Key Corporate Capital, Inc. (collectively, the “Banks”),¹³ to pursue the appointment of a receiver in state court.¹⁴ The Banks filed a receivership action in the Circuit Court for the County of Otsego, Michigan (“Michigan Court”) and, on February 3, 2004, the Michigan Court entered an order approving the request of the lenders to appoint Calcutt as the receiver with respect to the stock or membership interests of the Debtors that were controlled by Broz.¹⁵ The Michigan Court granted to Calcutt the right to exercise all voting, consent, and

⁵ See Applications at 1.

⁶ 11 U.S.C. §§ 1101 *et seq.*

⁷ See Statement of Licensee Debtors-in-Possession, filed by RFB Cellular, Inc., Alpine–Fresno C, LLC, Alpine–Michigan E, LLC, Alpine–Michigan F, LLC, and Alpine–Hyannis F, LLC, Debtors and Debtors in Possession, at 2 (May 27, 2004) (“Statement of Debtors”).

⁸ See 47 C.F.R. §§ 1.948(c)(2), (g), 24.839(a)(4).

⁹ Application Assigning Licenses from Alpine–Fresno C, LLC to Alpine–Fresno C, LLC, Debtor-in-Possession, File No. 0001440052 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–Hyannis F, LLC to Alpine–Hyannis F, LLC, Debtor-in-Possession, File No. 0001440069 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–Michigan E, LLC to Alpine–Michigan E, LLC, Debtor-in-Possession, File No. 0001440082 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–Michigan F, LLC to Alpine–Michigan F, LLC, Debtor-in-Possession, File No. 0001440104 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–California F, LLC to Alpine–California F, LLC, Debtor-in-Possession, File No. 0001440119 (filed Sept. 4, 2003); Application Assigning Licenses from RFB Cellular, Inc. to RFB Cellular, Inc., Debtor-in-Possession, File No. 0001440130 (filed Sept. 4, 2003) (collectively, “DIP Applications”).

¹⁰ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1631 (rel. Oct. 8, 2003).

¹¹ See DIP Applications, Exhibit A at 1; *see also* Alpine PCS, Inc., Form 602, Schedule A (filed Oct. 28, 2003) (“Alpine PCS Form 602”).

¹² See Petition at 4.

¹³ See *id.* at 5 n.10; *see also* Motion to Strike or, in the Alternative, Request for Leave to File Substantive Response filed by William B. Calcutt at 2 n.1 (“Motion to Strike”).

¹⁴ In re: Robert F. Broz, No. ND 03-12189-RR (Bankr. Ct. Cent. D. Ca. Jan. 8, 2004); Motion to Strike at 3.

¹⁵ CoBank, ACB v. RFB Cellular, Inc., et al., Order Appointing Receiver, File No. 03-10334-CH, at 2 (Cir. Ct. Cty Ostego Feb. 3, 2004) (“Receivership Order”), *available at* Motion to Strike, Exhibit A. *See also* Statement of (continued...)

approval rights with respect to the stock or membership interests of the Debtors.¹⁶ The Michigan Court authorized Calcutt to file the Applications with respect to the involuntary transfer of control from Broz to Calcutt, as Receiver, and allowed Calcutt to take possession of the Universal Licensing System (“ULS”) passwords from Broz so that the required applications could be filed with the Commission.¹⁷ The Debtors manually filed involuntary applications, dated March 3, 2004, reporting the transfer of control of Licenses to Calcutt, as Receiver.¹⁸ The Applications were submitted with a request for waiver of the electronic filing requirement,¹⁹ which explains that it was necessary to file the Applications manually because, as of March 3, 2004, Broz had not provided to Calcutt the passwords needed to file on ULS in time for the applications to be timely filed.²⁰ Calcutt appears to have received the passwords on March 4, 2004, the same day the Applications were required to be filed with the Commission.²¹ The Applications also include a request for waiver of the restriction on the transferability of closed bidding licenses.²² On March 5, 2004 and March 15, 2004, Mellon Bank returned to Calcutt the application filed by one of the Debtors, RFB Cellular, for correction of minor technical defects.²³

4. On May 5, 2004, the Alpine Petitioners filed the Petition requesting that the subject Applications transferring control of the Debtors from Broz to Calcutt be denied or designated for hearing.²⁴ The Alpine Petitioners generally allege that grant of the subject Applications is not in the public interest because Calcutt and the Banks do not have the requisite character to be Commission licensees.²⁵ They further argue that the Applications (1) do not demonstrate whether the Debtors are qualified to be licensees, (2) were inappropriately filed as *pro forma* applications, and (3) are premature because the order approving the transfer of control to Calcutt, as receiver, is not final.²⁶ The Alpine Petitioners filed the Supplement to Petition, dated May 18, 2004, to provide additional information about further alleged

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Debtors at 2; Motion to Strike at 1, 3; Applications, Exhibit B at 1; Applications, Exhibit C at 1-2. For the purpose of citing to Exhibit B of the Applications and as Exhibit B is substantively similar in all of the Applications, the page citations conform with Exhibit B in the Alpine-Michigan E, LLC, Debtor-in-Possession application (File No. 0001653360).

¹⁶ See Receivership Order at 4; *see also* Statement of Debtors at 2. The Receiver appointed Bruce C. Conklin, Jr. (“Conklin”) as the sole managing member of the board of directors for each of the Debtors, subject to approval of the Bankruptcy Court. See Statement of Debtors at 2. The Bankruptcy Court approved the motion to appoint Conklin on March 15, 2004, stripping Robert Broz and Kimberly Broz of the positions as Chief Executive Officer and Chief Operating Officer. See *id.* at 2-3. The Bankruptcy Court appointed Conklin and Craig T. Sheetz (“Sheetz”) as the Chief Responsible Officer and Chief Operating Officer, respectively. See *id.* at 3. Conklin and Sheetz have negotiated with third parties for the sale of the Debtors’ assets. See *id.* at 3-4.

¹⁷ See Receivership Order at 6; *see also* Applications, Exhibit B at 1; Motion to Strike at 5-6.

¹⁸ See Applications at 1; *see also* Motion to Strike at 6. One application has a filing date of March 19, 2004. See Application of RFB Cellular, Inc., Debtor-in-Possession, ULS File No. 0001689365 (filed Mar. 19, 2004); *see also infra* text accompanying note 23 and para. 14.

¹⁹ See 47 C.F.R. § 1.913(b).

²⁰ See Applications, Exhibit A at 1; *see also* Motion to Strike at 6.

²¹ See *id.* at 6-7; *see also* E-mail from Bob Broz to Bill Calcutt, dated March 4, 2004, *available at* Petition, Exhibit II at 1.

²² See 47 C.F.R. § 24.839(a), (a)(4); *see also* Applications, Exhibit B, at 1.

²³ See Motion to Strike at 7.

²⁴ Petition at 2.

²⁵ See *id.* at i, 5-10.

²⁶ See Petition at 10-11.

misrepresentations in support of their argument that the subject Applications should not be granted.²⁷ In response, the Debtors filed a Motion to Strike or, in the Alternative, Request for Leave to File Substantive Response, dated May 18, 2004;²⁸ a Statement of Licensee Debtors-in-Possession, dated May 27, 2004;²⁹ and a Reply to Supplement to Petition to Deny, dated May 28, 2004.³⁰

III. PROCEDURAL ISSUES

5. The Debtors argue that the Petition should be dismissed as an unauthorized pleading under section 1.939 of the Commission's rules.³¹ Pursuant to section 1.939 of the Commission's rules, a petition to deny may be filed against "any application listed in a Public Notice as accepted for filing."³² However, involuntary assignments and transfers of control are expressly excluded from the requirement to be placed on public notice as accepted for filing.³³ Moreover, section 1.939 of the Commission's rules implements section 309 of the Communications Act.³⁴ Section 309(b) of the Communications Act lists those applications that need to appear on public notice;³⁵ however, the Communications Act explicitly excludes some applications from this requirement, including applications for "involuntary assignment."³⁶ Furthermore, the Communications Act says that any "party in interest may file with the Commission a petition to deny any application . . . to which subsection (b) . . . applies."³⁷ Thus, the Communications Act explicitly exempts involuntary applications from the public notice requirement and does not provide for the filing of petitions to deny against involuntary applications.³⁸

6. In this instance, the Applications have not appeared on a public notice as accepted for filing; therefore, the Petition and Supplement to Petition filed by the Alpine Petitioners are procedurally defective. We therefore dismiss the Petition and Supplement to Petition as being improperly filed.

²⁷ Supplement to Petition at 1.

²⁸ Motion to Strike at 1.

²⁹ Statement of Debtors at 1.

³⁰ Reply to Supplement to Petition to Deny, filed by William B. Calcutt, as Receiver (May 28, 2004) ("Reply to Supplement to Petition").

³¹ 47 C.F.R. § 1.939. *See also* Motion to Strike at 2.

³² 47 C.F.R § 1.939(a).

³³ *See id.* § 1.933(d)(3).

³⁴ 47 U.S.C. § 309.

³⁵ *Id.* § 309(b). "No . . . station license . . . shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such . . . license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assigned were making application under section 308 for the license in question. . . ." *Id.* § 310(d).

³⁶ *See id.* § 309(c)(2)(B).

³⁷ *Id.* § 309(d)(1).

³⁸ *See, e.g.,* Applications of Gulf Coast Radio, Inc., *Memorandum Opinion and Order*, 45 F.C.C. 1865, 1866 ¶ 4 (1964) ("Since Section 309(c)(2)(B) of the Act . . . expressly except involuntary assignment applications from those applications against which petitions to deny may be filed, WSCM's petition to deny the above application for involuntary assignment . . . must be dismissed."); *see also* Applications of D.H. Overmyer Telecasting Co., Inc., *Memorandum Opinion and Order*, 94 F.C.C.2d 117, 118 n.1 (1983) ("*D.H. Overmyer*") ("Section 309 of the Communications Act . . . does not provide for the filing of petitions to deny against involuntary transfer applications."). *See also Storer Communications, Inc. v. FCC*, 763 F.2d 436, 438 (D.C.Cir. 1985) ("Applications falling within one of the exceptions listed in section 309(c) . . . are not subject to . . . petitions to deny.").

Moreover, as discussed below, even if we were to ignore the procedural defect and address the Petition and Supplement to Petition on the merits, the Alpine Petitioners fail to raise any arguments that would warrant denying the Applications or designating them for hearing.³⁹

IV. SECTION 310(d) APPLICATION

A. Public Interest Determination in Accordance with Section 310(d)

7. In considering an application for the transfer of control of licenses, the Commission must determine, pursuant to Section 310(d) of the Communications Act, whether the Applicants have demonstrated that the proposed transfer of control of licenses will serve the public interest, convenience, and necessity.⁴⁰ The legal standards that govern our public interest analysis require that we weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁴¹ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission's rules, and federal communications policy.⁴² Our public interest

³⁹ We note that in some cases the Commission has stated that petitions to deny are not permitted against involuntary assignment applications, but then has considered the pleadings on its merits as an informal objection, pursuant to Section 73.3587. See *D.H. Overmyer*, 94 F.C.C.2d at 118 n.1 (1983) (recognizing that Section 309 of the Communications Act “does not provide for the filing of petitions to deny against involuntary transfer applications,” but treating the petition to deny as an informal objection under section 73.3587 of the Commission's rules); Applications of Kirk Merkley, Receiver, *Memorandum Opinion and Order*, 94 F.C.C.2d 829, 830 ¶ 2 (1983) (finding an “unusual set of circumstances in which it is appropriate to consider [the petition to deny] on its merits as an informal objection, pursuant to section 73.3587 of the Commission's rules.”). Because Section 73.3587 providing for informal objections is applicable to broadcast stations, we do not apply it here. We are, however, considering the merits of the Petition and the Supplement of the Petition as an alternative argument to our procedural dismissal. As such, it does not constitute a waiver to our procedural dismissal. See *BDPCS v. FCC*, 351 F.3d 1177, 1182-1183 (D.C. Cir. 2003).

⁴⁰ 47 U.S.C. § 310(d).

⁴¹ See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd. 21,522, 21,543 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”); Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC, WT Docket 03-217, *Memorandum Opinion and Order*, 19 FCC Rcd. 2570, 2580-81 ¶ 24 (2004) (“*Cingular-NextWave Order*”); General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd. 473, 483 ¶ 15 (2004) (“*GM-News Corp. Order*”); *WorldCom Order*, 18 FCC Rcd. at 26,492 ¶ 12; VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 ¶ 17 (2001) (“*Deutsche Telekom-VoiceStream Order*”); Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd. 14,032, 14,046 ¶ 22 (2000) (“*Bell Atlantic-GTE Order*”); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., WT Docket No. 03-203, *Memorandum Opinion and Order*, 19 FCC Rcd. 6232, 6241 ¶ 23 (WTB, MB 2004) (“*Nextel-WorldCom Order*”); Global Crossing LTD. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, IB Docket No. 02-286, *Order and Authorization*, 18 FCC Rcd. 20,301, 20,315 ¶ 17 (IB, WTB, WCB 2003) (“*Global Crossing Order*”).

⁴² See, e.g., *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21,542-43 ¶ 40; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd. at 484 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241 ¶ 23; Applications of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc., WT Docket No. 00-130, *Memorandum Opinion and Order*, 16 FCC Rcd. 3716, 3721-22 ¶ 12 (WTB 2000) (“*TeleCorp-Tritel Order*”).

analysis considers the likely competitive effects of the proposed transaction and whether such transfers raise significant anticompetitive concerns.⁴³

8. As a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and the Commission's rules.⁴⁴ As a general rule, the Commission does not re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁴⁵ As a required part of our public interest analysis, however, Section 310(d) requires the Commission to consider whether the proposed assignee or transferee is qualified to hold Commission licenses.⁴⁶ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁴⁷ as well as conduct that takes place outside of the Commission.⁴⁸

⁴³ See, e.g., *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21,544-45 ¶ 42; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 24; *WorldCom Order*, 18 FCC Rcd. at 26,492 ¶ 12; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241 ¶ 23; *Global Crossing Order*, 18 FCC Rcd. at 20,315-16 ¶ 17. As these Applications involve the transfer of licenses to a court-appointed receiver, we find no evidence that Calcutt's selection as receiver will raise significant anticompetitive concerns. Additionally, as this issue was not raised in this proceeding, we do not find it necessary to address it any further.

⁴⁴ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21,546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26,493 at ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd. at 20,316 ¶ 18; Northcoast Communications, LLC and Celco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd. 6490, 6492 ¶ 5 (CWD 2003) ("*Verizon-Northcoast Order*").

⁴⁵ See, e.g., *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21,546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581-82 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26,493-94 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd. 25,459, 25,465 ¶ 14 (2000) ("*SBC-BellSouth Order*"); *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd. at 20,316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd. at 6492 ¶ 5; *TeleCorp-Tritel Order*, 18 FCC Rcd. at 6492 ¶ 5. See also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

⁴⁶ See, e.g., *Cingular-AT&T Wireless*, 19 FCC Rcd. at 21,546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2582 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26,494 ¶ 13; *SBC-BellSouth Order*, 15 FCC Rcd. at 25,465 ¶ 14; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14,227 ¶ 429; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24.

⁴⁷ See *WorldCom Order*, 18 FCC Rcd. at 26,494 ¶ 13. The Commission will consider any violation of any provision of the Act, or of the Commission's rules or policies, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications. *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14227-28 ¶ 429; Policy Regarding Character Qualifications In Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd. 3252 (1990), *recon. granted in part*, 6 FCC Rcd. 3448 (1991), *modified in part*, 7 FCC Rcd. 6564 (1992).

⁴⁸ See *WorldCom Order*, 18 FCC Rcd. at 26,494 ¶ 13. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14227-28 ¶ 429.

B. Qualifications of Transferee

9. In the Petition and Supplement to Petition, the Alpine Petitioners make several allegations regarding the qualifications and character of Calcutt and the Banks, as transferees.⁴⁹ Broz states that the actions of Calcutt and the Banks indicate that they are unsuitable to be Commission licensees. These allegations include the (1) failure to abide by contractual obligations and agreements, (2) unauthorized transfer of control of Commission licenses, (3) misrepresentation of facts in filings with the Commission, and (4) failure to demonstrate their qualifications to be a Commission licensee. Additionally, the Alpine Petitioners argue that it is not in the public interest to act on the Applications because the court order approving the transfer of control of the licenses to the receiver is not final.

10. *Failure to Abide by Agreements.* The Alpine Petitioners allege that, as the Debtors' financial situation worsened, the Debtors negotiated a forbearance agreement with one of their creditors, CoBank.⁵⁰ The Alpine Petitioners claim that "one or two of the other banks" were unwilling to sign the forbearance agreement and threatened to sue CoBank if it signed.⁵¹ They claim that CoBank agreed not to accelerate the loan so long as Broz adhered to the terms of the negotiated forbearance agreement, which included a new payment schedule.⁵² The Alpine Petitioners state that, notwithstanding CoBank's earlier commitment, the Banks elected foreclosure.⁵³ The Alpine Petitioners argue that CoBank's failure to abide by its agreement shows lack of character.⁵⁴

11. As stated above, the Commission considers whether the transferee is qualified to be a Commission licensee. In this instance, Calcutt is the transferee, not CoBank or the other Banks. Whether or not CoBank and the other Banks failed to abide by an agreement or an earlier commitment does not impugn Calcutt's character.⁵⁵ Furthermore, the Commission has repeatedly "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."⁵⁶ The Alpine Petitioners provide no argument warranting that the Commission deviate from this long-standing precedent.

⁴⁹ The Alpine Petitioners also raise some allegations that could be construed as impugning the character and qualifications of the Debtors. These allegations were raised against the Debtors after Calcutt had assumed control, pursuant to the Receivership Order. For the purposes of this order, we will consider these allegations along with those allegations raised against Calcutt, as he was in control of the Debtors at the time the alleged misrepresentations, omissions, and/or wrong-doings.

⁵⁰ Petition at 5.

⁵¹ *Id.* at 5.

⁵² *Id.* at 5. They state that CoBank said that the loan could not be accelerated without CoBank's consent, because it held more than 40 percent of the loan. *Id.* at 5-6.

⁵³ *Id.* at 6. Prior to foreclosure, the Alpine Petitioners allege that the Banks presented a one-page term sheet appointing a Chief Restructuring Officer ("CRO"), Craig Sheetz ("Sheetz"), who is a former officer of Dobson Cellular. *Id.* at 6, Exhibit 1. The Banks were responsible for preparing the documents to appoint the CRO, but these documents were not produced to Broz. *Id.* at 6.

⁵⁴ *Id.* at 7.

⁵⁵ Additionally, as the Debtors note in the Motion to Strike, the Michigan Court approved the receiver, and Broz's counsel did not object to the appointment of Calcutt nor did they appeal the receivership order. Motion to Strike at 5.

⁵⁶ *D.H. Overmyer*, 94 F.C.C.2d at 123 ¶ 9. See also Applications of Dale J. Parsons, Jr., *Memorandum Opinion and Order*, 10 FCC Rcd. 2718, 2721 ¶ 18 ("*Dale J. Parsons*"); Applications of TV Active, LLC, *Order on Reconsideration*, 16 FCC Rcd. 18,938, 18,944 ¶ 14 (PSPWD, WTB 2001) ("*TV Active*"); Applications of Interactive Control Two, Inc., *Order on Reconsideration*, 16 FCC Rcd. 18,948, 18,960-61 ¶¶ 28-29 ("*Interactive Control*");

(continued....)

12. *Unauthorized Transfers of Control.* The Alpine Petitioners allege that the banks have obtained control of the Debtors without complying with the Commission's rules.⁵⁷ Specifically, they allege that the Banks are the real parties in interest, because Calcutt "is merely a figure head for the Banks" and serves at the discretion of the banks.⁵⁸ The Debtors, in response, argue that Calcutt, as Receiver, was appointed by the Michigan Court and is, therefore, supervised by that court.⁵⁹ The Debtors further argue that "[t]reating the Banks as the actual transferees of control would also be inconsistent with [Commission] policy regarding involuntary transfers and assignments of licenses to receivers."⁶⁰ We agree. The Commission has long-standing precedent that it "will not generally question the appointment of a receiver where a court is seeking to protect the creditors of a financially disabled licensee."⁶¹ The Commission has further held that disputes regarding bankruptcy appointments "should be left to those tribunals which are specifically charged with reviewing such matters on appeal."⁶² Broz presents no persuasive argument as to why we should digress from this well-established policy.

13. The Alpine Petitioners also allege that two of the Banks improperly seized control of two Commission licensees, NPI Wireless ("NPI") and RFB Cellular.⁶³ They claim that CoBank and CIT insisted that NPI hire a Chief Restructuring Officer, and that this was done without court order or any authority that would enable the banks to bypass their statutory obligation to obtain Commission approval prior to obtaining control.⁶⁴ They state that "[t]he Banks' activities in this proceeding evidence an understanding of what authority was needed in the NPI proceeding, and their determination not to obtain such authority evidences a determination to violate core statutory and regulatory obligations."⁶⁵ As stated above, the Banks are not the transferee in this proceeding; even if there was concrete evidence of an unauthorized transfer of control by the Banks, such conduct would not impugn Calcutt's qualifications to be a Commission licensee.

14. The Alpine Petitioners also claim that the Banks improperly seized control of RFB Cellular without the Commission's approval.⁶⁶ They state that Calcutt and the Debtors failed to notify the

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Application of O.D.T International, *Memorandum Opinion and Order*, 9 FCC Rcd. 2575, 2576 ¶ 9 (1994) ("*O.D.T. International*").

⁵⁷ Petition at 1 n.1.

⁵⁸ *Id.* at i, 1 n.1.

⁵⁹ Motion to Strike at 3-4. The Michigan Court receives and reviews monthly reports prepared by the Receiver and retains authority to remove the Receiver. *See id.*; *see also* Receivership Order at Section 5. Additionally, pursuant to Michigan law, a receiver is considered an officer and an extension of the appointing court, rather than a representative of the party who filed the receivership action. *See* Motion to Strike at 4 (citing *Cohen v. Bologna*, 52 Mich. App. 149 (1974)).

⁶⁰ Motion to Strike at 4.

⁶¹ *D.H. Overmyer*, 94 F.C.C.2d at 123 ¶ 9. *See also* In re: Station KDEW(AM), Dewitt, Arkansas, *Memorandum Opinion and Order*, 11 FCC Rcd. 13,683, 13,684, 13,687 ¶¶ 3, 10 (1996) ("*KDEW(AM)*"); *Dale J. Parsons*, 10 FCC Rcd. at 2720, 2721 ¶¶ 11, 17; *O.D.T. International*, 9 FCC Rcd. at 2576 ¶ 8-9; *see also* Motion to Strike at 5.

⁶² *D.H. Overmyer*, 94 F.C.C.2d at 123 ¶ 9. *See also* *KDEW(AM)*, 11 FCC Rcd. at 13,687 ¶ 10; Application of H. Edward Dillon, Receiver, *Memorandum Opinion and Order*, 42 F.C.C.2d 203, 204-05 ¶¶ 5-6 (1973); *O.D.T. International*, 9 FCC Rcd. at 2576 ¶ 8-9; *Dale J. Parsons*, 10 FCC Rcd. at 2720 ¶ 13; *TV Active*, 16 FCC Rcd. at 18,946 ¶ 20; *see also* Motion to Strike at 5 (citing In re: Station KDEW(AM), 11 FCC Rcd. 13,683 (1996)).

⁶³ Petition at i.

⁶⁴ *Id.* at 7.

⁶⁵ *Id.* at 7-8.

⁶⁶ *Id.* at 8.

Commission within 30 days of Calcutt's appointment as the receiver.⁶⁷ In response, the Debtors state that all of the Applications were appropriately and timely filed. The Debtors note that the involuntary application notifying the Commission of the transfer of control of RFB Cellular, which was filed manually because Broz did not provide to Calcutt the passwords required to file applications electronically via ULS, was returned due to minor defects by Mellon Bank on March 5, 2004 and again on March 15, 2004.⁶⁸ The file date of the RFB Cellular DIP application is listed in ULS as March 19, 2004, because the RFB Cellular application was returned to the Debtors by Mellon Bank; however, Commission records reflect that this application was originally received at Mellon Bank on March 4, 2004. We find that the filing delay caused by the minor defects in the application does not indicate any attempt to mislead the Commission or demonstrate a lack of character.

15. *Misrepresentation of Facts.* The Alpine Petitioners allege that the Debtors have misrepresented facts to the Commission in the subject Applications and that these misrepresentations call into question Calcutt's and the Debtors' qualifications to be a Commission licensee.⁶⁹ Specifically, the Alpine Petitioners claim that the Debtors misrepresented (1) whether Broz provided the ULS passwords to Calcutt, and (2) the construction status of two PCS licenses held by Alpine-Fresno C DIP and Alpine-Michigan E DIP.⁷⁰

16. The Debtors filed the Applications with requests for waiver of the Commission's electronic filing requirement because, as stated above, the Debtors manually filed the Applications out of an abundance of caution as they were fearful that they would be unable to acquire the ULS passwords from Broz in time to complete the electronic filing. The Alpine Petitioners state that the passwords were timely supplied to Calcutt by e-mail, dated March 4, 2004.⁷¹ The Alpine Petitioners further argue that even had the passwords not been provided, Calcutt and the Debtors could have filed manually.⁷² The Debtors state that Broz was ordered, pursuant to the Receivership Order, to supply Calcutt with the ULS passwords.⁷³ The Debtors allege that, over a four-week period following the entry of the Receivership Order, they requested that Broz supply them with the necessary passwords to file applications in ULS.⁷⁴ Since the Michigan Court entered the order appointing Calcutt as the receiver on February 4, 2004, the filing deadline was March 4, 2004.⁷⁵ As the filing deadline approached, the Debtors claim that they thought it was unlikely that Broz would provide the passwords.⁷⁶ Thus, in an abundance of caution, on March 3, 2004, Calcutt signed the manual applications and filed them at Mellon Bank by Federal Express.⁷⁷ We find that the Alpine Petitioners' argument is totally without merit. Broz provides evidence that he gave the ULS

⁶⁷ 47 C.F.R. 1.948(g) ("Within 30 days after the occurrence of . . . legal disability . . . , an application shall be filed for consent to assignment of such . . . license, or for involuntary transfer of control of such corporation, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved."). See also Petition at i, 8. The RFB application was filed on March 19, 2004, and the transfer of control occurred on February 3, 2004.

⁶⁸ Motion to Strike at 7.

⁶⁹ See Petition at i, 9.

⁷⁰ See Petition at 9-10; Supplement to Petition at 1-3.

⁷¹ *Id.* at 9. See E-mail from Bob Broz to Bill Calcutt, dated March 4, 2004, available at Petition at Exhibit II.

⁷² Petition at 9.

⁷³ Motion to Strike at 5-6.

⁷⁴ Application, Exhibit A at 1; Motion to Strike at 6.

⁷⁵ See Motion to Strike at 5-6.

⁷⁶ *Id.* at 6, 8.

⁷⁷ *Id.* at 6, 8.

passwords on March 4, 2004. Thus, Broz had not submitted the ULS passwords at the time Calcutt manually filed the transfer of control applications; therefore, there has been no misrepresentation to the Commission.

17. The Alpine Petitioners also allege that the Debtors misrepresented the construction status of two licenses, WPOJ687 and WPSJ964, in the Applications filed by Alpine–Fresno C DIP and Alpine–Michigan E DIP.⁷⁸ The Applications originally stated that the construction notifications had been filed for these two licenses.⁷⁹ The Alpine Petitioners, however, argue that these two closed bidding licenses are within the initial five-year license period after grant and were never constructed,⁸⁰ and, therefore, they cannot be transferred to anyone but another designated entity at this stage of the license term.⁸¹ The Alpine Petitioners conclude that it is impossible to know whether the misrepresentation was the result of carelessness or an intent to deceive, but such a misrepresentation on a material component of an application that goes directly to the eligibility to transfer the licenses alerts the Commission “that it cannot expect candor in representations made now, and . . . therefore has no reason to believe that there will be candor in future representations.”⁸² The Debtors state that they were neither acting carelessly nor intending to deceive the Commission in answering the construction questions.⁸³ Instead, the Debtors state that they were relying on prior representations regarding the construction status of these two licenses made in Form 603 applications signed by Broz and filed with the Commission on September 4, 2003.⁸⁴

18. The Alpine Petitioners are incorrect in their allegation that these licenses cannot be transferred to Calcutt, as the court-appointed receiver. Pursuant to section 24.839(a) of the Commission’s rules, “[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding . . . will be granted unless . . . [t]he application is for an involuntary assignment or transfer of control to . . . an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; provided that, the applicant requests a waiver pursuant to this paragraph.”⁸⁵ Furthermore, the Debtors stated that, if their “reliance [on prior representations in transfer and assignment applications] was misplaced and that the construction requirements had not been met, the Receiver [would] timely file an amendment to the two affected Applications to correct any misstatement.”⁸⁶ The Debtors have amended the applications to reflect that the construction requirements have not been fulfilled for these

⁷⁸ Supplement at 2.

⁷⁹ Application of Alpine–Michigan E, LLC, Debtor-in-Possession, File No. 0001653360 (filed Mar. 4, 2004); Application of Alpine–Fresno C, LLC, Debtor-in-Possession, File No. 0001653450 (filed Mar. 4, 2004).

⁸⁰ Supplement at 2. Broz states that a Form 601 notifying the Commission that the licenses had been constructed is not on file and submits a declaration that construction has not been completed in either market. *See id.* at 2, Supplement at Declaration.

⁸¹ Supplement at 2. *See also* 47 C.F.R. § 24.839.

⁸² Supplement at 2-3.

⁸³ Reply to Supplement at 2.

⁸⁴ *Id.* at 2-3. *See* Application Assigning Licenses from Alpine–Fresno C, LLC to Alpine–Fresno C, LLC, Debtor-in-Possession, File No. 0001440052 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–Michigan E, LLC to Alpine–Michigan E, LLC, Debtor-in-Possession, File No. 0001440082 (filed Sept. 4, 2003).

⁸⁵ 47 C.F.R. § 24.839(a)(4).

⁸⁶ Reply to Supplement at 3.

two licenses.⁸⁷ Thus, there has been no intentional misstatement of fact and the Debtors had a reasonable basis for believing their representations were correct.⁸⁸

19. *Demonstration of Qualifications.* The Alpine Petitioners allege that the Applications are improperly filed as *pro forma* applications.⁸⁹ They argue that the Applications should be filed as substantive transfer of control applications because Calcutt, the receiver-transferee, is not related to Broz, the transferor.⁹⁰ They further argue that the Debtors and Calcutt have failed to make any showing regarding their qualifications to be Commission licensees. Specifically, they state that the Debtors and Calcutt have not provided sufficient information regarding their ownership or designated entity status.⁹¹ The Alpine Petitioners state that without this information, the Commission “cannot determine whether grant of the proposed applications would serve the public interest” and cannot grant the applications.⁹²

20. Generally, we note that “the Commission’s review of an applicant’s qualification in the context of an involuntary transfer application, filed pursuant to the order of a bankruptcy court, is ordinarily limited. . . .”⁹³ Under such circumstances, as opposed to proceeding where a new, fully independent licensee is being reviewed, the Commission is only considering a party who will be operating the facility solely under the supervision of the court.⁹⁴

21. The Alpine Petitioners further argue that “no ownership report (Form 602) is provided.”⁹⁵ However, Calcutt filed a Form 602 listing the Debtors as “FCC Regulated Businesses of the Filer” a few days after control was transferred to Calcutt.⁹⁶ Additionally, as stated above, independent receivers appointed by a court of competent jurisdiction in a foreclosure action do not need to demonstrate their qualifications for closed bidding eligibility, pursuant to section 24.839(a)(4) of the Commission’s rules.⁹⁷ In response to the Alpine Petitioners’ allegation that the Applications were incorrectly filed as *pro forma* applications, we note that the Applications are technically involuntary applications. We recognize that the Debtors responded that the Applications are *pro forma* transfer of control applications, but they also responded that the transfer of control is involuntary. If an application is involuntary, it is processed as such, regardless of the response that the application is *pro forma*. As noted above, the information provided with an involuntary application is limited, because the party will be operating the facility under the supervision of a bankruptcy court. We therefore find that the Applications contain sufficient information to determine that the transfer of control of these Licenses is in the public interest.

⁸⁷ See Application of Alpine–Fresno C, LLC, Debtor-in-Possession, ULS File No. 0001653450 (amended June 29, 2004) (stating that license WPOJ687 is not constructed); Application of Alpine–Michigan E, LLC, Debtor-in-Possession, ULS File No. 0001653360 (amended June 29, 2004) (stating that license WPSJ964 is not constructed).

⁸⁸ See 47 C.F.R. § 1.17.

⁸⁹ Petition at 10.

⁹⁰ See *id.*

⁹¹ *Id.* Broz also notes that some of the licenses are still part of the Commission’s installment payment program.

⁹² *Id.*

⁹³ *D.H. Overmyer*, 94 F.C.C.2d at 124 ¶ 10.

⁹⁴ See *id.*

⁹⁵ Petition at 10.

⁹⁶ William B. Calcutt, FCC Form 602 (filed Feb. 9, 2004, Apr. 20, 2005). See also Motion to Strike at 8-9.

⁹⁷ 47 C.F.R. 24.839(a)(4).

C. Finality of Court Order

22. Finally, the Alpine Petitioners state that it is not in the public interest to grant the Applications, because the bankruptcy court order approving the transfer to the receiver is being appealed in bankruptcy court and is therefore not final.⁹⁸ The Debtors argue that the deadline to appeal the Receivership Order has passed and notes that Broz has not appealed the Receivership Order.⁹⁹ The Debtors clarify that Broz is appealing the order of the Bankruptcy Court providing relief from the automatic stay to allow the Michigan Court receivership action to proceed.¹⁰⁰ The Debtors argue that the finality of the receivership order does not depend on the resolution of the bankruptcy appellate proceedings.¹⁰¹ They further argue that “even if the outcome of those proceedings could call into question the effectiveness of the Receivership Order, under [Commission] precedent that is not sufficient reason to delay action on the applications.”¹⁰²

23. Although Broz appealed the Bankruptcy Court order granting relief from the automatic stay,¹⁰³ this appeal was dismissed as moot by the Bankruptcy Appellate Panel (“Bankruptcy Appellate Panel”) for the Ninth Circuit.¹⁰⁴ Furthermore, Broz appealed the Bankruptcy Appellate Panel decision,¹⁰⁵ but the United States Court of Appeals for the Ninth Circuit dismissed Broz’s appeal pursuant to his request.¹⁰⁶ Thus, it appears that Broz does not have any pending appeals of the Receivership Order or the order providing relief from the automatic stay; therefore, this argument is moot.

V. REQUESTS FOR WAIVER

24. As part of the Applications, the Debtors have requested waivers of the Commission’s electronic filing requirement and the restriction on the transferability of closed bidding licenses, pursuant to sections 1.913(b) and 24.839(a), respectively. To obtain a waiver of the Commission’s rules, a petitioner must demonstrate that a grant of the waiver would be in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case.¹⁰⁷ In the alternative, a petitioner must show that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or that the applicant has no reasonable alternative.¹⁰⁸

A. Section 1.913(b) of the Commission’s Rules

25. The Applications were filed with a request for waiver of section 1.913(b), which states that “all applications and other filings using FCC Forms 601 through 605 or associated schedules must be filed

⁹⁸ Petition at 10-11.

⁹⁹ Motion to Strike at 5, 9.

¹⁰⁰ *Id.* at 9.

¹⁰¹ Motion to Strike at 9.

¹⁰² *Id.* at 9 (citing *In re: Station KDEW (AM)*, 11 FCC Rcd. 13,683 (1996)).

¹⁰³ *In re: Robert F. Broz*, Notice of Appeal, Case No. ND 03-12189-RR (Bankr. Cent. D. Ca. Jan. 20, 2004).

¹⁰⁴ *In re: Robert F. Broz*, Judgment, BAP No. CC-04-1041-KMoB (B.A.P. 9th Cir. Aug. 2, 2004).

¹⁰⁵ *In re: Robert F. Broz*, Notice of Appeal, BAP No. CC-04-1041 (B.A.P. 9th Cir. Sept. 1, 2004).

¹⁰⁶ *In re: Robert F. Broz*, ACB, Order, No. 04-56720 (9th Cir., filed Jan. 7, 2005).

¹⁰⁷ *See* 47 C.F.R. § 1.925(b)(3)(i).

¹⁰⁸ *See id.* § 1.925(b)(3)(ii).

electronically in accordance with the electronic filing instructions in ULS.”¹⁰⁹ The Debtors and Calcutt state that they had “repeatedly requested of Broz that he provide the ULS password to the Receiver” as required pursuant to the Receivership Order and “made several attempts to electronically file [the Applications] with the Commission, but [was] unable to do so without the Broz ULS password.”¹¹⁰ Thus, Calcutt filed the Applications on March 3, 2004, one day before the deadline to file the Applications pursuant to section 1.948(g) of the Commission’s rules,¹¹¹ because “the Receiver [had] no reasonable alternative to filing Form 603 on paper. . . .”¹¹² Although the Alpine Petitioners argue that the request submitted by the Debtors for waiver of the applicable rules is “unpersuasive,”¹¹³ we find that there are unique and unusual factual circumstances in this case,¹¹⁴ and we hereby grant the request for waiver of the Commission’s electronic filing rule.

B. Section 24.839(a) of the Commission’s Rules

26. The Applications were also filed with a request for waiver of section 24.839(a) of the Commission’s rules,¹¹⁵ which restricts the transferability of closed bidding licenses unless the transaction falls into one of the enumerated exceptions.¹¹⁶ These exceptions include that the transfer of control application is filed five years after the initial license grant,¹¹⁷ the transferee meets the closed bidding eligibility criteria,¹¹⁸ and the transfer of control application is filed on or after the date that the licensee has notified the Commission that the license has been constructed.¹¹⁹ Additionally, the transfer restriction does not apply to applications “for an involuntary assignment or transfer of control to . . . an independent receiver appointed by a court of competent jurisdiction in a foreclosure action . . . ; provided that, the applicant requests a waiver pursuant to this paragraph.”¹²⁰ The Debtors have requested a waiver of the transfer restrictions in section 24.839, because it would allow “the [Michigan Court] to exercise its equitable powers to appoint the [r]eceiver.”¹²¹ The Debtors further state that the Applications “will serve the public interest by permitting the [r]eceiver to reorganize [the Debtors] within the parameters of state receivership laws so that the [Debtors] may emerge as a more competitive licensee.”¹²² We conclude that there are unique and unusual factual circumstances in this case,¹²³ and we hereby grant the request for waiver of the Commission’s transfer restriction on closed bidding licenses.

¹⁰⁹ *Id.* § 1.913(b).

¹¹⁰ Application, Exhibit A at 1.

¹¹¹ 47 C.F.R. § 1.948(g).

¹¹² Application, Exhibit A at 1.

¹¹³ Petition at 8-9.

¹¹⁴ *See* 47 C.F.R. § 1.925(b)(iii)(2).

¹¹⁵ *Id.* § 24.839(a).

¹¹⁶ *See id.*

¹¹⁷ *See id.* § 24.839(a)(1).

¹¹⁸ *See id.* § 24.839(a)(2).

¹¹⁹ *See id.* § 24.839(a)(6).

¹²⁰ *Id.* § 24.839(a)(4).

¹²¹ Applications, Exhibit A at 1.

¹²² *Id.* at 1.

¹²³ *See* 47 C.F.R. § 1.925(b)(iii)(2).

VI. CONCLUSION

27. We find that the Petition filed by the Alpine Petitioners is procedurally defective; however, even if it were appropriately filed, the Alpine Petitioners have 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, they have failed to raise any valid argument that Calcutt does not have the requisite qualifications to be a Commission licensee under an involuntary transferee proceeding. We conclude that Calcutt has shown the requisite qualifications to acquire control of the Debtors in the context of an involuntary proceeding, and our review of the proceeding has not revealed any facts that would raise questions concerning the candor of the Debtors or Calcutt. We further conclude that Calcutt's actions and representations reflect a good faith effort to pursue or protect the Debtors' interests. Thus, we find that a grant of the Applications and requisite waivers serves the public interest, convenience, and necessity.

VII. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to sections 1.933(d) and 1.939(a) of the Commission's Rules, 47 C.F.R. §§ 1.933(d), 1.939(a), the Petition to Deny and the Supplement to Petition to Deny filed by Alpine PCS, Inc. and Alpine Operating, LLC are DISMISSED.

29. IT IS FURTHER ORDERED that, pursuant to section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the requests for waiver of sections 1.913(b) and 24.839(a) of the Commission's rules, 47 C.F.R. §§ 1.913(b), 24.839(a), is GRANTED.

30. IT IS FURTHER ORDERED that, pursuant to the authority granted in Sections 4(i), 309(j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), 310(d), the Applications, dated March 3, 2004, seeking approval for the transfer of control of licenses held by Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, Alpine-Fresno C, LLC, Debtor-in-Possession, Alpine-Hyannis F, LLC, Debtor-in-Possession, and Alpine-California F, LLC, Debtor-in-Possession from Robert F. Broz to William B. Calcutt, as Receiver, are GRANTED.

31. These actions are 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

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau