

97-128 SHURBERG

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HARRY F. COLE

January 3, 1984

BY HAND

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FCC  
Office of the Secretary

James C. McKinney, Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W. - Room 314  
Washington, D.C. 20554

Dear Mr. McKinney:

I am writing on behalf of Shurberg Broadcasting of Hartford, Inc. ("SBH"), to request that you issue an order to Faith Center, Inc. ("Faith Center"), licensee of Station WHCT-TV, Hartford, Connecticut, requiring Faith Center to make the local public records file at that station available to Alan Shurberg, the sole principal of SBH, for his review during regular business hours at the station's main studio location.

Some background relative to this request may be appropriate. Faith Center was the subject of a character qualifications hearing -- BC Docket No. 80-730 -- with respect to the license of Station WHCT-TV. Its renewal application therein was granted by the Commission for reasons not relevant here. See Faith Center, Inc., FCC 83-448, Mimeo No. 33843, released September 30, 1983. SBH has filed an application (FCC Form 301) for authority to construct and operate a television station utilizing the same facilities presently used in the operation of Station WHCT-TV.

Mr. Shurberg is a resident of the Hartford area. In connection with the SBH application, and also in connection with certain pleadings which he filed, pro se, relative to a proposed assignment of the license of Station WHCT-TV (File No. BALCT-820929EO), Mr. Shurberg has, on at least two occasions, sought to inspect the local public records file of Station WHCT-TV. That file should contain copies of materials relating to the incumbent licensee's past performance, and also a copy of the assignment

application describing the proposed assignee's plans for the station. As set forth in detail below and in the attached affidavit of Mr. Shurberg, each time that he has attempted to review the file, he has been refused access to it. In view of the licensee's apparent determination to deny Mr. Shurberg the right of access to that file -- a right which is guaranteed by Section 73.3526 of the Commission's Rules -- it appears necessary to submit the instant request for an order from the Commission requiring Faith Center to make that file available.

Section 73.3526, and the cases decided thereunder, are clear in their instructions to licensees to make the local public records file available for inspection by all members of the public during regular business hours. Faith Center has, however, consistently flouted that requirement. Mr. Shurberg has attempted on at least two separate occasions to review the WHCT-TV file. The most recent attempt occurred on December 29, 1983, at approximately 11:00 a.m. According to Mr. Shurberg, he and a witness drove to the address listed as the station's main studio in Avon, Connecticut, some nine miles outside of Hartford. There Mr. Shurberg rang the doorbell and was greeted by an individual apparently employed by the station. Mr. Shurberg explained the purpose of his visit and requested the opportunity to review the station's local public records file. The individual informed Mr. Shurberg that he would have to submit a written request for an appointment to review the file. In that request, Mr. Shurberg was told, he would have to provide not only his name and address, but also his telephone number and the purpose for which he wished to review the file. Mr. Shurberg informed the individual -- who declined to identify himself -- that Commission Rules require that the file be made available; Mr. Shurberg further suggested that the individual might wish to consult with the licensee's communications counsel to determine the accuracy of Mr. Shurberg's assertions in this regard. The individual refused to do so, however, and also continued to refuse Mr. Shurberg access both to the file and to the station. Unable to see the file, Mr. Shurberg left.

As noted above, the Commission's Rules are clear with respect to the public file obligation imposed on licensees. In addition, not only must the file be made generally available, but it must also be made available without any harassment of those seeking to view it. See, e.g., Town and Country Radio, Inc., 51 FCC 2d 1217, 33 RR 2d 671 (Rev. Bd. 1975). The Commission has previously held that requiring members of the public to seek prior appointments, to submit requests for the file in writing,

James C. McKinney, Chief  
January 3, 1984  
Page 3

to provide the purpose of their inspection, and the like, to constitute harassment inconsistent with the Rules. See, e.g., WBRN, Inc., 32 FCC 2d 729, 23 RR 2d 384 (1971); Availability of Locally Maintained Records, 28 FCC 2d 71, 21 RR 2d 1574 (1971). Faith Center has simply ignored these requirements. That such a violation could occur once is, in and of itself, bad enough; that it could occur repeatedly, particularly when the licensee has in the meantime been faced with basic character qualifications questions against it, is almost unimaginable.

The need to correct this situation is especially urgent when the continuing violations occur in an era of deregulation in which the Commission itself has justified its own deregulatory posture in part by reference to the local public file requirement. That requirement, in the Commission's eyes, permits the public, rather than the Commission, to police the performance of broadcasters. See, e.g., Town and Country Radio, Inc., 51 FCC 2d 1217, 33 RR 2d 671 (Rev. Bd. 1975). The Commission has previously held that requiring members of the public to seek prior appointments, to submit requests for the file in writing, to provide the purpose of their inspection, and the like, to constitute harassment inconsistent with the Rules. See, e.g., WBRN, Inc., 32 FCC 2d 729, 23 RR 2d 384 (1971); Availability of Locally Maintained Records, 28 FCC 2d 71, 21 RR 2d 1574 (1971). Faith Center has simply ignored these requirements. That such a violation could occur once is, in and of itself, bad enough; that it could occur repeatedly, particularly when the licensee has in the meantime been faced with basic character qualifications questions against it, is almost unimaginable.

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James C. McKinney, Chief  
January 3, 1984  
Page 4

In view of the clear violations of the local public records file rule reflected both above and in Mr. Shurberg's attached affidavit, and in view of the licensee's apparent unwillingness to correct those violations on its own, it is unfortunately necessary to request that the Commission issue an order requiring Faith Center to permit Mr. Shurberg, and any other interested member of the public, to inspect the local public records file of Station WHCT-TV during regular business hours without fear of harassment or other interference. Further, since these violations are a matter of long standing, you are requested to provide expedited consideration to this matter, and to issue the requested order as soon as possible. SBH recognizes that there is presently pending an application for the assignment of the license of Station WHCT-TV to Interstate Media Corporation. However, in view of the facts that Faith Center has previously been authorized to sell that station and that, despite that authorization, it failed to do so, there is reason to believe that its presently proposed assignment may never occur. In any event, Faith Center is the current licensee, and, as such, it must abide by the rules applicable to all licensees. Failure by the Commission to enforce its own rules would be obviously inconsistent with past precedent, with the Commission's own stated rationale for deregulation, and with the clear interests of the public.

Please call me if you have any questions about this matter.

Sincerely,

  
Harry F. Cole

Counsel for Shurberg Broadcasting  
of Hartford, Inc.

cc: Henry L. Baumann  
Charles W. Kelley  
James A. Edmundson, Esquire  
Counsel for Faith Center, Inc.  
Bruce A. Eisen, Esquire  
Counsel for Interstate Media Corporation

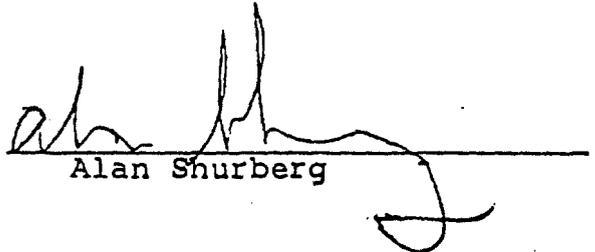
AFFIDAVIT

Alan Shurberg, being first duly sworn, hereby deposes and says as follows:

1. I am a resident of the Hartford, Connecticut area and am the sole principal of Shurberg Broadcasting of Hartford, Inc., which, on December 2, 1983, filed an application with the Federal Communications Commission for authority to construct and operate a new commercial television station to operate on Channel 18 in Hartford. Channel 18 is presently utilized in the operation of Station WHCT-TV, the licensee of which is Faith Center, Inc. Over the course of the last year I have participated, without benefit of counsel, in FCC proceedings relating to the renewal of the license of Station WHCT-TV and also relating to the proposed sale of that license to Interstate Media Corporation.

2. In connection with my interest in Station WHCT-TV, I have, on at least two separate occasions, sought to review the local public records file of that station in order to review materials relating to the present licensee's past performance and the proposed assignee's promised performance. The most recent of these attempts occurred on December 29, 1983, at approximately 11:00 a.m. Accompanied by an independent witness, I drove to the address listed as the station's main studio in Avon, Connecticut, approximately nine miles outside of Hartford. There I rang the doorbell and was greeted by an individual apparently employed by

the station. I explained the purpose of my visit and requested the opportunity to review the station's local public records file. I was informed by the person that I would have to submit a written request for an appointment to review the file. I was also told that that request should include not only my name and address, but also my telephone number and the purpose for which I wished to review the file. I told the person that the licensee was required, under FCC rules, to make the file available without appointment during regular business hours, and I suggested that he might wish to contact the licensee's communications counsel to confirm this. I offered to wait, but the individual -- who refused to identify himself during our conversation -- declined to make such a call. He continued to refuse me access to the file, and did not even permit me to enter the station. Accordingly, I left the station.

  
Alan Shurberg

Subscribed and sworn to before me this 3rd day of January, 1984.

  
Rochelle J. Moran  
Notary Public

My Commission Expires July 17, 1988

Attachment C



Attachment D