

1 Q How long have you been a partner there?

2 A Since January 1, 1987.

3 Q Prior to that were you an associate at Peabody &  
4 Brown?

5 A Yes. Yes, I was.

6 Q Can we agree that when I refer to Peabody, I am  
7 referring to Peabody & Brown?

8 A Yes.

9 Q Do you specialize in any particular area of legal  
10 practice at Peabody?

11 A I'm a business lawyer. I practice in all areas of  
12 law applicable to businesses.

13 Q Do you have any -- strike that. Does your  
14 understanding of the area of business law include expertise  
15 related to FCC regulatory matters?

16 A No, it does not.

17 Q Do you have any expertise relative to FCC  
18 regulatory matters?

19 A Only what I learned in 1984 and 1985.

20 Q Did there come a time, Mr. Bacon, that you and  
21 Peabody were retained to serve as counsel for an entity  
22 called Astroline Communications Company Limited Partnership?

23 A Yes.

24 Q When was that?

25 A May, 1984.

1           Q     Just so you will know, I believe the other  
2     counsel, we have all adopted a shorthand of referring to  
3     AstroLine as Astroline Communications Company Limited  
4     Partnership.  Occasionally we may refer to it as ACCLP.

5                     To the extent that other AstroLine entities, such  
6     as AstroLine Corporation or AstroLine Company, are  
7     mentioned, we try to use the full name as it is --

8           A     Understood.

9           Q     If you have any confusion as to what AstroLine I  
10    am talking about at any point, please let me know, and we  
11    will try to clarify.

12                    Prior to May of 1984, did you also serve as  
13    counsel for other AstroLine entities, such as AstroLine  
14    Corporation or AstroLine Company?

15          A     Yes.

16          Q     What other entities?

17          A     I believe the first one was called AstroLine  
18    Petroleum Corporation of Maine.  There was AstroLine  
19    Corporation, AstroLine Company.  I can't remember any  
20    others, but I would bet there were one or two others that we  
21    organized along the way.

22          Q     Can you tell me the approximate first date that  
23    you represented any of the actual entities?

24          A     Yes, I can.

25          Q     When was that?

1           A     It would have been -- that would have been in 1979  
2 right after I came to work at Peabody & Brown.

3           Q     Did you bring these AstroLine entities with you to  
4 Peabody & Brown?

5           A     No. I came straight from law school, and they  
6 were there waiting for me.

7           Q     Do you know how long they had been there waiting  
8 for you?

9           A     Since 1975 or thereabouts.

10          Q     Now, you assisted, did you not, in the formation  
11 of ACCLP, Astroline Communications Company?

12          A     Yes, I did.

13          Q     And that was in May of 1984?

14          A     Yes.

15          Q     When it was formed, AstroLine had two general  
16 partners; that is, an individual, Mr. Ramirez, and a  
17 corporation, WHCT Management, Inc. Do you recall that?

18          A     Yes, I do.

19          Q     Who decided to set AstroLine up with those two  
20 general partners?

21          A     I don't know.

22          Q     Who suggested that it be set up as an entity with  
23 those two general partners?

24          A     I cannot -- I really don't remember. I can  
25 certainly remember Rich Ramirez being involved, but how we

1 came up with WHCT Management is -- I've been trying to  
2 remember all morning, and I just can't.

3 Q Do you know why any corporate general -- strike  
4 that. Any corporation was included as a general partner,  
5 whether it was WHCT Management, Inc., or --

6 A As I said, there were many -- later on, many  
7 reasons seemed apparent, but at the time I just cannot  
8 remember why that decision was made.

9 Q Mr. Bacon, we have an attractively color coded set  
10 of exhibits up there.

11 A I see that.

12 Q Thank you. Could you please take the red volume  
13 and look at what has been I believed received in evidence or  
14 at least marked for identification as Shurberg Exhibit No.  
15 41?

16 A All right.

17 Q That is a letter from you to Mr. Boling. Is that  
18 correct?

19 A Uh-huh.

20 Q But that is not your signature, is it?

21 A No. Those are my initials placed there by my  
22 secretary at the time, Alek Agami.

23 Q But you have no doubt that that is your letter?

24 A No doubt.

25 MR. COLE: Your Honor, I withheld offering this,

1 and based on Mr. Bacon's testimony I would like to offer it  
2 at this point.

3 MS. SCHMELTZER: No objection, Your Honor.

4 JUDGE FRYSIAK: All right. Received.

5 MR. COLE: Thank you, Your Honor.

6 JUDGE FRYSIAK: That is Shurberg 41?

7 MR. COLE: That is correct.

8 (The document referred to,  
9 having been previously marked  
10 for identification as Shurberg  
11 Exhibit No. 41, was received  
12 in evidence.)

13 BY MR. COLE:

14 Q Now, am I correct in reading this letter that you  
15 had drafted certain organizational documents, in particular  
16 the one that is referenced here, an assignment repurchase  
17 and security agreement, concerning Ms. Planell in connection  
18 with her acquisition of a two percent limited partnership  
19 interest in AstroLine?

20 A Yes.

21 Q Had you prepared other such organizational  
22 documents related to the acquisition of interest in  
23 AstroLine?

24 A I can't remember one. I thought Terry was the  
25 first one, but there could have been earlier ones.

1           Q     No. I am not asking chronologically. Just as a  
2 general matter.

3           A     Yes.

4           Q     You --

5           A     I was always in charge of that.

6           Q     You were the one in charge. Was your standard  
7 operating procedure -- strike that. When you were called  
8 upon to prepare such documents, would you draft them first  
9 and then send them to Mr. Boling for his review and  
10 approval?

11          A     Yes.

12          Q     And then once he approved it, you would send it on  
13 to Mr. Ramirez, and he would then get the signature of the  
14 affected person?

15          A     I think I also sent them to everybody at the same  
16 time because they were perfunctory. I mean, I was acting as  
17 a -- just a scribe. The actual contents of the agreements  
18 could be summarized in two or three sentences from a  
19 business standpoint. I don't think the parties were  
20 interested in reading the fine print.

21          Q     And once the documents were signed as part of your  
22 role as I guess --

23          A     Scribe.

24          Q     -- scribe, they would be sent back to you for --

25          A     Yes.

1 Q -- placement in the appropriate files?

2 Could you please look at Shurberg 54, please?

3 This is a letter from Ms. Planell to you, which appears to  
4 transmit to you the executed materials. That basically  
5 closes the loop? Would that be correct? The documents have  
6 been prepared, reviewed, approved, sent out, signed, and now  
7 they are coming back to you?

8 A Apparently I didn't send something out that I  
9 should have two years earlier, according to this letter.

10 Q And what is that?

11 A She's saying, "I would also appreciate a fully  
12 executed copy of the assignment and assumption of the  
13 purchase and security agreement dated 9-6-85. I never  
14 received one." I can't remember what that's all about.

15 Q But in any event, this would be a letter that you  
16 would have received back from Ms. Planell; putting aside  
17 that paragraph, just the rest of the letter --

18 A Yes.

19 Q -- sending back to you the signed documents?

20 A Yes.

21 MR. COLE: Your Honor, I would now move this into  
22 evidence. Based on Mr. Bacon's testimony, I offer Shurberg  
23 54 into evidence.

24 MS. SCHMELTZER: No objection.

25 JUDGE FRYSIK: All right. Received.

1 (The document referred to,  
2 having been previously marked  
3 for identification as Shurberg  
4 Exhibit No. 54, was received  
5 in evidence.)

6 MR. COLE: Thank you, Your Honor.

7 BY MR. COLE:

8 Q Now, your role as scribe included, did it not, not  
9 only bringing people into AstroLine, but also if a partner  
10 departed AstroLine you would prepare those documents as  
11 well? Is that correct?

12 A Right.

13 Q Could you look at Shurberg 55, please? This would  
14 be an example of that. Actually, let me ask you. Is this  
15 an example of that situation where a partner is departing  
16 AstroLine?

17 A Well, the short answer to that question is yes,  
18 although Tom was the only other person that was involved.  
19 It was not somebody who was, strictly speaking, an employee.

20 Q Okay.

21 A He was a much -- stood in a different category  
22 from Terry Planell or any of the others.

23 Q I see. He was not a formal employee of AstroLine?

24 A I don't believe so.

25 Q Or any kind of employee of AstroLine?

1           A     I don't believe so.

2           Q     But he was a general partner of AstroLine, was he  
3 not?

4           A     I believe he was for awhile. His comings and  
5 goings are -- he came, and then he went. Whether legally he  
6 became one at any time, I just can't recall. I was trying  
7 to remember that this morning as well.

8           Q     Let me refer you then to the smaller gray volume  
9 and Shurberg Exhibits 5 and 6 and ask if that refreshes your  
10 recollection as to whether or not he was in fact a general  
11 partner?

12          A     Yes. Yes, it does.

13          Q     Exhibit 5 being an assignment of the assumption  
14 agreement pursuant to which Mr. Hart acquired an interest.  
15 Is that not correct?

16          A     Yes. September 10, 1985.

17               MR. COLE: Your Honor, I had not previously  
18 offered Shurberg 55. I would like to do so now, based on  
19 Mr. Bacon's testimony.

20               MS. SCHMELTZER: No objection.

21               JUDGE FRYSIAK: Received.

22

23

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Shurberg  
4 Exhibit No. 55, was received  
5 in evidence.)

6 MR. COLE: Thank you, Your Honor.

7 BY MR. COLE:

8 Q In any event, Mr. Hart was a partner. Again  
9 referring back to Shurberg 55, which I believe you have in  
10 front of you, in April of 1987, Mr. Hart was leaving the  
11 partnership. Is that correct?

12 A That's right.

13 Q And you prepared the letter for him to sign to  
14 acknowledge his departure?

15 A I'm sure I did.

16 Q There came a time, Mr. Bacon, did there not, that  
17 it was decided that AstroLine's, ACCLP's, ownership  
18 structure had to be changed in order to insure that the  
19 limited partners would be completely insulated from the  
20 general partners? Do you recall that?

21 A Not the way you describe it. You better ask me  
22 that again. Let me make sure I understand what you're  
23 saying.

24 Q Did there come a time, to your knowledge, when it  
25 was decided that AstroLine's ownership structure had to be

1 changed in order to insure that the limited partners would  
2 be completely insulated from the general partners?

3 A Do you mean completely insulated from liability?

4 Q No. I mean insulated from communication and from  
5 involvement in general partnership activities, the  
6 activities of the general partner.

7 A I do not recall a change in the structure to alter  
8 the relationship between the limiteds and generals. No,  
9 sir.

10 Q Let me refer you then to again in the red volume  
11 Shurberg No. 58, which is a memorandum from Baker &  
12 Hostetler to ACCLP regarding restructuring considerations.  
13 I would like you to take a look at that and see if that  
14 refreshes your recollection in any respect.

15 (Pause.)

16 A All right. I've read it.

17 Q Do you recall ever seeing this before?

18 A No, I don't, although if I were still involved in  
19 November, 1988, it certainly would have come to me. I just  
20 don't remember when I stopped being involved.

21 Q Okay. Let me then ask you to flip over to  
22 Shurberg 59, which is a letter dated November 14 addressed  
23 to Mr. Ramirez and over a signature block, which is not  
24 executed, for Edward Hayes, Jr., on the letterhead of Baker  
25 & Hostetler.

1 I would ask you to take a look at that and see if  
2 that refreshes your recollection?

3 (Pause.)

4 A No.

5 Q Do you recall whether the --

6 A Don't remember it.

7 Q Do you recall whether in November of 1988 the  
8 Peabody & Brown fax number was 723-4624?

9 A No, but I sure remember 723. It could have been.

10 Q Okay. One other thing. Does Peabody --

11 A Is that the fax number at the top?

12 Q Well, it appears to be, as I read it, but --

13 A There is certainly no -- I don't remember reading  
14 these, but I certainly would not be surprised if they were  
15 in my file or I had read them. I just -- they're not coming  
16 back to me.

17 Q Let me also ask you. When Peabody was called upon  
18 to produce documents in connection with the Hartford  
19 litigation, not this, did you all Bates stamp yours with a  
20 PB stamp that says PB down at the bottom of the  
21 right-hand --

22 A No. That would have been done, I assume, by the  
23 trustee.

24 Q I see. All right. Let me now refer you to  
25 Shurberg Exhibit 60, and let me ask you. Is that your

1 handwriting in the notations at the bottom of page 1?

2 A No.

3 Q I am sorry. It is not your handwriting?

4 A Uh-uh.

5 Q Do you recognize that handwriting?

6 A Yes.

7 Q Whose is it?

8 A William C. Lance, my partner.

9 Q Do you recall discussing this with Mr. Lance in or  
10 around November 14, 1988?

11 A No. It's funny.

12 Q I am sorry. Did you say it was funny?

13 A Yes. It's funny because I think I have seen this,  
14 but haven't -- I just haven't read it.

15 Q What makes you think you have seen it, but have  
16 not read it?

17 A Because I was flipping through copies of documents  
18 yesterday or the day before that had been -- which you had  
19 found in my files, and I think I saw this letter then, but I  
20 didn't read it. I saw this markup.

21 In any event, these are changes that would have  
22 been consistent with the way we approached all documents  
23 that came into our hands relating to the partnership.

24 Q Could you explain that?

25 A As you can see, the letter here, for instance,

1 characterizes WHCT as a nominal general partner, which is  
2 sort of a characterization of it. Bill is here crossing out  
3 nominal and putting in the specific word that it was so that  
4 we're not leaving things open to guessing about what they  
5 might have meant, which is what I meant by our approach to  
6 documents that would come into our hands relating to this  
7 client.

8 For instance here, "Recent decisions issued by the  
9 Commission make certain changes in the basic structure of  
10 AstroLine advisable," as opposed to necessitate. There I  
11 think, based on the memo that I just read, which I assume  
12 Bill must have read and probably I did, makes it advisable.  
13 Well, that's the absolute truth of the matter. It's  
14 advisable, but necessitate implies that the FCC advice we're  
15 getting is absolutely 100 percent correct.

16 I think all along we were trying to, with any of  
17 these descriptions that would come out of our office, be as  
18 absolutely precise as possible.

19 Q Now, this document was not coming out of your  
20 office, though, was it?

21 A It obviously came across Bill's desk, and it might  
22 have come across mine. Once we have our fingerprints on  
23 something, I think we want it to be absolutely accurate. I  
24 wish I had a 100 percent accurate memory.

25 Q Do you recall discussing any of the matters set

1       forth in this document, that is Shurberg 60, with anyone at  
2       Baker & Hostetler?

3               A       I don't even -- still don't remember the letter.  
4       I've read it three times over, and I just can't remember  
5       seeing it.

6               MR. COLE:   Your Honor, may I approach the witness?  
7       I have an exhibit I would like to show him.   I will pass  
8       copies on.

9               JUDGE FRYSIAK:   Yes, you may.

10              MR. COLE:   I am giving two copies to the reporter  
11       on the way by.

12              Mr. Kennedy, I am sorry.   I do not have an extra  
13       copy for you.

14              Ed, could you pass yours along?   Thank you.

15              I would be happy to show it to the Bureau.

16              MS. SCHMELTZER:   Have you given a number to this?

17              MR. COLE:   No, not yet.   This is a document which  
18       is three pages in length plus a cover sheet, and it is a  
19       memorandum, one page in length, from Fred J. Boling,  
20       president of WHCT Management, Inc., to Directors, Offices  
21       and Stockholders of WHCT Management, Inc., and it is then  
22       accompanied by a three-page letter from Edward Hayes to  
23       Richard Ramirez dated November 16, 1988.

24              I would like to have that marked for  
25       identification, please, as Shurberg 142, I believe.

1 JUDGE FRYSIAK: It may be marked.

2 (The document referred to was  
3 marked for identification as  
4 Shurberg Exhibit No. 142.)

5 MR. COLE: Thank you, Your Honor. For the record,  
6 Your Honor, I believe this was included in the bankruptcy  
7 hearing as Exhibit No. 42.

8 BY MR. COLE:

9 Q Mr. Bacon, have you had a chance to look at that  
10 while I have been chatting about it and describing it?

11 A Yes.

12 Q Do you recognize this document?

13 A Yes. I think I saw this within the last week  
14 looking through papers of my own.

15 Q Do you recall discussing this document with Mr.  
16 Boling on or about November 17, 1988?

17 A No.

18 Q Do you recall discussing it with anyone on or  
19 about November 17, 1988?

20 A I certainly would have discussed it with Bill  
21 Lance within the office. Outside of the office I cannot  
22 remember discussing it with anyone, no.

23 MR. COLE: Your Honor, I offer Shurberg 142 into  
24 evidence based on the fact that it was received into  
25 evidence in the bankruptcy proceeding.

1 MS. SCHMELTZER: No objection.

2 JUDGE FRYSIAK: Received.

3 (The document referred to,  
4 having been previously marked  
5 for identification as Shurberg  
6 Exhibit No. 142, was received  
7 in evidence.)

8 MR. COLE: Thank you, Your Honor.

9 THE WITNESS: There is the letter.

10 BY MR. COLE:

11 Q Do you mean the letter from Mr. Hayes?

12 A Yes.

13 Q This is the final draft of the letter? Would you  
14 agree with me, sir, that this appears to be the final draft  
15 of what had been worked on by Mr. Lance, for instance,  
16 marked up by Mr. Lane in Shurberg 60?

17 A No. I think this is Shurberg 61 two days later.

18 Q I see.

19 A Shurberg 60 -- well, I don't know. It could be.  
20 It's an awfully different looking letter. I'd have to go  
21 through it.

22 Q I would not want you to do that. That is fine.

23 A I could probably spend an hour on that.

24 Q Go back with me if you would, Mr. Bacon, to  
25 December of 1984, okay? I am shifting time frames, and I

1 want to make sure you and I are in sync on this. December  
2 of 1984.

3 I do not want to testify, but just to give you a  
4 piece of chronological reference, AstroLine had been formed  
5 in May of 1984. Its application to acquire WHCT had been  
6 granted in December, early December of 1984, and it was  
7 preparing to close on its acquisition of Station WHCT. Do  
8 you recall that?

9 A Yes.

10 Q You were involved in those preparations to close,  
11 were you not?

12 A Yes, I was.

13 Q All right. Please look at in the red volume  
14 Shurberg 67, which is a memorandum from you to a  
15 distribution list with a number of revised checklists of  
16 matters requiring attention in connection with the HCT  
17 closing.

18 Could you please take a look at that? I have a  
19 couple of questions about that document I would like to ask  
20 you.

21 (Pause.)

22 A All right.

23 Q Okay. Turn, if you would, to there are multiple  
24 Bates stamp numbers on this. I am looking at the one which  
25 is four zeroes and then page 440, so 0000440.

1 A I'm there.

2 Q Are you there?

3 A Yes.

4 Q The fourth entry in that listing states, "Prepare  
5 ownership reports, FCC Form 323, for Astroline  
6 Communications Company and AstroLine Company for filing 30  
7 days after closing." Is that correct?

8 A Yes.

9 Q And the Responsibility column associated with that  
10 entry are the initials TAH/CSB. Is that correct?

11 A Correct.

12 Q CSB is you, is it not?

13 A Yes.

14 Q And who is TAH?

15 A Thomas A. Hart.

16 Q Okay. So is it accurate to conclude that you were  
17 both jointly responsible, that is you and Mr. Hart, for  
18 assuring compliance with the FCC's ownership report  
19 requirements?

20 A No. This is to prepare the report, so my  
21 responsibility would be to make sure that I had in Tom's  
22 hands everything he needed in order to prepare the report  
23 since he was responsible for FCC matters.

24 Q Mr. Hart was special communications counsel for  
25 AstroLine? Is that correct?

1           A     Yes, I guess you could call him that. I don't  
2 remember seeing any formal designation.

3           Q     But irrespective of the designation, he was the  
4 one who handled --

5           A     Right.

6           Q     -- getting things on file with --

7           A     Absolutely.

8           Q     So you would have given him -- strike that. In  
9 connection with closing on the WHCT acquisition, you would  
10 have provided Mr. Hart with the relevant--

11          A     Whatever he wanted.

12          Q     Whatever he wanted, and then he would fill it in  
13 the form, get it signed and file it with the Commission? Is  
14 that correct?

15          A     Right.

16          Q     Now, you personally never filed anything with the  
17 FCC, did you?

18          A     Not that I recall.

19          Q     And Peabody had no responsibility for that either,  
20 did they?

21          A     No.

22          Q     Did Peabody have any responsibility for providing  
23 materials to the station in compliance with FCC rules and  
24 regulations?

25          A     I -- No. No.

1 Q Anything relating to FCC compliance would come  
2 from Mr. Hart from either Baker & Hostetler or Collier  
3 Shannon before that?

4 A Right.

5 Q In January of 1985, and again we are still in the  
6 same approximate time frame.

7 A Right.

8 Q January, 1985, AstroLine closes on the --

9 A Right.

10 Q -- acquisition. They are now a TV licensee.  
11 Could you turn, please, to Shurberg --

12 A Did we close in January?

13 Q I beg your pardon?

14 A That was the closing date, January?

15 Q I am perfectly happy to state that I believe that  
16 is the case, and I think everyone will stipulate that is the  
17 case.

18 A Okay. All right. Okay.

19 Q I believe it was mid January, mid to late January  
20 of 1985.

21 Turn, if you would, please, to Shurberg 68, which  
22 is a letter from you to Mr. Hart dated April 9.

23 A Yes.

24 Q Feel free to take a look at that.

25 A I have read it as recently as an hour ago.

1 Q Is that your signature on --

2 A Yes.

3 Q -- the second page?

4 A Yes.

5 MR. COLE: Your Honor, just while we are here, I  
6 would like to move this into evidence as Shurberg Exhibit  
7 68.

8 MS. SCHMELTZER: No objection.

9 JUDGE FRYSIAK: Received.

10 (The document referred to,  
11 having been previously marked  
12 for identification as Shurberg  
13 Exhibit No. 68, was received  
14 in evidence.)

15 MR. COLE: Thank you, Your Honor.

16 BY MR. COLE:

17 Q Am I correct in reading this letter as  
18 demonstrating that in April of 1985, you wrote to Mr. Hart  
19 to advise Mr. Hart of what you perceived to be certain  
20 matters relative to the ownership report which had been  
21 filed in February of 1985 which needed to be corrected?

22 A Yes, which I guess I was very careful to say there  
23 were questions.

24 Q Okay. Raising questions for him to consider?

25 A His determination of what would need correcting,

1 yes.

2 Q How did you know to raise these questions if you  
3 had no FCC expertise?

4 A I read the instructions on the form that he sent  
5 me.

6 Q Okay.

7 A Which were written in English.

8 Q Some would argue with you on that, Mr. Bacon.

9 Now, in August and September of 1985, some new  
10 partners joined AstroLine. Do you recall that?

11 A August did you say?

12 Q Yes, August/September. This is not a memory  
13 contest. I would be happy to refer you to I believe  
14 Shurberg Exhibit 3 in the gray folder just to refresh your  
15 recollection.

16 A Oh, this is Thelma.

17 Q Right.

18 A Okay.

19 Q And then Shurberg Exhibit 4 was --

20 A Yes.

21 Q -- Ms. Planell's initial interest.

22 A Yes. She's a general.

23 Q Right. I beg your pardon?

24 A She's a general partner, isn't she? Terry.

25 Q Well, you should --

1 A Yes.

2 Q -- review the document because I believe the  
3 document indicates she is a limited.

4 A Maybe she's a limited. Okay. Limited. Yes,  
5 you're right.

6 Q And Shurberg 5 is Mr. Hart.

7 A He must have been the general then. We looked at  
8 that before.

9 Q And Shurberg 6 I believe gives you a listing on  
10 page 3 of Shurberg 6 of all the partners of AstroLine as of  
11 September 10, 1985.

12 A All right.

13 Q So you would agree that that is the roster of  
14 partners of AstroLine as of September, 1985?

15 A Yes, I would.

16 Q Do you recall whether in connection with the  
17 acquisition of each of these individual partners' interest  
18 you prepared the organizational documents as we discussed  
19 earlier today?

20 A Yes.

21 Q And you did prepare them?

22 A Yes, all of them.

23 Q I apologize for making you jump around to the  
24 various folders, but go back to the red one, way at the end  
25 of the red one, Shurberg 72. It is a letter from you dated

1 October 2, 1985, to Mr. Hart.

2 A Yes.

3 Q Do you see that?

4 A Uh-huh.

5 Q That is your handwriting, is it not?

6 A It is.

7 Q This was you providing Mr. Hart in effect the  
8 executed documents for submission to the Commission?

9 A Uh-huh.

10 Q Am I reading that correctly?

11 A Right.

12 MR. COLE: Your Honor, I had not previously  
13 offered 72 into evidence. I would like to offer it at this  
14 point.

15 MS. SCHMELTZER: No objection.

16 JUDGE FRYSIK: Received.

17 (The document referred to,  
18 having been previously marked  
19 for identification as Shurberg  
20 Exhibit No. 72, was received  
21 in evidence.)

22 MR. COLE: Thank you, Your Honor.

23 BY MR. COLE:

24 Q This letter also indicates that you were aware  
25 that an ownership report had been filed on September 13. Is

1 that correct? I refer you to the second paragraph.

2 A Yes.

3 Q Do you recall why, if an ownership report had been  
4 submitted on September 13, you were providing Mr. Hart with  
5 these additional documents on October 2?

6 A No, I don't recall why.

7 Q But in any event, is it safe to conclude, at least  
8 from Shurberg 72, that while you were not an expert in FCC  
9 matters, you were actively involved in the preparation of  
10 AstroLine's ownership reports to some degree?

11 A I guess I do not want to imply that I was involved  
12 and had any responsibility for compliance with FCC  
13 regulations at any time.

14 If you're asking me did I respond to inquiries  
15 from Mr. Hart, send documents where and when I was asked to  
16 send them, I think that's about as far as you could take  
17 that theory of my involvement in the preparation of reports.

18 Q But you --

19 A At one time I looked at the instructions on a  
20 report and worried about the impression that it might create  
21 having what was clearly in my mind a limited partner being  
22 described as someone who might be a control person.

23 That set off all kinds of alarm bells in my mind  
24 and so I wrote that letter that you saw in 1985. As far as  
25 compliance with FCC regulations, no.

1 Q Do you recall that at the end of July of 1987  
2 AstroLine was required by the FCC to file a further  
3 ownership report?

4 A When?

5 Q End of July of 1987.

6 A No.

7 Q Okay. Let me refer you to the white volume, what  
8 we refer to as the white album, and that would be Shurberg  
9 No. 89. This is a telecopier cover letter from Dale R.  
10 Harberg to you accompanied by a draft FCC ownership report.

11 A I have looked at this.

12 Q Is that your handwriting at the bottom?

13 A Yes, it is.

14 Q Does this exhibit reflect that Ms. Harberg sent to  
15 you a draft ownership report on July 31, 1987?

16 A Yes. It looks like it's a fax from her to me.

17 Q And does the handwritten notation at the bottom  
18 indicate that you spoke with Ms. Harberg about this report  
19 or this draft report on that same day, that is July 31,  
20 1987?

21 A Yes. T/C Dale H., and the date. That would be me  
22 talking to her on the phone.

23 Q Who is Dale H.?

24 A She or he -- I can't even remember which -- was a  
25 lawyer or paralegal at Baker & Hostetler.

1           Q     Could you read the handwritten note just to make  
2     sure I am understanding it right?

3           A     I can, although the last line is gone, and it's  
4     gone on the copy I looked at this morning. I've been trying  
5     to figure out what it said, but the first three lines say:  
6                 "Expressed concern re...", which means about,  
7     "...including ownership reports for WHCT Management and  
8     AstroLine Company because they might be deemed admissions  
9     that these entities exercise...", and I can only speculate  
10    that the last line says, "...control over the affairs of  
11    ACC," or words to that effect.

12           MR. COLE: Your Honor, just so the record is  
13    clear, this is the way the document was received by me. I  
14    reviewed documents in the law firm of Peabody & Brown I  
15    believe in June and flagged a number to be copied and sent  
16    down. This is the way it arrived.

17           THE WITNESS: I might have a better one back at --

18           MR. COLE: Mr. Bacon may have a better copy back  
19    in his office. I do not know, but this is the way it  
20    arrived, and that is how I exchanged them.

21           THE WITNESS: You can see at the bottom line  
22    there's it looks like the word also.

23           BY MR. COLE:

24           Q     Right after what appears to be ACC?

25           A     Yes. I think I said there also made comments

1 about something else is probably what that says. I can try  
2 to find that for you if you'd like --

3 Q It is up to you.

4 A -- when I get back.

5 Q Do you know whether any ownership report was filed  
6 with the FCC on AstroLine's behalf in late July or early  
7 August, 1987?

8 A I don't know for sure.

9 MR. COLE: Your Honor, while we are here, since  
10 Mr. Bacon has identified this document, I would like to  
11 offer Shurberg 89.

12 MS. SCHMELTZER: No objection.

13 JUDGE FRYSIAK: Received.

14 (The document referred to,  
15 having been previously marked  
16 for identification as Shurberg  
17 Exhibit No. 89, was received  
18 in evidence.)

19 MR. COLE: Thank you, Your Honor.

20 BY MR. COLE:

21 Q So you are not sure whether any ownership report  
22 was in fact filed. Do you know whether --

23 A I'm pretty sure one was filed. I just can't  
24 remember for sure.

25 Q Do you know whether the concerns you expressed to

1 Ms. Harberg were ever acted on by anyone?

2 A No, I don't, and I don't know whether I even was  
3 right about whether they could be excluded under the FCC  
4 rules.

5 Q Do you recall discussing those concerns with  
6 anyone other than Ms. Harberg?

7 A No.

8 Q Let me show you, and now we are in the blue  
9 folder. I would like to refer you to Shurberg 21, which is  
10 a two-page letter from Mr. Hart to the FCC dated August 3,  
11 1987. I would ask you to take a look at that.

12 (Pause.)

13 A All right.

14 Q Have you ever seen that letter before?

15 A Yes.

16 Q When?

17 A I believe at some point during the last three days  
18 in going through papers.

19 Q Do you recall seeing it in 1987?

20 A No, but again anything of this nature I probably  
21 would have seen at some point.

22 Q Do you recall discussing this with Mr. Hart at  
23 that time?

24 A No, not specifically.

25 Q Do you recall discussing it with Mr. Ramirez at

1 that time?

2 A No.

3 Q Do you recall discussing it with anyone --

4 A No, I don't.

5 Q -- approximately the time of August 3, 1987?

6 A No recollection.

7 Q You have no recollection at all of when the first  
8 time was that you saw this document?

9 A None.

10 Q Could you turn to Shurberg 85, please, the white  
11 album. This is a letter from you to Ms. Harberg, is it not?

12 A Yes.

13 Q And that again is the signature of the secretary  
14 that you had identified previously?

15 A Yes, that's Alek's.

16 Q Does this refresh your recollection as to any  
17 conversations you had with Ms. Harberg on or about July 28,  
18 1987, concerning preparation of an ownership report for  
19 AstroLine?

20 A No, it doesn't. I looked at this letter before in  
21 the last few days. I've looked at the form, the fax form  
22 that I scribbled on, and I've looked at the letter you just  
23 referred me to. There is just absolutely no recollection of  
24 any conversations. Honestly, I don't even recall the  
25 conversation that I made the notation about.

1 Q Do you know why you would have been sending Ms.  
2 Harberg the materials which are listed in this letter?

3 A I can only assume I was asked to send them to her  
4 by Tom or by her, but I don't know. No recollection of why.

5 Q Look at the address block if you would, please,  
6 Mr. Bacon.

7 A Uh-huh.

8 Q That is addressed to Dale Harberg, c/o Thomas A.  
9 Hart.

10 A Yes.

11 Q Why would you send something to Ms. Harberg in  
12 care of Mr. Hart?

13 A Again, I can only speculate. I'm sure that I did  
14 that because she told me that was how to address the letter.

15 Q Could Mr. Hart have told you that?

16 A Maybe Mr. Hart told me that. Yes. I just don't  
17 remember.

18 Q Based on the letters that you had sent to Mr. Hart  
19 in I believe April of 1985 and also in early October of  
20 1985, is it safe to conclude that you made efforts to assure  
21 that agreements which needed to be filed with the Commission  
22 were in fact available to Mr. Hart to file?

23 A No.

24 Q That is not correct?

25 A I sent things when I was asked to send them.

1 Q If you had noticed an omission in a draft  
2 ownership report, you would not have brought that to Mr.  
3 Hart's attention to correct?

4 A I think I would have.

5 Q Go back to Shurberg 89, please, which is the draft  
6 ownership report which had been faxed to you by Ms. Harberg.

7 A Yes.

8 Q Let me refer you to --

9 A Oh. Could I supplement my answer to your earlier  
10 question about --

11 Q Absolutely.

12 A -- what this note means?

13 Q Sure. Supplement away.

14 A If you'll notice on the ownership report pages,  
15 I've marked certain changes here and there. That's what  
16 that last phrase says. I told her about those comments.

17 Q I see. That is the last illegible phrase at the  
18 very bottom?

19 A Right.

20 Q And that refers to your other handwritten  
21 remarks --

22 A Right.

23 Q -- that are included?

24 A I would have gone through this with her on the  
25 phone and just said take out that comma, change this word,

1 etc.

2 Q Now let me refer your attention to pages 2 and 3  
3 of the draft report. They are landscape. They are printed  
4 on the page lengthwise or widthwise, I guess. They are the  
5 pages that have in the upper left-hand corner Paragraph 6,  
6 List All Contracts and Other Instructions. Do you see that?

7 A Yes.

8 Q There are two copies of that page with different  
9 entries on each one.

10 A Yes.

11 Q Can you tell me if the Astroline limited  
12 partnership agreement, the amended AstroLine limited  
13 partnership agreement which is entered into and effective as  
14 of December 31, 1985, is listed there?

15 A Sure is.

16 Q Where?

17 A It's the second document down, amended limited  
18 partnership agreement and certificate.

19 Q But is that not dated 9-10-85?

20 A Yes.

21 Q Let me refer you to Shurberg Exhibit 7.

22 A Shurberg Exhibit 7.

23 Q It is the gray one, the gray folder. Is Shurberg  
24 Exhibit 7 not the first certificate of amendment to the  
25 AstroLine limited partnership agreement, and is that not

1 dated as of September 10, 1985?

2 A Yes, it is.

3 Q So that is not the December 31, 1985, agreement?

4 A No, it's not.

5 Q Do you see any other reference to the December 31,  
6 1985, AstroLine partnership agreement?

7 A No, I don't.

8 Q Do you know why it was not listed there?

9 A I don't know. I do not know.

10 Q Turn, please, to Shurberg 92, which is --

11 A Let me just make sure it isn't listed.

12 Q Yes, please do. Please take your time.

13 (Pause.)

14 A All right.

15 Q It is not listed, is it?

16 A (Non-verbal response.)

17 Q That is no?

18 A That is no.

19 Q All right. Shurberg 92, please. This is a letter  
20 from you to Mr. Hart dated August 31, 1988. Is that  
21 correct?

22 A Yes.

23 Q Again, this indicates, as I read it, that you were  
24 sending him another copy of the December 31 partnership  
25 agreement. Is that correct?

1           A     That's correct.

2           Q     Do you know why you had to send him another copy  
3 of that agreement?

4           A     No.

5           Q     Do you recall --

6           A     No. I don't recall why or anything about it.

7           Q     Do you recall wondering why it was that if you had  
8 sent Mr. Hart a copy of that agreement in July of 1987 he  
9 needed another one in August of 1988?

10          A     No. I never really paid any attention to why and  
11 when ownership reports were being filed.

12          Q     But is that consistent with your letter to Mr.  
13 Hart of April of 1985 raising questions about the ownership  
14 report that had been filed?

15          A     Yes. I guess a way to summarize my relationship  
16 with Baker & Hostetler was if something was put in front of  
17 me to review, I reviewed it. If I was asked to send  
18 something, I sent it.

19          Q     But you did not go looking for trouble?

20          A     I just -- the only trouble I was looking for --  
21 yes, I was looking for one piece of trouble. I was always  
22 looking to see if they were characterizing AstroLine -- if  
23 AstroLine Company or its partners could in any way be  
24 characterized as controlling persons or general partners.

25                 If I saw anything that would hint of control by

1 AstroLine Company over this entity, I would -- then the  
2 alarm bells would go off.

3 Q Why was that?

4 A Because in addition to representing Astroline  
5 Communications Company in connection with these agreements,  
6 I was also counsel and always had been to AstroLine Company,  
7 and the thought that these guys who had been -- could be  
8 exposed to claims by the creditors of AstroLine  
9 Communications Company was something I was charged with  
10 preventing.

11 Secondly, the role of Rich as a control person,  
12 the controlling person of the entity, was already in  
13 litigation at that time and has been in continuous  
14 litigation ever since, as far as I can tell.

15 Anything that would suggest for a moment that Rich  
16 wasn't the controlling person would set off alarm bells in  
17 my mind because then we could be -- end up in trouble with  
18 our license. Again, that was my responsibility to make sure  
19 that all the legal documents made him the controlling  
20 person.

21 Q When you say that the question of Mr. Ramirez's  
22 control was in constant litigation, are you referring to the  
23 Shurberg litigation?

24 A Yes, I am.

25 Q Do you recall when the Shurberg litigation

1 started?

2 A I don't ever recall a time when it wasn't going  
3 on.

4 MR. COLE: Sometimes I feel like that, Mr. Bacon.  
5 All right.

6 Your Honor, may I approach the witness? I have  
7 another document.

8 Again, Mr. Kennedy, and I apologize to the Bureau,  
9 you can share with them.

10 It is a one-page document with a cover sheet, a  
11 letter. While I am passing the reporter two copies, it is a  
12 letter from Ms. Planell on WHCT letterhead addressed to Mr.  
13 Bacon.

14 I have had this marked for identification as  
15 Shurberg Exhibit 143, I believe. Yes, 143.

16 (The document referred to was  
17 marked for identification as  
18 Shurberg Exhibit No. 143.)

19 BY MR. COLE:

20 Q Mr. Bacon, do you recall receiving this letter  
21 from Ms. Planell?

22 A No.

23 Q Do you recall sending Ms. Planell a copy of an  
24 agreement -- strike that.

25 Do you recall sending Mr. Ramirez a copy of an

1 agreement for the station's local public inspection file?

2 A No. In response to this letter, you mean?

3 Q No. Prior to this letter. I believe this letter  
4 refers to an agreement which you -- well, the letter says,  
5 "Dear Carter: I am in receipt of the copy of the agreement  
6 that you sent to Richard," and then it goes on asking for  
7 further information or additional information concerning  
8 that agreement.

9 A I didn't -- don't recall any act like that except  
10 that I did look at a letter earlier today that showed me  
11 sending a document to someone at the station for the public  
12 record file. I can't remember the date of it.

13 Q Do you recall ever sending to the station a copy  
14 of the AstroLine limited partnership agreement without a  
15 Schedule A attached to it?

16 A No.

17 Q So you have no recollection of this letter at all?

18 A None.

19 Q And no recollection of any correspondence between  
20 you and Ms. Planell or Mr. Ramirez sometime around the time  
21 of June 2, 1988, concerning the AstroLine limited  
22 partnership agreement?

23 A No.

24 Q Do you recall whether you sent Ms. Planell a  
25 Schedule A in June of 1988?

1 A No.

2 Q You testified, sir, that you -- strike that. When  
3 questions or matters were put before you, you responded to  
4 them. Is that correct?

5 A Yes.

6 Q So if this letter had arrived, would you have sent  
7 her a Schedule A?

8 A Yes.

9 Q Would you have spoken with Mr. Hart about it?

10 A I doubt it.

11 Q How often did you speak with Mr. Hart concerning  
12 AstroLine matters, Astroline Communications matters, on  
13 average?

14 A I would say seldom.

15 Q Would that be once a month?

16 A That would be I would say less than that. It's  
17 hard for me to remember a time when I spoke with him about  
18 any of these matters. I think I generally communicated with  
19 Tom in writing when I communicated at all.

20 Q Why was that?

21 A No particular reason. Just an attempt to be --  
22 there's really no particular reason, I guess.

23 I wasn't trying to -- my role was to respond to  
24 requests from his office, and generally it was better to  
25 respond to those in writing than orally because there wasn't

1 really much I could do to characterize any of the  
2 information I was giving him.

3 Q Let me refer you -- strike that. You were aware,  
4 were you not, Mr. Bacon, that in early September of 1988,  
5 and we have moved ahead. We are in 1988 now.

6 A Right.

7 Q Before the bankruptcy, but only shortly before the  
8 bankruptcy. In early September of 1988, Baker & Hostetler  
9 had recommended that AstroLine modify its ownership  
10 structure. Do you recall that?

11 A Yes, I do.

12 Q Let me refer you, just so we are all in the same -  
13 -

14 A Wasn't that what you first showed me?

15 Q No. No. That was a November document.

16 A Document 7.

17 Q Strike that. The documents I showed you earlier  
18 were dated November 10 through I believe 16 of 1988. Now we  
19 are referring to September of 1988. We should be --

20 A Okay.

21 Q -- two to three months earlier.

22 Let me refer you to Shurberg Exhibit 96, which is  
23 a letter from Mr. Hart to Mr. Ramirez with a copy to you and  
24 Mr. Boling.

25 A All right.

1 Q Does that refresh your recollection as to the  
2 advice from Baker & Hostetler concerning the need to change  
3 the partnership structure of AstroLine in September of 1988?

4 A I can tell you that I remember absolutely nothing  
5 about their advice other than what I'm reading in these  
6 letters. My memory is completely blank on why we did what  
7 we did at that time.

8 I mean, I remember the ownership changes,  
9 certainly remember some of them, but the rationale for them  
10 is all under the heading of FCC rules in my head. I cannot  
11 remember anything beyond that.

12 Q Do you recall any conversations you had on or  
13 about September 7, 1988, about the general matter of  
14 AstroLine's ownership structure as far as the FCC's rules  
15 were concerned?

16 A No.

17 Q Do you recall ever speaking with a woman named  
18 Linda Bocchi, who was an attorney at Baker & Hostetler?

19 A No.

20 MR. COLE: Your Honor, may I approach the witness  
21 again?

22 JUDGE FRYSIAK: Yes.

23 MR. COLE: Mr. Bacon, I would like to show you a  
24 document which is three pages in length plus a cover sheet.

25 I hand the reporter two copies and copies to all

1 counsel and ask that this be marked for identification --  
2 strike that.

3 As I say, it is a cover page with three sheets.  
4 The first sheet is under the letterhead of Baker &  
5 Hostetler. It is one page, Telecopier Cover Sheet, dated  
6 9-7-88, from Linda Bocchi to Carter S. Bacon, and it is  
7 accompanied by what appears to be a photocopy of the Code of  
8 Federal Regulations, Section No. 73.3540, with the  
9 Commission's rules and then what appears to be the first  
10 page of FCC Form 316, and there is handwriting on both of  
11 those two attachment pages.

12 I would like to have that marked for  
13 identification as Shurberg No. 144.

14 JUDGE FRYSIK: It will be marked.

15 (The document referred to was  
16 marked for identification as  
17 Shurberg Exhibit No. 144.)

18 MR. COLE: Thank you, Your Honor.

19 BY MR. COLE:

20 Q Mr. Bacon, does that refresh your recollection at  
21 all as to conversations you might have had with Ms. Bocchi  
22 on or about September 7, 1988?

23 A No.

24 Q Do you recognize the handwriting that is on the  
25 attachments? That is, on the page of 73.3540 there is the

1 written word Ignore at the top, and on page three, the Form  
2 316, there is a paragraph circled, and the numbers 73.3540  
3 are written in the margin. Are those recognizable to you?

4 A No. Uh-uh. None of the marks on this page are  
5 recognizable.

6 Q And you do not recall receiving this document? Is  
7 that correct?

8 A No.

9 Q Do you know if changes in the AstroLine  
10 partnership agreement were effectuated as contemplated by  
11 Mr. Hart's letter, which is Shurberg 96, the September 7,  
12 1988, letter?

13 A I thought we had transferred the stock in WHCT  
14 Management to Rich, that all the owners of WHCT transferred  
15 their stock to Rich, and Rich became the sole stockholder of  
16 WHCT.

17 Q And when you refer to Rich, you are referring  
18 to --

19 A Rich Ramirez. I'm sorry.

20 This is saying, "Please be advised if WHCT  
21 Management, Inc., is not dissolved...", which means to make  
22 it go away as an entity, "...a separate ownership report  
23 will have to be filed disclosing corporate structure. I  
24 recommend that this entity be dissolved and its ownership  
25 interest be distributed among the limited partners."

1           As I recall, Rich owned -- all the stock was  
2 transferred to Rich, and I think he still owns all the  
3 stock. I just don't remember dissolving it or even  
4 considering dissolving it.

5           Q     Do you recall discussing this matter with anyone  
6 after you received the September 7, 1988, letter?

7           A     No, I don't. Frankly, if I received this letter,  
8 which I'm sure I did, I probably just threw it in a file  
9 without giving it much thought at all at that time.

10          Q     Even though Mr. Hart advised that it was  
11 imperative that certain changes in the ownership structure  
12 be made?

13          A     He was sending that advice to his client, which  
14 was Rich and Astroline Communications Company Limited  
15 Partnership. Until I was told by them to take an action, I  
16 would not have.

17                 There are already lawyers involved. There is no  
18 need for me to add my two cents about anything here since it  
19 did not affect -- had nothing to do with my own clients,  
20 which I would have regarded once Schatz & Schatz was on the  
21 job, but I would have regarded myself as watching out for  
22 the AstroLine Company partners to make sure they were not  
23 exposed by some action that was being taken to liability as  
24 the general partners.

25          Q     Did you understand what Mr. Hart meant when he

1 referred to the insulation of limited partners from the  
2 management or operation of the media related activities of  
3 the partnership?

4 A I probably would have. I mean, I certainly do  
5 today, and I probably would have then. Between then and  
6 now, that is something I wouldn't have given any thought to.  
7 It hasn't come up in any other partnership I've been  
8 involved with.

9 MR. COLE: Your Honor, I would like to offer into  
10 evidence Shurberg 144.

11 MS. SCHMELTZER: Which is 144?

12 MR. COLE: That is -- strike that. I take that  
13 back. I will withdraw that.

14 MS. SCHMELTZER: Right.

15 MR. COLE: I withdraw the offer.

16 MR. COLE: Finally, Mr. Bacon, let me just show  
17 you one last document.

18 Your Honor, may I approach?

19 JUDGE FRYSLIAK: Yes.

20 MR. COLE: This is a cover page and 11 pages  
21 thereafter.

22 I will provide the reporter with two copies and  
23 copies to all counsel except, of course, Mr. O'Connell, who  
24 is very graciously allowing me to share and make sure that  
25 the Bureau has a copy.



1 fax line at the top indicates '88 09/07 12:07 on the first  
2 page?

3 A Yes. September 7, 1988, the same date as the  
4 letter.

5 Q But you have no other recollection of this  
6 document at all?

7 A Absolutely not.

8 MR. COLE: Excuse me for just a minute, Your  
9 Honor.

10 (Pause.)

11 BY MR. COLE:

12 Q I am sorry, Mr. Bacon. I skipped over one thing  
13 that I wanted to show you, if I could, while I have you. I  
14 believe in the red volume, Shurberg 62, and again I  
15 apologize for jumping around chronologically. Please take a  
16 minute to get your bearings.

17 This is a document dated November 22, 1988. You  
18 will recall we saw the Baker & Hostetler materials dated  
19 earlier, about two weeks earlier, in November of 1988, then  
20 we saw Mr. Boling's memorandum to WHCT principals dated I  
21 believe November 17, 1988, and then I want you to look at  
22 this. I want to ask you a couple questions about this.

23 A All right. Which other documents did you want me  
24 to look at?

25 Q I am just giving you a frame of reference to

1 assist you in orienting yourself. Take a moment to find  
2 those.

3 A That would be the November 16,1988, letter to Rich  
4 Ramirez --

5 Q Yes.

6 A -- from Edward Hayes?

7 Q That is correct.

8 A Which seems to clearly be the proximate cause of  
9 my November 22 memorandum.

10 Q Do you recall sending this memorandum out on  
11 November 22?

12 A No.

13 Q This is consistent with your role as scribe to the  
14 organization? Is that correct?

15 A Yes.

16 Q That is a decision that was made to --

17 A To make this amendment because it's clear from  
18 these papers that it was -- FCC counsel had advised  
19 Astroline Communications Company Limited Partnership that  
20 under current FCC rules, having a provision such as the one  
21 in this amendment would be important to the partnership and,  
22 therefore, please -- then the request comes through to us to  
23 please make sure that an amendment is done in accordance  
24 with Massachusetts law incorporating this provision. That  
25 would be the way this all would have come about.

1 MR. COLE: Your Honor, I offer Shurberg 62. I  
2 withheld this previously. I would offer it now.

3 MS. SCHMELTZER: No objection.

4 JUDGE FRYSIAK: Received.

5 (The document referred to,  
6 having been previously marked  
7 for identification as Shurberg  
8 Exhibit No. 62, was received  
9 in evidence.)

10 MR. COLE: Thank you, Your Honor.

11 Your Honor, my notes do not reflect that I offered  
12 Shurberg 60, which is the Ed Hayes letter which has been  
13 marked up, according to Mr. Bacon, by Mr. Lance. I would  
14 like to offer that as Shurberg 60 at this time.

15 MS. SCHMELTZER: No objection, Your Honor.

16 JUDGE FRYSIAK: All right. Received.

17 (The document referred to,  
18 having been previously marked  
19 for identification as Shurberg  
20 Exhibit No. 60, was received  
21 in evidence.)

22 MR. COLE: Thank you, Your Honor.

23 THE WITNESS: Can I offer another comment to  
24 clarify an earlier answer?

25 MR. COLE: Feel free.

1 THE WITNESS: Looking at Exhibit 60, this is --  
2 you'll remember these were the handwritten comments of Bill  
3 Lance of my office.

4 MR. COLE: That is correct.

5 THE WITNESS: You asked me whether I remembered  
6 the disillusion being carried out that was referred to in  
7 the September 7 letter you showed me.

8 Here is Bill saying on page 2 of that letter,  
9 picking up with the language on Line 4, "We strongly  
10 recommend that WHCT immediately retire as general partner,"  
11 and he has inserted, "Or that all its stock be transferred  
12 to...", and I'm sure he meant Richard Ramirez, "...or  
13 someone other than AstroLine Company or its partners."

14 That is probably what I'm thinking of when I say I  
15 remember the stock being transferred to Rich. I think  
16 that's probably where we were going, but we're just  
17 responding to FCC's counsel that says you can't have a  
18 structure like this anymore.

19 BY MR. COLE:

20 Q When FCC counsel advised that you could not have a  
21 structure like that anymore, do you recall asking FCC  
22 counsel how long the prohibition that they were referring to  
23 had been in effect?

24 A No.

25 Q And FCC counsel there would have been Mr. Hart?

1 A Yes.

2 Q Do you know when Mr. Hart left Baker & Hostetler?

3 A No.

4 Q When you refer to FCC counsel, would you refer to  
5 Mr. Hart after he left Baker & Hostetler?

6 A No. I would always refer to Baker & Hostetler, to  
7 my knowledge.

8 Q Except am I correct that in the very earliest  
9 days, that is 1984 to early 1985 --

10 A Shannon Collier.

11 Q Collier Shannon?

12 A Collier Shannon.

13 Q Just to make sure we are clear, Mr. Hart and  
14 Collier Shannon were FCC counsel from 1984 until he joined  
15 Baker & Hostetler. At that point, Baker & Hostetler and Mr.  
16 Hart became FCC counsel for AstroLine --

17 A Yes.

18 Q -- and continued on, and even though Mr. Hart left  
19 Baker & Hostetler at some point--

20 A When did he leave?

21 Q I do not think it is a matter of record. I would  
22 be happy to --

23 A I don't remember anybody. I mean, this all ended  
24 for me around 1988. I think I was still thinking of Baker &  
25 Hostetler as FCC counsel at that time whether Tom was there

1 or not.

2 Q One last thing, Mr. Bacon. If you could look at  
3 Shurberg 57? It is in the red folder. This is a loose end  
4 that I would like to tie up before we move too far. This  
5 again relates back to your very early testimony today, and I  
6 apologize for taking it out of order.

7 A That's all right.

8 Q This relates to Mr. Hart's resignation from  
9 AstroLine in April of 1987, and I just want to confirm that  
10 this is your letter to Mr. Boling transmitting to Mr. Boling  
11 the various documents, and this is all part and parcel of  
12 your role as scribe for AstroLine?

13 A Yes.

14 MR. COLE: Your Honor, on that basis, I believe I  
15 withheld offer of 57. I would like to offer Shurberg 57 at  
16 this time.

17 MS. SCHMELTZER: No objection.

18 JUDGE FRYSIK: Received.

19 (The document referred to,  
20 having been previously marked  
21 for identification as Shurberg  
22 Exhibit No. 57, was received  
23 in evidence.)

24 MR. COLE: Thank you, Your Honor. Your Honor, I  
25 have no further questions.

1 MS. WITHERS: The Bureau has no questions.

2 MS. SCHMELTZER: Could we take a short break, Your  
3 Honor, to try and speed things up?

4 JUDGE FRYSIAK: Five minutes?

5 MS. SCHMELTZER: Yes. That would be fine.

6 (Whereupon, a short recess was taken.)

7 JUDGE FRYSIAK: All right. We are back on the  
8 record.

9 MR. COLE: Your Honor, before I turn the witness  
10 over to Ms. Schmeltzer, in going over my notes I noticed  
11 that there is the matter of Shurberg Exhibit 67 about which  
12 I examined Mr. Bacon. It is his December 21, 1984,  
13 memorandum with the attached checklist concerning the  
14 closing responsibilities for the WHCT closing.

15 I would like to correct that oversight by offering  
16 it now.

17 MS. SCHMELTZER: No objection.

18 JUDGE FRYSIAK: 67?

19 MR. COLE: 67, yes. Shurberg 67.

20 (The document referred to,  
21 having been previously marked  
22 for identification as Shurberg  
23 Exhibit No. 67, was received  
24 in evidence.)

25 MR. COLE: Thank you, Your Honor. I have nothing

1 further.

2 JUDGE FRYSIAK: All right.

3 CROSS-EXAMINATION

4 BY MS. SCHMELTZER:

5 Q Mr. Bacon, I am Kathryn Schmeltzer, counsel for  
6 Richard Ramirez.

7 I want to show you a copy of what is already in  
8 the record as Shurberg Broadcasting Exhibit 9, which is the  
9 amended and restated limited partnership agreement of  
10 December 31, 1985.

11 You will notice, if you will look at the copy that  
12 is in the record, there is a very faint stamp in the upper  
13 right-hand corner. I would just like to show you a slightly  
14 better copy of that stamp --

15 A Okay.

16 Q -- to see if you can read that for us.

17 A I recognize that stamp. That's the stamp of the  
18 Secretary of State of the Commonwealth of Massachusetts.

19 Q And did you file that agreement with the Secretary  
20 of State of Massachusetts?

21 A Corporation Division. I'm sure I caused it to be  
22 filed there.

23 JUDGE FRYSIAK: Is there a date on that stamp?

24 THE WITNESS: It's illegible.

25

1 BY MS. SCHMELTZER:

2 Q When documents are filed with the Secretary of  
3 State for Massachusetts, are they public documents?

4 A Yes.

5 MS. SCHMELTZER: Your Honor, I would like to have  
6 marked for identification as Trustee Ramirez TIB's Exhibit  
7 15 a one-page document. This is a letter on the stationery  
8 of Peabody & Brown.

9 I have given two copies to the reporter and one  
10 copy to everyone else.

11 (The document referred to was  
12 marked for identification as  
13 Trustee Ramirez TIB's Exhibit  
14 No. 15.)

15 BY MS. SCHMELTZER:

16 Q Mr. Bacon, do you recognize this document?

17 A Yes, I do.

18 Q Can you tell us what it is?

19 A It's an opinion letter issued by my firm to 28  
20 Garden Street Associates.

21 Q And is this an opinion about Astroline  
22 Communications Company Limited Partnership?

23 A Yes, it is.

24 Q Is this a formal opinion letter of your firm?

25 A Generally. Well, it is a formal opinion letter.

1 Yes, it is.

2 MS. SCHMELTZER: Your Honor, I would move that  
3 Trustee Ramirez TIB's Exhibit 15 be received in evidence.

4 MR. COLE: No objection.

5 JUDGE FRYSIAK: Received.

6 (The document referred to,  
7 having been previously marked  
8 for identification as Trustee  
9 Ramirez TIB's Exhibit No. 15,  
10 was received in evidence.)

11 MS. SCHMELTZER: We have no further questions,  
12 Your Honor.

13 JUDGE FRYSIAK: Mr. Cole, do you have any follow  
14 up?

15 MR. COLE: As much as I would like to follow up  
16 that question, Your Honor, I do not think so. Nothing  
17 further, Your Honor.

18 JUDGE FRYSIAK: All right, Mr. Bacon. Thank you  
19 very much.

20 THE WITNESS: You're welcome.

21 JUDGE FRYSIAK: You are excused.

22 (Witness excused.)

23 JUDGE FRYSIAK: Nothing further for this  
24 afternoon?

25 MR. COLE: That is correct. We have Mr. Hart

1 tomorrow morning.

2 JUDGE FRYSIAK: 10:00 a.m.?

3 MR. COLE: I believe 10:00 a.m. I will fax him a  
4 note this afternoon just to remind him that we have him at  
5 10:00 a.m.

6 JUDGE FRYSIAK: All right. We stand in recess  
7 until 10:00 a.m. tomorrow.

8 MR. COLE: One last thing as far as you are going  
9 to get back to me or Ms. Schmeltzer is going to report back  
10 to me on Mr. Ramirez so we can decide whether or not he is  
11 going to be in on Thursday? Is that right?

12 MS. SCHMELTZER: Well, I think your question was  
13 whether we could all agree that --

14 MR. COLE: That Thielen Marin is the Los Angeles  
15 firm.

16 VOICE 1: We just need to confirm that.

17 MS. SCHMELTZER: We should confirm that.

18 MR. COLE: Yes. Okay. Fine.

19 JUDGE FRYSIAK: All right. See you tomorrow  
20 morning.

21 MR. COLE: Thank you, Your Honor.

22 (Whereupon, at 3:45 p.m. the hearing was  
23 adjourned, to reconvene at 10:00 a.m. on Thursday,  
24 September 29, 1998.)

25 //

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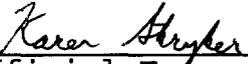
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