

SBH Exh. 70

BAKER & HOSTETLER

ATTORNEYS AT LAW

WASHINGTON SQUARE, SUITE 1100

1050 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20036

(202) 861-1500

TELECOPIER (202) 466-2387

TELEX 650-235-7276

IN DENVER, COLORADO
SUITE 1100, 303 EAST 17TH AVENUE
DENVER, COLORADO 80203
(303) 861-0600

IN ORLANDO, FLORIDA
13TH FLOOR BARNETT PLAZA
ORLANDO, FLORIDA 32801
(305) 841-1111

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 821-0200
TWX 810 421 8376

IN COLUMBUS, OHIO
65 EAST STATE STREET
COLUMBUS, OHIO 43215
(614) 228-1841

May 24, 1985

WRITER'S DIRECT DIAL NO.:

(202) 861-1658

VIA ZAP MAIL

William Lance, Esquire
Peabody & Brown
One Boston Place
Boston, MA 02108

Mark Oland, Esquire
Schatz & Schatz, Ribicoff & Kotkin
One Financial Plaza
Hartford, CT 06103

Re: Shurberg Broadcasting of Hartford, Inc. v. Federal
Communications Commission, 84-1600 (D.C. Cir. 1985)

Gentlemen:

Enclosed for your review is a draft of Astroline Com-
munications Company Limited Partnership's brief, as an inter-
venor, in the above-referenced matter. If your schedule
permits, I would appreciate it if you, or someone in your
office, could take a look at the brief over the next few days.
I have also enclosed a copy of the Federal Communications
Commission's Memorandum Opinion and Order, FCC 84-613 (re-
leased December 7, 1984) from which SBH seeks appeal.

The brief is due on Thursday, May 30, 1985. Therefore, all
suggestions should be received in my office no later than 3:00
p.m. on Tuesday, May 28, 1985. I will be working on the facts
and other sections of the brief over the weekend. Thank you for
your assistance in this matter. Please let me hear from you
soon; in the meantime, I remain,

Sincerely,

Thomas
Thomas A. Hart, Jr.

Enclosures

cc: Herbert A. Sostek (w/encl.)
Walter A. Stringfellow, Esq. (w/encl.)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 84-1600

SHURBERG BROADCASTING OF HARTFORD, INC.

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION

Appellee.

On Appeal From An Order Of
The Federal Communications Commission

BRIEF FOR INTERVENOR
ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

Thomas A. Hart, Jr.
Lee H. Simowitz
Merilyn M. Strailman
BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 861-1500

Attorneys for Intervenor Astroline
Communications Company Limited
Partnership

Center

CERTIFICATE REQUIRED BY RULE 8(c) OF THE GENERAL RULES OF
THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

The undersigned, counsel of record for Astro-
line Communications Company Limited Partnership, Intervenor
in support of Appellee, certifies that the following listed
parties including Intervenors, appeared in the proceedings
below before the Federal Communications Commission:

Appellant:

Shurberg Broadcasting of Hartford, Inc.

Intervenors (in support of Appellee):

Astroline Communications Company Limited
Partnership

Department of Communications of the Capital
Region Conference of Churches, The
Communications Management Team of the
Christian Conference of Connecticut and
Sherman G. Tarr

Non-intervening parties filing below in support of Appellee's
position:

Faith Center, Inc.

Other non-intervening parties filing below:

Interstate Media Corporation

These representations are made in order that judges
of this Court, inter alia, may evaluate possible dis-
qualifications or recusal.

Thomas A. Hart, Jr.
Attorney of Record for Astroline
Communications Company Limited
Partnership

5/24/85

I. SBH HAD NO RIGHT TO COMPARATIVE CONSIDERATION WITH FAITH CENTER.

SBH's claim is founded on the premise that, under Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945), it had an absolute statutory right to a comparative hearing against Faith Center. SBH has no such right. SBH's application arrived in the middle of a properly initiated non-comparative renewal proceeding for the purpose of determining whether Faith Center was qualified to hold the license for WHCT-TV. The absence of any "window" for competing applications on December 2, 1983, the date SBH filed its application, rests on the Commission's interpretation of its own procedural orders -- an interpretation that this court has repeatedly held deserves judicial deference.

- A. Faith Center's ongoing non-comparative renewal and distress sale proceeding complied in all respects with the FCC's specific procedures regulating renewal proceedings.

The FCC, pursuant to the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. §§ 151 et seq (1982), has provided specific procedures for processing renewal applications. A licensee must file a renewal application "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed" 47 C.F.R. §73.3539(a) (1984). An application for a new broadcast station license which is mutually exclusive with an application for renewal of an existing station must be filed by the end of the first day of the last full calendar month of the expiring license term. 47 C.F.R. §73.3516(e) (1984). Section 73.3516(e) of the Commission's Rules is referred to as the "cut-

off" rule. See City of Angels Broadcasting, Inc. v. FCC, 745 F.2d 656, 662 (D.C. Cir. 1984). The cut-off rule provides for only a three-month "window" during which competing applications may be filed against renewal applications and prohibits acceptance of mutually exclusive applications at any other time.^{1/}

No "window" opens, however, when a licensee is involved in renewal hearings, because the licensee is not required to file a renewal application until the hearing is terminated.

It has been long standing Commission policy that, when an application for renewal of license is designated for hearing, the applicant is not required to file another renewal application for the station until completion of the hearing and the issuance of a final decision on the application . . .

Committee for Open Media v. FCC, 543 F.2d 861, 864 n.15 (D.C. Cir. 1976), citing Chronicle Broadcasting Co., 41 F.C.C. 2d 14 (1973). Although protracted proceedings may indirectly result in extending a license beyond its normal expiration date, such consequences are anticipated by the Communications Act. 47 U.S.C. §307(c) (1983). The only time restriction imposed by the Communications Act is a limitation upon the period for which the Commission itself may grant a license. Id. Courts have consistently

^{1/} "The cut-off rule basically serves two purposes. First, it advances the interest of administrative finality: 'There must be some point in time when the Commission can close the door to new parties to a competitive hearing or, at least hypothetically, no licenses could ever be granted.' Second, it aids timely broadcast applicants by granting them a 'protected status' that allows them to prepare for what often will be an expensive and time-consuming contest, fully aware of the competitors they will be facing." Id. at 663 (citations omitted).

held that this limitation is on the Commission's award of a license and not on the duration of the licensing proceeding itself, for:

'[p]ending any hearing and final decision on' a renewal application 'and the disposition of any petition for hearing . . . the Commission shall continue such license in effect' - obviously, beyond the maximum . . . term for which the Commission could award it, if necessary. Thus Congress made specific provision for licenses involved in the renewal process, and unambiguously decreed that they be maintained in operation until 'final decision' on the question of renewal.

. . . Moreover, [Section 307(c)] requires licensees to file renewal applications only '[u]pon the expiration of [a] license.'

Committee for Open Media v. FCC, 543 F.2d at 866-67. (quoting 47 U.S.C. §307(c)).

In 1980, when Faith Center's license came due for renewal, the Commission designated its license for a non-comparative renewal hearing, thus obviating the need for Faith Center to file a supplemental renewal application until the hearing was resolved. At the same time, the Commission authorized Faith Center to seek a qualified minority purchaser to whom its license could be assigned under the terms of the Commission's distress sale policy. In re Application of Faith Center, Inc., 83 F.C.C.2d 401 (1980); Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C.2d 979 (1978). Unless the Commission terminated the renewal hearing and required Faith Center to file a supplemental renewal application, no "window" for competing applications would open in the normal course of the proceeding, as that course is defined by the Communications Act and this Court's decision in Committee for Open Media. There was thus no

"window" open for competing applicants when SBH filed its application on December 2, 1983, and SBH had no statutory right under Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945) to transform the noncomparative hearing then in progress into a comparative hearing.

- B. SBH's arguments that a "window" for competing applicants opened in December 1983 are groundless.

Through an ingenious -- but spurious -- argument, SBH attempts to bootstrap its way into the status of a comparative applicant with full statutory Ashbacker rights. This argument is not identified as such in SBH's brief; rather, SBH's pivotal assertion is imbedded in SBH's description of what it calls "The Administrative Background." SBH Br. 4.

On September 30, 1983, the Commission authorized the second of Faith Center's three attempts at a distress sale, to Interstate Media Corporation ("IMC"). In re Application of Faith Center, Inc., 54 Rad. Reg. (P&F)2d 1286 (1983). In approving that distress sale, the Commission pronounced the proceeding "terminated" (id. at 1290) but subject to two conditions subsequent, both of which were essential:

[W]e shall grant Faith's current Petition for Special Relief, subject to the conditions that IMC is found fully qualified to be a Commission licensee as a result of the Mass Media Bureau's review of the assignment application, and that the contemplated assignment is in fact consummated within 90 days of the Bureau's grant of the assignment application becoming final. Should either of these conditions not be met, this proceeding will return to its status prior to the filing of Faith's Petition for Special Relief.

Id. at 1290 (emphasis added). Seizing on the word "terminated," and ignoring the fact that the conditions subsequent were not fulfilled -- IMC did not complete the assignment -- SBH asserts:

The "window" for competing applications for Connecticut broadcast licenses opened on December 1, 1983. As of that date the Faith Center/IMC application was still pending, and the Station WHCT-TV "hearing" had been terminated. SBH filed its competing application on December 2, 1983, with the understanding that it would be entitled to comparative consideration against Faith Center or IMC, as well as any other applicant which might file during the three-month "open window" period.

SBH Br. 5-6.

But contrary to SBH's claim, the hearing had not been "terminated" and no window opened to receive its application. In its Clarification of Distress Sale Policy in October 1978 ("Clarification"), 44 Rad. Reg. (P&F) 2d 479 (1978), the Commission expressly anticipated that assignments pursuant to this policy would not always be achieved: "In the event a licensee's exploration of (or application for) distress sale relief is unsuccessful, . . ., the suspended qualification hearing will be resumed." Id. at 480, n.2 (emphasis added). At no point in a distress sale proceeding, however, is the hearing status of an applicant's renewal application terminated in order to open the door to competing applicants. If the Commission's conditional grant of authority to assign a license pursuant to the distress sale policy could have the effect of opening the door to competing applicants pending the outcome of the conditions to the grant, the possibility recognized by the Commission of resuming the basic qualifications hearing if the proposed sale is unsuccessful would be foreclosed.

Once a renewal application is designated for a non-comparative hearing on basic qualifications issues and a distress sale is authorized, the proceeding is simply suspended -- not terminated -- until the distress sale proceeding is completed or the hearing is resumed and a resolution of the issues designated in that proceeding is reached. See Clarification at 480. Therefore, when SBH filed its application, Faith Center's renewal application for that broadcast facility was still in hearing status, with no window for competing applications, pending the outcome of the conditions to the September 30, 1983 authorization for assignment of the license through a distress sale.

Having staked its claim to a nonexistent "window" in which it filed its application, SBH then maintains that the pendency of the Faith Center renewal proceeding could not empower the Commission to reject SBH's application. SBH places tremendous emphasis on the fact that the Commission never reached the merits of Faith Center's renewal application. SBH Br. 18-21. SBH argues in essence that the Commission could not exclude SBH from the proceeding unless actual hearing activity were underway directed at the merits of Faith Center's license renewal. SBH's argument is erroneous for two reasons.

First, SBH's argument is circular. By the express terms of the Commission's distress sale procedure, the distress sale option is available only to licensees who are not yet involved in renewal hearings. "[W]e will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to

transfer or assign their licenses at a 'distress sale' price to applicants with a significant minority ownership interest. . .". Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 983 (1978) (emphasis added; footnote omitted). The Commission restricts the distress sale program to licensees not yet involved in renewal hearings for strong reasons of policy that have been summarized by this Court:

The imposition of this limitation on the exception's availability will prevent a licensee from proceeding into the hearings, evaluating the evidence against him, and deciding on that basis whether to seek out a minority purchaser. In this manner the Commission believes that its goal of increased minority ownership can be promoted at a minimum cost to deterrence.

Stereo Broadcasters, Inc. v. FCC, 652 F.2d 1026, 1028 (D.C. Cir. 1981). SBH's argument is thus perfectly circular: if a renewal hearing on the merits had commenced, Faith Center would never have been eligible for the distress sale program in the first place.

Second, there was plenty of activity in the Faith Center docket, all of it directed at Faith Center's attempts to effect an acceptable and feasible distress sale. SBH never explains (nor can it) why a renewal hearing on the merits should permit the Commission to exclude competing applicants while an active distress sale proceeding (in SBH's view) counts for nothing.^{2/} In fact, the Commission and its staff closely

^{2/} SBH asserts that "[t]his is not . . . a situation where the incumbent licensee has been struggling for years to demonstrate its qualifications to the Commission . . ." SBH Br. 19. But this manifestly is a situation in which the licensee "has been struggling for years" to complete a distress sale. SBH does not explain why one such proceeding can be protected from latecomers but the other cannot.

supervised Faith Center's attempts to achieve a distress sale throughout the proceeding. [record references] It is simply untenable for SBH to maintain that competing applicants cannot intrude on an active renewal hearing, but that applicants can intrude on an active distress sale proceeding at will.

Finally, SBH unfairly attempts to tar the Commission with the charge of being hostile to competing license applicants. In fact, SBH itself was a latecomer to a proceeding in which -- despite ample opportunity -- no competing applicants had shown the slightest interest. Faith Center's last previous license application had been filed in 1977; no competing applicant filed against its renewal application. In 1980, when Faith Center's license again came due for renewal, the Commission solicited comments from the public as to the appropriate disposition of Faith Center's WHCT-TV license. [citation] Although comments were submitted, no one -- including SBH and its owner, Mr. Alan Shurberg -- expressed an interest in filing a competing application for the frequency. The Commission then commenced its non-comparative renewal proceeding and authorized Faith Center to seek a distress purchaser. Two such purchasers came forward, in 1981 and 1982, but no one -- again including SBH or Mr. Shurberg -- sought to interject a competing application. Only in December 1983, after any reasonable person would have concluded that there was no interest in a comparative proceeding, did SBH appear with its competing application. SBH and any other potential competing applicants had ample opportunity long before to make their wishes known to the Commission; they did not do so.

- 3 -
- C. The FCC acted within its administrative discretion in continuing Faith Center's non-comparative renewal proceeding pending consummation of its distress sale to Astroline.

The FCC has wide discretion in designing its own procedures. City of Angels Broadcasting, Inc. v. FCC, 745 F.2d 656, 664 (D.C. Cir. 1984).^{3/} "Section 4(j) of the Communications Act of 1934, 47 U.S.C. § 154(j), proclaims that the FCC 'may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.'" Id.

In City of Angels, this Court upheld the FCC's denial of an applicant's request to intervene in an ongoing comparative proceeding. Much like SBH in this case, the applicant requested to have its mutually exclusive application accepted and given comparative consideration along with other comparative applicants even though it was filed long after the "window" for filing competing applications had closed. Yet, in contending that its 1983 application should have been accepted for filing, SBH goes even farther than the applicant in City of Angels -- not only does SBH request to have its untimely application accepted, it contends that an ongoing non-comparative proceeding should thereby be transformed into a comparative proceeding so that SBH could be given comparative consideration.

^{3/} See e.g., MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 533 (D.C. Cir. 1983); Western Union Telegraph Co. v. FCC, 665 F.2d 1112, 1121, & n.13 (D.C. Cir. 1981); Nader v. FCC, 520 F.2d 182, 195-97 (D.C. Cir. 1975).

SBH's argument would require this Court to overturn the FCC's interpretation of its own September 30, 1983 order, and to find that it committed reversible error in not opening a "window" for filing against Faith Center. In its Memorandum Opinion and Order ("MO&O") under review in this case, the Commission clearly interpreted its prior order of September 30, 1983, explaining that Faith Center's renewal had not been granted, but that it was only granted conditionally, pending consummation of a distress sale. MO&O at 3. The Commission stated: "There was no requirement that Faith file a renewal application for the period of 1984 through 1989, since Faith's 1977 renewal application was and remains in hearing status and competing applications cannot be filed until the proceeding has been terminated." Id.

This court's review of the Commission's construction of its own prior order is limited. The court may not overturn an agency's interpretation unless there are compelling indications that it is wrong. City of Angels, 745 F.2d at 661. Whether there may be other reasonable interpretations of an order in addition to that expressed by the Commission is irrelevant. This court should only examine whether the Commission's interpretation was reasonable under the circumstances. If it was, then the Commission's interpretation should be upheld. See also Tele-Media Corp. v. FCC, 697 F.2d 402, 420 (D.C. Cir. 1983).

If the Commission's own interpretation of its order is upheld, as it should be, then Faith Center's renewal proceeding was a non-comparative proceeding from its inception. Whether to

--

transform it into a comparative proceeding was a decision left to the discretion of the Commission which, for the reasons fully explained infra, denied SBH's request.

II. THE COMMISSION'S ORDER IS CONSISTENT WITH THIS COURT'S DECISION IN NEW SOUTH MEDIA.

SBH contends that this Court's decision in New South Media Corp. v. FCC, 685 F.2d 708 (D.C. Cir. 1982) deprived the Commission of the discretion to do anything except halt the Faith Center distress sale proceeding and commence a comparative proceeding whose only participants would be SBH and Faith Center.^{4/}

^{4/} "The Commission cannot seriously argue that . . . New South Media did not compel it to accept and consider SBH's application in a consolidated comparative hearing with that of Faith Center." SBH Br. 22. "[T]he Commission would again ignore SBH's right to sole comparative status as against Faith Center . . ." SBH Br. 46 (all emphasis added).

To the contrary, the Commission chose a course of action that was entirely consistent with the New South Media decision, and SBH's reliance on that case is misplaced.

In New South Media, the Commission reopened prior license renewals for thirteen RKO broadcast stations, and proposed to adjudicate RKO's qualifications to retain its licenses in a single noncomparative renewal proceeding. All competing applicants for the thirteen licenses would be kept at bay until the noncomparative proceeding ran its course, whenever that might be. "The Commission has placed a freeze on their [competing] applications, and it is unclear when the freeze would thaw." 685 F.2d at 717. This Court reversed the Commission because it had "not adequately accounted for an action destined to prolong by months and in some cases even years licensee RKO's immunity from competitive challenge and comparative evaluation." Id. at 715.

The differences between the case under review and New South Media are far more significant than any similarities. First, at the most elementary level, this case does not involve an indeterminate freeze on competing applications. Faith Center had been unable to consummate two previous distress sale proposals, and the Commission ruled that if the assignment to Astroline also failed, Faith Center would be promptly required to file a supplemental renewal application, thus opening the way for

(footnote continued)

again ignore SBH's right to sole comparative status as against Faith Center . . ." SBH Br. 46 (all emphasis added).

any competitor who wished to file an application. MO&O at 6. The Commission's order thus had two possible outcomes, both of which would have activated the normal comparative hearing process -- immediately (if the Astroline assignment fell through) or on the ordinary three-year cycle (if Astroline consummated the purchase). In no event would the Faith Center license have been relegated to the indefinite limbo that this Court found unacceptable in New South Media.

Second, a distress sale proceeding is a bona fide renewal proceeding. A successful distress sale proceeding results in the renewal of the license in question, not for the incumbent's own use but solely for the purpose of assigning the renewed license to a qualified minority purchaser. In New South Media, by contrast, the renewal "hearings" at issue were hearings in name only, with nothing to be resolved or even begun until the collateral proceeding on RKO's qualifications was finished (" . . . no renewal hearing ongoing at the Commission, no evidence-taking underway, no proceeding in midstream or even launched." 685 F.2d at 716). But a distress sale renews a license, and serves the public interest, just as surely as a comparative hearing does -- by divesting the renewed license from an incumbent whose qualifications are in serious doubt, and by assigning that renewed license in a manner that increases diversity of programming and ownership.

Third, the order under review did not insulate a dubious incumbent from license competition. In New South Media, RKO reaped an undeserved benefit because the indefinite freeze on competing applications allowed it to retain its licenses, free

from challenge, for extended terms. Here, the Commission's order removed the questionable licensee as quickly and directly as possible. The order under review did not permit Faith Center to sit on its license; the order required Faith Center to give it up.

Fourth and finally, the New South Media decision gives powerful (even decisive) weight to the public interest in "license competition that normally propels a licensee to better broadcasting." 685 F.2d at 716, quoting Committee for Open Media v. FCC, 543 F.2d 861, 873 (D.C. Cir. 1976). But no one could reasonably expect that Faith Center would be "propelled" to better performance. Unlike the RKO licenses in New South Media, who were vigorously defending their licenses and wanted to keep them, Faith Center wanted to exit, not to offer better performance. By electing a distress sale, it acknowledged that it had no realistic hope and no intention of retaining its license. Indeed, SBH itself refers to "the general agreement that Faith Center should not remain a licensee." SBH Br. 19. The need for a competitive spur to the incumbent that weighed heavily in the Court's decision in New South Media is therefore absent in the case under review.

In summary, in contrast to New South Media, in the order under review the Commission did not put an indefinite "freeze" on competing applications, it did not allow the license renewal proceeding to stagnate, it did not perpetuate Faith Center's tenure, and it did no violence to the principle of applying a competitive spur to incumbents' performance. In simplest terms, the Commission suffered reversal in New South Media because its orders indefinitely avoided disposing of the

question of license renewal. Here, the Commission's order disposed of the license renewal in the quickest and most decisive manner available.

III. THE COMMISSION MADE A RATIONAL DETERMINATION TO ADVANCE THE PUBLIC INTEREST IN BROADCASTING DIVERSITY THAT SHOULD NOT BE DISTURBED BY A REVIEWING COURT.

As we have demonstrated in Sections I and II, SBH possessed no statutory right to transform this distress sale proceeding into a comparative proceeding. The Commission, after weighing the numerous competing policy considerations, allowed Faith Center one last opportunity to complete a distress sale of its television station before opening the license renewal proceeding to competing applicants. This process of rational balancing, by which the Commission manages its own docket and pursues its statutory mandate, is precisely the kind of expert agency determination that reviewing courts are properly reluctant to overturn.

SBH contends that the Commission's order should be overturned because (a) the Commission could not lawfully balance any other interests against SBH's claimed Ashbacher right to a comparative hearing, and (b) the Commission's distress sale policy constitutes unlawful reverse discrimination and therefore should not have weighed in the balance. Both of these contentions are erroneous.

- A. The Commission struck a reasonable balance between the interests served by a comparative hearing and the interests in broadcasting diversity served by the distress sale procedure.

In contending that the Commission should have halted the Faith Center distress sale proceeding and commenced a comparative hearing in its stead, SBH isolates comparative hearings from the public interest goals that such hearings are intended to serve. A comparative hearing is only one means of achieving the public interest goals at the root of the Communications Act.

"[T]he 'public interest standard necessarily invites reference to First Amendment principles," Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 122, 93 S. Ct. 2080, 2096, 36 L.Ed.2d 772 (1973), and, in particular, to the First Amendment goal of achieving "the widest possible dissemination of information from diverse and antagonistic sources," Associated Press v. United States, [326 U.S. 1, 20 (1945)].

FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 795 (1978).

The Commission crystallized those goals in its Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393 (1965), which accorded major significance to promoting diversity of broadcast expression through diversity of broadcast ownership. "Diversification of control of the media of mass communication is elevated in the 1965 Policy Statement to a factor of primary significance . . ." Citizens Communication Center v. FCC, 447 F.2d 1201, 1207 (D.C. Cir. 1971).

In 1973, this Court instructed the Commission that the public interest in diversification should be implemented by increasing minority involvement in broadcast media ownership.

It is consistent with the primary objective of maximum diversification of ownership of mass communications media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token, but in good faith as broadening community representation, gives a local minority group media entrepreneurship.

TV 9, Inc. v. FCC, 495 F.2d 929, 937 (D.C. Cir. 1973) (footnote omitted).

The dearth of minority broadcast owners has been a longstanding obstacle to the public interest goal of diversification. "The extreme underrepresentation of minorities in the ownership of mass media broadcast facilities has been extensively documented and no party here questions it." West Michigan Broadcasting Co. v. FCC, 735 F.2d 601, 603 n.5 (D.C. Cir. 1984), cert. denied, ___ U.S. ___ (1985). With this Court's endorsement and encouragement, the Commission has interpreted the public policy favoring diversification to encompass advancing minority ownership. "[O]ver the past decade the courts, the Commission, and the Congress have all concluded that promotion of minority owned broadcast media facilities, where the minority owner will be fully involved in broadcast management, as an important public policy objective within the FCC's 'public interest' mandate." Id. at 607. ^{11/}

The Commission adopted the distress sale procedure in 1978 as an alternative to the lengthy and costly comparative

^{11/} Accord Garrett v. FCC, 513 F.2d 1056 (D.C. Cir. 1975); TV 9, Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973); Citizens Communications Center v. FCC, 447 F.2d at 1213 n.36.

hearing process; to be applied in limited instances where a distress sale will directly promote the public interest by diversifying media ownership. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 981 (1978). Licensees who are apprehensive that their licenses might not be renewed after a full evidentiary hearing are encouraged to assign their licenses to companies with significant minority involvement. The distress sale procedure has a proven and unchallenged record of success. In the first four years of the policy, 27 licenses were assigned to minority owners, thus "contribut[ing] significantly to increased minority ownership in broadcasting." Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C.2d 849, 852 (1982).

Despite the established, salutary public policies served by the distress sale proceeding, SBH contends that the Commission was obligated to bring that proceeding to an immediate halt in order to accommodate SBH's demand for a comparative hearing with Faith Center. ^{12/} SBH argues that the mere filing

^{12/} SBH argues that the mere filing of its application automatically prevented the Commission from continuing with the distress sale proceeding already in progress. SBH relies on a footnote to the Commission's Clarification of Distress Sale Policy, 44 Rad. Reg. (P&F)2d 479, 480 n.3 (1980): "Distress sales are an option only where no competing applicant is involved in the hearing. In comparative hearings the Ashbacker rights of the challenger to a full administrative comparison with the incumbent properly preclude departure of the existing licensees from the administrative process."

SBH misinterprets the Commission's clarification, which was issued to cope with the particular and limited problem of licensees who were already involved in renewal hearings when
(footnote continued)

of its application mandates a comparative hearing and outweighs, as a matter of law, not only considerations of diversification of programming and ownership, but also the other interests cited by the Commission in its MO&O, including "the rapid conclusion of this renewal proceeding," the "swift[] end [of] Faith Center's tenure as a licensee of this station," providing "residents of the station's service area with a new licensee whose qualifications are not in doubt," and the avoidance of "a lengthy and expensive comparative renewal proceeding." MO&O at 5.

SBH maintains that it was "unlawful" for the Commission to balance SBH's claimed Ashbacker right to comparative consideration against any and all other policy objectives. SBH Br. 23-24. To the contrary, this Court has affirmed the Commission's power to balance its own well-founded policies against the asserted Ashbacker rights of applicants for comparative hearings. In WLVA, Inc. (WLVA-TV), Lynchburg, Va. v. FCC, 459 F.2d 1286 (D.C. Cir. 1972), this Court affirmed the Commission's refusal to

(footnote continued)

the distress sale procedure was initiated. The Commission afforded such licensees an opportunity to invoke the distress sale procedure, but only if no competing applicant was already involved in the hearing, i.e., only if no comparative hearing was already underway. Clarification, 44 Rad. Reg. (P&F)2d at 479-480. Faith Center was in a noncomparative renewal proceeding when SBH attempted to file its competing application; by its terms, the Clarification applies only to comparative renewal hearings. Moreover, the Commission had authorized Faith Center to invoke the distress sale procedure in 1981, long before SBH appeared on the scene. The Commission thus did not authorize a distress sale proceeding in the face of SBH's competing application. Rather, SBH has tried to use an ostensible competing application as a vehicle to interrupt a distress sale proceeding already authorized and in progress -- a situation to which the Clarification is wholly inapplicable.

conduct a comparative hearing on the basis of "the overriding impact of the Commission's long-standing UHF protection policy," under which VHF stations were denied permission to enlarge their coverage area if that enlargement would be detrimental to UHF development. Id. at 1303. "[A]lthough the Commission's reliance on its UHF protection policy in this context may to some extent be viewed as a limitation on Ashbacker, such a limitation is clearly reasonable." Id. at 1304. ^{13/}

Noting that Ashbacker itself recognized the Commission's discretion to limit the filing rights of competing applicants (326 U.S. at 333 n.9), the Commission has very recently stated:

The Commission traditionally has balanced an applicant's right to a comparative hearing with the public's interest in having frequencies occupied and operating. . . . The Commission has exercised this discretion over the years and limited the filing rights of competing applicants in order to provide certainty, to avoid disruptions in the processing procedures for high demand services or to further other compelling public interest objectives.

In the Matter of Secs. 73.3572 and 73.3573 Relating to Processing of RM and TV Broadcast Applications, MM Dkt. No. 84-750 (May 6, 1985) at 6-7.

^{13/} SBH appears to take the position that the Commission may refuse to entertain a comparative hearing application only if the application would interfere with the administration of a proceeding already in progress. SBH Br. 12. This is much too narrow: as WLVA, Inc. makes clear, the Commission has the authority to weigh other policies in addition to mere administrative convenience.

SBH urges principally that comparative hearings provide a competitive "spur" by furnishing "additional incentive to existing licensees to offer optimal service to the public." SBH Br. 10. But a comparative hearing would not serve as a "spur" to Faith Center. Only a licensee who wishes to remain a licensee can be "spurred" to better performance. See pp. _____, supra. Faith Center wanted to relinquish its license; indeed, it had been trying to sell its license for over two years. License competition can only be beneficial if the incumbent wishes to compete. When the licensee wishes to exit -- as Faith Center assuredly did -- there is no one to be "spurred," and a comparative hearing for that purpose is an empty formality. 14/

SBH also invokes the principle that a licensee ought not to be insulated from license competition for a protracted period. SBH Br. 15-16. To the contrary, Faith Center is being insulated from nothing; the Commission approved Faith Center's distress sale to Astroline in order to remove Faith Center's license as quickly as possible. Far from protecting Faith Center's license, the Commission adopted the alternative that would reassign it immediately.

14/ As the Supreme Court has observed, it is not at all clear that the public interest would be well served by a reluctant licensee. FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 812-813 (1978). The Court quoted with evident approval the Commission's brief, which stated: "[I]f the Commission were to force broadcasters to stay in business against their will, the service provided under such circumstances, albeit continuous, might well not be worth preserving." Id. at 813.

Moreover, SBH's self-serving enthusiasm for the principles of comparative hearings is lukewarm at best. SBH demands a "right to sole comparative status as against Faith Center" and objects strenuously to the Commission's "re-open[ing] of the window to let in any number of other competing applicants," all of whom SBH dismisses as "opportunistic latecomers." SBH Br. 46. SBH's idea of a comparative hearing is evidently a private affair in which SBH would square off against Faith Center and no one else, despite Faith Center's manifest lack of willingness or ability to participate in such a proceeding. SBH champions comparative hearings, while at the same time insisting on the right to pick and choose among the parties with whom it would compete.

Finally, in Section 310(c) of the Federal Communications Act, Congress directed that comparative considerations have no role in assignments. In acting on an assignment application, "the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or licensee." 47 U.S.C. § 310(d). An assignment, whether in the context of a distress sale or otherwise, ^{15/} is intended by Congress and the

^{15/} Generally, the Commission will disapprove an assignment, even to an otherwise qualified assignee, if the qualifications of the present holder of the license are in doubt. See, e.g., LaRose v. FCC, 494 F.2d 1145, 1147-1148 (D.C. Cir. 1974). This general policy is flexible, and is relaxed to accommodate overriding public policy considerations.
(footnote continued)

Commission to be a consensual transaction, in which the Commission satisfies itself that the assignee is qualified to receive the license but does not otherwise concern itself with whether the assignment is to the party the Commission might have chosen. SBH sought to inject a comparative proceeding into an assignment, where Congress has declared that comparative considerations do not apply.

* * * * *

In short, the Commission balanced the benefits of the distress sale proceeding against SBH's argument to halt that proceeding and commence an exclusive comparative license renewal proceeding. The Commission struck a manifestly rational balance and decided to allow Faith Center the opportunity to complete a distress sale to Astroline (a qualified minority purchaser), but to make that the last chance for a distress sale before opening Faith Center's license to a full comparative proceeding. "The Commission's implementation of the public-interest standard, when based on a rational weighing of competing policies, is not to be set aside by the Court of Appeals, for 'the weighing of policies under the "public interest" standard is a task that Congress has delegated to the Commission in the first instance.'" FCC v. WNCN Listeners Guild, 450 U.S. 582, 596 (1981), quoting FCC v.

(footnote continued)

Distress sales represent only one exception to this rule where strong competing public interests are present. In other cases, the Commission waived its general policy for the protection of innocent creditors of a bankrupt licensee. LaRose v. FCC, supra.

INERT

SS
insert

Termination of protracted proceedings and restoration of service are other interests that have justified assignments even without a determination of the assignor's qualifications. See, e.g., George E. Cameron Jr. Communications (KROQ), 56 Rad. Reg. (P&F) 825, 828 (1984) (approval of assignment "will terminate these protracted and burdensome proceedings and permit the stations to continue normal operations unencumbered by the prospect of further costly and time consuming litigation.")

National Citizens Committee for Broadcasting, 436 U.S. at 810. ^{16/}

B. SBH's attack on the constitutionality of the distress sale procedure is groundless.

SBH devotes all of three pages of its brief to a back-handed and undeveloped claim that the distress sale program unconstitutionally discriminates against non-minorities. A constitutional question of this magnitude should not be, and need not be, confronted on the limited record available in this case. While the record is practically devoid of legal and factual support for SBH's claim of reverse discrimination, the gross underrepresentation of minorities in media ownership is a matter of undisputed judicial, administrative and legislative recognition. Even if it were appropriate to address SBH's assertions in this litigation, no substantial constitutional issue exists. The distress sale program is an appropriate means repeatedly sanctioned by Congress, by which the Commission has attempted to correct the underrepresentation of minorities in the broadcast media.

^{16/} See also NAACP v. FCC, 682 F.2d 993, 1001 (D.C. Cir. 1982) (Commission must be given "leeway to balance the competing policy considerations and, with due regard to the record and its own expertise, choose an appropriate course of action.")

Courts should not address constitutional questions unless it is unavoidable. "There is no occasion to consider . . . constitutional questions unless their answers are indispensable to the disposition of the cause before us." Stefanelli v. Minard, 342 U.S. 117, 120 (1951) (Frankfurter, J.). As we have already demonstrated, SBH's claim that it was "statutorily entitled" (SBH Br. 31) to comparative consideration with Faith Center is based on SBH's erroneous interpretation of Section 309 of the Communications Act. SBH's erroneous statutory argument makes it unnecessary to reach its constitutional claim.

Moreover, SBH's constitutional arguments are based on factual and legal errors. SBH asserts that the distress sale program is unconstitutional because it "unquestionably excluded SBH from any effective consideration." SBH Br. 29 (emphasis in original). The distress sale program is of course designed to increase the number of minority-owned stations. But this is not a case in which the Commission has reserved certain channels or broadcast frequencies solely for minority owners, and refused to entertain petitions of nonminorities for access to them. Interested parties, including rivals for the license in question, can oppose a licensee's election of the distress sale procedure, and they can oppose as well specific distress sale transactions when they are presented to the Commission for approval or disapproval. "A distress sale, contrary to the views of Faith . . . is a form of extraordinary relief and depends on the facts and circumstances of the individual petition. Although distress

sales are generally granted, they are not a matter of right." Faith Center, Inc., 82 F.C.C.2d 1, 35 (1980). ^{17/}

In fact, the distress sale program is far less exclusionary of nonminorities than the "set-aside" program upheld by the Supreme Court in Fullilove v. Klutznick, 448 U.S. 448 (1980), which reserved for minority firms (subject to limited administrative waiver) 10% of federal funds for local public works projects. "It is not a constitutional defect in this program that it may disappoint the expectations of nonminority firms. When effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, such a 'sharing of the burden' by innocent parties is not impermissible." Id. at 484 (Burger, J.).

SBH relies principally on Firefighters Local Union No. 1784 v. Stotts, 104 S. Ct. 2576 (1984), from which SBH infers that its claimed "statutorily entitled" rights may not be impaired unless the minority beneficiary of the program "has been the specific victim of discrimination which has barred him or her from broadcast ownership." SBH Br. 31. But Stotts is wholly inapplicable, as SBH itself evidently acknowledges when it characterizes its own argument as based merely on a "suggestion implicit" in that decision. SBH Br. 31.

^{17/} Indeed, the Commission denied distress sale treatment for competitors two other television stations owned by Faith Center, and competitors filed applications for both of those licenses. Faith Center, Inc., 82 F.C.C.2d 1 (1980), recons. denied, 86 F.C.C.2d 891 (1981).

Stotts was purely a statutory decision -- not a constitutional one -- interpreting the courts' remedial power under Title VII of the Civil Rights Act of 1964. Title VII limits a court's ability to impair employee rights under a bona fide seniority system to instances of individual victims of discrimination, and not to mere members of a disadvantaged class. 104 S. Ct. at 2588. ^{18/} But neither Title VII nor seniority systems are involved in this case. Stotts rests on Title VII's particular statutory protection for seniority systems against court-compelled remedial orders; it has absolutely nothing to do with the constitutional standards for a voluntary procedure such as the Commission's distress sale program. ^{19/}

^{18/} "Title VII precludes a district court from displacing a non-minority employee with seniority under the contractually established seniority system absent either a finding that the seniority system was adopted with discriminatory intent or a determination that such a remedy was necessary to make whole a proven victim of discrimination." Stotts, 104 S. Ct. at 2587 n.9.

^{19/} In fact, the Stotts Court expressly noted that its decision did not reach the question of what an employer might lawfully adopt as a voluntary affirmative action program. Id. at 2590.

Subsequent lower court decision have treated Stotts as inapplicable to voluntary affirmative actions programs not imposed by a court under the remedial powers of Title VII. Wygant v. Jackson Board of Education, Jackson, Mich., 746 F.2d 1152, 1157-58 (6th Cir. 1984); Kromnick v. School District of Philadelphia, 739 F.2d 894, 911 (3d Cir. 1984); Britton v. South Bend Community School Corp., 593 F. Supp. 1223, 1230-31 (N.D. Ind. 1984).

Moreover, even in a Title VII case -- which this case most certainly is not -- the courts have interpreted Stotts as not imposing a requirement of actual discrimination.

(footnote continued)

Moreover, the Commission is justifiably concerned with the underrepresentation of minorities in broadcasting, regardless of the cause of that underrepresentation. "As this Commission, the courts, and the Congress have recognized, there is a critical underrepresentation of minorities in broadcast ownership, and full minority participation in the ownership and management of broadcast facilities is essential to realize the fundamental goals of programming diversity and diversification of ownership which are at the heart of the Communications Act and the First Amendment." Waters Broadcasting Corp., 91 F.C.C.2d 1260, 1264 (1982), aff'd sub nom. West Michigan Broadcasting Co. v. FCC, 735 F.2d 601 (D.C. Cir. 1984), cert. denied, ___ U.S. ___ (1985) (footnote omitted).

Although there is ample evidence that discrimination has denied minorities ownership opportunities, ^{20/} the

(footnote continued)

Had the Court intended to radically change its interpretation of Title VII law so as to require a finding of actual discrimination in any affirmative action case, I believe it would have said so. In the absence of clearer authority, I decline to read such an expansive meaning into an opinion limited to a discussion of layoffs made in violation of a bona fide seniority system.

Deveraux v. Geary, 596 F. Supp. 1481, 1486 (D. Mass. 1984) (emphasis in original). Yet SBH erroneously contends that Stotts extends a requirement of actual discrimination beyond Title VII when the courts do not interpret Stotts as establishing such a requirement even within Title VII.

^{20/} "Generations of discrimination have created a form of racial caste. In the view of the panelists a direct result of the general societal discrimination has been the underrepresentation of these minorities in the ownership of broadcast stations as well as other communications (footnote continued)

Commission, which is charged to serve the public interest, has the authority and the duty to address itself to the problem of minority underrepresentation even if it were not the product of discrimination. The Commission acts within its proper role not only by seeking to do justice to the members of minority groups who have been victimized by discrimination or the effects of past discrimination, but also by seeking to benefit the public through the presentation of as wide as possible a range of programming and opinion.

This additional scope of the Commission's authority becomes apparent by comparison to Fullilove v. Klutznick, 448 U.S. 448 (1980), wherein the Court upheld a set-aside program -- more restrictive of nonminorities than the distress sale procedure -- solely to redress the economic injustices of past industrywide discrimination. Diversification of construction contractors on public works projects does not, however, serve an independent First Amendment interest. But diversification of the channels of expression manifestly does advance the policies of the First Amendment, in addition to redressing the effects of industrywide discrimination.

(footnote continued)

facilities." Federal Communications Commission Minority Ownership Taskforce, Minority Ownership in Broadcasting 7-8 (1978) (footnote omitted).

"The Conferees find that the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications" H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess., reprinted in 1982 U.S. Code Cong. & Ad. News 2287, cited in West Michigan Broadcasting Co. v. FCC, 735 F.2d at 613-614.

The Commission's remedial powers are thus broader than those of courts or agencies lacking the Commission's unique responsibilities. But SBH advances arguments that would confine the Commission more narrowly than other agencies -- for example, the unfounded claim that a beneficiary of the distress sale policy must have been the "specific victim of discrimination which has barred him or her from broadcast ownership " SBH Br. 31. The distress sale procedure is a constitutional means toward a constitutional end, and SBH's arguments to the contrary are groundless. As noted above, however, the Court need not reach this issue; ample alternative grounds support affirmance of the Commission's order.

IV. ASTROLINE QUALIFIES FOR APPLICATION OF THE DISTRESS SALE PROCEDURE.

SBH argues that the record does not support Astroline's status as a "minority-controlled entity." SBH Br. 34-37 ^{21/} To

^{21/} SBH is simply wrong in its claim that "[i]n order to invoke the 'distress sale' policy, a proposed assignee must be a minority-controlled entity." SBH Br. 34 (emphasis added). In 1982, the Commission clarified its distress sale policy for the express purpose of permitting limited partnerships in which there was "significant minority involvement" -- but not necessarily control -- to participate in the program. Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d 849, 853-855 (1982). Nevertheless, Astroline is qualified for the program under any definition because Astroline is a minority-controlled entity. Its general manager, Mr. Ramirez, has legal and operational control of the partnership and the station. Astroline therefore clearly meets the Commission's criteria for significant minority involvement.

the contrary, Astroline is fully qualified as a minority purchaser, and SBH's arguments to the contrary are groundless.

In its Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d 849 (1982), the Commission revised and clarified the criteria for participating as a purchaser in the distress sale program. The Commission declared that limited partnerships would be eligible for the program if (a) the general partner is a member of a minority group, and (b) the general partner owns more than a 20 per cent interest in the broadcasting entity. Id. at 855. The Commission explained:

Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest with parties who are willing to expend their energies and efforts actively running a business. Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has limited liability and lacks a voice in the operation of the enterprise.

Id. at 854 (footnotes omitted). It is undisputed that Astroline satisfies the literal terms of the Commission's test. Astroline is a limited partnership in which Mr. Richard Ramirez is a general partner. Mr. Ramirez, who is Hispanic (a defined minority group under the distress sale program), has a 21 per cent ownership interest and a 70 per cent voting interest in the entity. Mr. Ramirez will be General Manager of the station. Petition for Special Relief of Faith Center, Inc. at 3-4 (JA__).

SBH claims that Astroline's minority status is not bona fide because Mr. Ramirez did not contribute a pro rata share of his personal funds to capitalization of the partnership. SBH overlooks the very purpose of the distress sale program: to assist minority group members to overcome the financial handicaps

that have limited their ownership of broadcast properties. Recognizing that "'financing has remained the single greatest obstacle' to minority entry into the telecommunications industry," the Commission issued its 1982 Policy Statement to increase minorities' "opportunities to attract investors in their enterprises, and thus secure financing." Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d at 853.

Mr. Ramirez brings to the enterprise his considerable experience in the broadcast industry, both in radio and television, and his willingness to devote himself to the day-to-day operation of the station. He is the only principal in Astroline with the experience to operate a broadcast property. His partners supply only the station's financing, for which they will receive a return on their investment. The limited partners' willingness to invest their money while conferring managerial and voting control of the station upon Mr. Ramirez is exactly what the distress sale program is designed to encourage.

Moreover, the Commission's primary definition of control has always included complete managerial responsibility for the operation of the enterprise. "We have generally found 'control' to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters. Southwest Texas Broadcasting Council, 85 F.C.C.2d 713, 715 (1981)." Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d at 855 n.30. See also William M. Bernard, 44 Rad. Reg. (P&F)2d 525 (1978); Anax Broadcasting, 49 Rad. Reg. (P&F) 2d 1598 (1981). Mr. Ramirez possesses this complete operational authority over the management

of Astroline, and thus satisfies the basic test of control. Comments [of Astroline Communications Company Limited Partnership] in response to Consol. Comments of Shurberg Broadcasting of Hartford at 6-7 (JA____). 22/

SBH points to no evidence whatsoever to back up its claim that Mr. Ramirez' involvement is a sham -- that he does not actually perform as the station's general partner and general manager. The size of Mr. Ramirez' personal investment cannot determine that issue, but it is virtually the only evidence on which SBH relies. In effect, SBH attempts to engraft a new requirement onto the distress sale procedure -- that the minority general partner invest a minimum share of his personal funds in the venture -- that the Commission did not see fit to adopt.

In short, SBH criticizes the distress sale procedure for operating in precisely the manner it should: it united Mr. Ramirez, who has the skills, experience and ability to operate a television station but not the finances to acquire it, and the Astroline limited partners, who are willing to invest the necessary capital but lack the industry experience or the interest to devote to the day-to-day management of a television station. Nothing in the distress sale program requires or even

22/ SBH argues that Mr. Ramirez lacks complete control over the operations of Astroline because he regularly consults with the limited partners. SBH Br. 37. Assuming that the extra-record material cited by SBH is properly before the Court, it is not inconsistent with Mr. Ramirez' complete authority for the operation of the station. There is no rule, either of the Commission or in partnership law generally, that requires limited partners to wall themselves off from the partnership in which their funds are invested.

suggests that a minority general partner make a minimum personal investment in the enterprise. All that is required is that the minority partner be a general partner, and possess a 20 per cent or greater ownership interest. Astroline therefore qualifies as a purchaser under the express terms of the distress sale procedure, and SBH's contentions to the contrary are baseless.

7LHS1A(3)

STATEMENT OF ISSUES PRESENTED */

I. Whether petitioner Shurburg Broadcasting of Hartford, Inc. ("SBH") had an absolute right to a comparative hearing by virtue of its filing of a competing license application in the middle of a noncomparative renewal proceeding in which the incumbent licensee was attempting to consummate a distress sale.

II. Whether this Court's decision in New South Media Corp. v. FCC, 685 F.2d 708 (D.C. Cir. 1982) compelled the Federal Communications Commission ("Commission") to halt the distress sale proceeding and commence a comparative proceeding to accommodate SBH's application.

III. Whether the Commission possessed the discretion to balance SBH's claimed right to a comparative hearing against the public interests in diversifying media ownership through increasing minority participation, in removing a licensee of highly questionable qualifications, and in bringing a protracted proceeding to a rapid and efficient conclusion.

IV. Whether the distress sale purchaser, intervenor Astroline Communications Company Limited Partnership ("Astroline"), qualified for the distress sale program as a firm with significant minority involvement.

V. Whether the proceeding was infected by ex parte communications or other procedural irregularities.

* [Rule 8(b) statement -- to be supplied]

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

FCC 84-613
95294

In re Application of)
)
)
FAITH CENTER, INC.) BC DOCKET NO. 80-730
Hartford, Connecticut) File No. BRCT-348
)
)
For Renewal of License)

MEMORANDUM OF DECISION AND ORDER

Adopted: November 9, 1984 ; Released: December 7, 1984

By the Commission: Commissioner Patrick concurring in the result.

1. The Commission has before it: (a) a Petition for Extraordinary Relief, filed April 19, 1984, by which Shurberg Broadcasting of Hartford, Inc. (Shurberg) requests that we designate its application (File No. BPCT-831202KF) for a comparative renewal hearing together with the license renewal application of Faith Center, Inc. to determine which applicant should operate a commercial television station on Channel 18 in Hartford, Connecticut; (b) an Opposition to (a) filed May 30, 1984 by The Department of Communications of the Capitol Region Conference of Churches, the Management Team of the Christian Conference of Connecticut and Sherman G. Tarr (henceforth "Citizens"), through their attorneys the Media Access Project; (c) a Reply to (b) filed June 4, 1984, by Shurberg; (d) a Petition for Special Relief filed June 28, 1984, by Faith Center, Inc. (Faith) in which Faith requests authority to assign the license of Station WHCT-TV, Channel 18, Hartford, Connecticut to Astroline Communications Company Limited Partnership (Astroline) pursuant to the Commission's distress sale policy announced in our Statement of Policy on Minority Ownership of Broadcasting Facilities; 1/ (e) Comments in Opposition to (a) and Comments in Support of (d) filed July 23, 1984, by Astroline; (f) Comments on (a) and (d) filed July 23, 1984, by the Chief, Mass Media Bureau; (g) Comments and Statement in Support of Petition for Special Relief filed July 23, 1984, by Citizens; (h) Petition for Special Relief filed July 23, 1984, by Media Access Project (MAP); (i) Comments on (d) filed July 23, 1984 by Interstate Media Corporation (IMC); 2/ (j) Consolidated Comments filed July 23, 1984 by Shurberg; (k)

1/ 68 F.C.C. 2d 979 (1978), as revised, 92 F.C.C. 2d 849 (1982). On June 28, 1984, Faith and Astroline also filed an assignment application for Station WHCT-TV (File No. BALCT-840629KS) and a Petition for Expedited Processing of Faith's Petition for Special Relief and the related assignment application for authority to assign WHCT-TV from Faith to Astroline.

2/ We have accepted IMC's Comments in the interest of allowing all concerned parties to express their views about these matters. Nevertheless, we have refrained from considering IMC's allegations of misconduct concerning negotiations for the sale of station WHCT-TV, which have also been filed in a civil lawsuit, since such allegations are private matters not within our jurisdiction. See In Re Application of North Dakota Broadcasting Company, Inc. and Central Minnesota Television Company. 69 F.C.C. 2d 1756, 1760 (1978). In this light, Faith's Motion to Strike IMC's Comments will be granted to the extent that IMC's allegations of misconduct on Faith's part are concerned and will otherwise be denied.

Response to (a) filed July 25, 1984, by Faith; (l) Reply Comments filed August 2, 1984, by Shurberg; (m) Comments in Response to (i) filed August 2, 1984, by Astroline; (n) Motion for Acceptance of Late-Filed Reply Comments 3/ and Comments in Response to (j) filed August 3, 1984, by Astroline; (o) Motion to Accept Late-Filed Reply Comments 4/ and Reply Comments filed August 3, 1984, by Citizens; (p) Reply Comments filed August 16, 1984, by IMC; 5/ (q) Motion to Strike (i) filed September 6, 1984, by Faith; (r) Opposition to (q) filed September 28, 1984 by IMC; (s) a Supplement to (h) filed October 15, 1984, by MAP; (t) a Supplemental Motion for Expedited Processing filed October 24, 1984, by Astroline; and (u) a Second Supplement to (h) filed October 29, 1984, by MAP.

2. Shurberg's Petition for Extraordinary Relief seeks a remedy which is inconsistent with the remedy sought by Faith in its Petition for Special Relief. Thus, if the Commission grants Shurberg's petition and consolidates Shurberg's application with that of Faith in a comparative hearing, we could not grant Faith's current request for permission to sell Station WHCT-TV pursuant to our distress sale policy. 6/ Therefore, we are considering both of these petitions at the same time, within the context of Faith's renewal proceeding in BC Docket No. 80-730. By Order, FCC 84I-69, released July 3, 1984, our General Counsel afforded all relevant parties the opportunity of filing comments on these two pleadings, as well as replies to those comments, in this renewal proceeding. As we shall explain below, we have decided to conditionally grant Faith's third request for authority to sell its Hartford, Connecticut, television station pursuant to our distress sale policy.

3. Faith is the licensee of Station WHCT-TV, which operates on television channel 18, Hartford, Connecticut. In November 1980, the renewal application of Station WHCT-TV was designated for hearing to determine whether Faith was qualified to remain a Commission licensee. Faith indicated its intention to take advantage of our distress sale policy; 7/ and subsequently, Faith came forward with a prospective purchaser of Station WHCT-TV. We granted its renewal application and its request to sell the station pursuant to our distress sale policy, subject to the conditions that the Broadcast Bureau (now the Mass Media Bureau) would find the purchaser fully qualified to be a Commission licensee and that the assignment of WHCT-TV's license would be consummated within 90 days of the Bureau's favorable determination. 8/ If those conditions were not met, Faith's renewal application was to return to hearing status. In fact, the purchaser was unable to consummate the transaction and Faith's application was returned to hearing status.

4. After its first distress sale failed, Faith filed a second request to sell its station under our distress sale policy to Interstate Media Corporation (IMC). In our Memorandum Opinion and Order, FCC 83-448, released September 30,

3/ For good cause shown, this motion will be granted.

4/ For good cause shown, this motion will be granted.

5/ These Reply Comments will be dismissed as an unauthorized pleading. The pleading repeats allegations contained in IMC's Comments and attempts to reply to Astroline's Reply Comments. We have not solicited any Replies to Reply Comments.

6/ See Clarification of Distress Sale Policy, 44 Rad. Reg. (P&F) 2d 479, 480 n. 3. (1978).

7/ See Faith Center, Inc., 83 F.C.C. 2d 401 (1980), recon. denied, 86 F.C.C. 2d 891 (1981).

8/ 88 F.C.C. 2d 788, 794-95 (1981).

1983, we granted Faith's second Petition for Special Relief by which it sought to sell Station WHCT-TV to IMC and granted its renewal application, subject to the conditions that the Mass Media Bureau would find IMC fully qualified to be a Commission licensee and that the assignment of the station's license would be consummated within 90 days of the Bureau's grant of the assignment application becoming final. If those conditions were not met, Faith's renewal application would automatically return to hearing status. The second distress sale was not consummated, and the Administrative Law Judge presiding in Faith's renewal proceeding announced that Faith's application had returned to hearing status pursuant to the Commission's September 1983 Memorandum Opinion and Order. 9/ Faith's current Petition for Special Relief filed June 28, 1984, requests authority to assign the license of Station WHCT-TV to Astroline Communications Company Limited Partnership (Astroline) pursuant to our distress sale policy.

5. In its Petition for Extraordinary Relief filed April 19, 1984, Shurberg seeks to have its application (File No. BPCT-831202KF) for authority to operate on Channel 18, in Hartford, Connecticut, designated for hearing with the license renewal application of Faith Center, Inc. Shurberg observes that broadcast licenses for stations in Connecticut were scheduled to expire on April 1, 1984. See Section 73.1020(a)(16) of our Rules. Applications for renewal were required to be filed on or before December 1, 1983, and applications mutually exclusive with those renewal applications were due by March 1, 1984. See Sections 73.3539 and 73.3516(e) of our Rules. Shurberg's competing application was filed on December 1, 1983. According to Shurberg, the Commission's September 1983 Memorandum Opinion and Order granted Faith's renewal application, thereby opening a "window" for the filing of competing applications. In this regard, Shurberg asserts that we could only grant Faith's license through April 1, 1984, in our September 1983 Order because the then current license term for Connecticut broadcast stations ended on April 1, 1984.

6. Shurberg's argument is based on several erroneous assumptions. First, Faith's renewal application has not been granted. Our September 1983 Order explicitly stated that Faith's renewal application was granted subject to two conditions and that if either condition was not met, Faith's application would revert to hearing status. Since one of those conditions was that Faith and IMC consummate the assignment of Station WHCT-TV's license within 90 days of the grant of the relevant assignment application becoming final, and since that condition was never met, Faith's renewal application automatically reverted to hearing status. Second, the "window" for filing competing applications against the renewal applications of Connecticut broadcast stations, which opened for most Connecticut stations during the period from December 1, 1983, through March 1, 1984, never opened for Station WHCT-TV. There was no requirement that Faith file a renewal application for the period of 1984 through 1989, since Faith's 1977 renewal application was and remains in hearing status and competing applications cannot be filed until the proceeding has been terminated.

7. Section 307(c) of the Communications Act of 1934, as amended, 10/ provides that licenses of broadcast stations whose renewal applications are in

9/ See the ALJ's Order, FCC 84M-1834, released April 16, 1984.

10/ Section 307(c) of the Communications Act of 1934, as amended, was designated as such by Public Law 97-259, approved September 13, 1982, 96 Stat. 1087, 1093. The former Section 307(c) was deleted and the former Section 307(d) became Section 307(c).

hearing status shall remain in effect pending final disposition of the hearing case. Moreover, competing applications are ordinarily not permitted to be filed against license renewal applications designated for hearing. See, e.g., RKO General, Inc., 89 F.C.C. 2d 297, 315-26 (1982), affirmed sub nom. Atlantic Television Corporation v. F.C.C., No. 82-1263 (D.C. Cir. Oct. 21, 1982). Thus, Faith's renewal application for station WHCT-TV has been placed in protected status from competing applications until the completion of its renewal proceeding, and Faith would not have to file a new or supplemental renewal application during the course of this proceeding. While a licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due, and while the filing of such a supplemental renewal application would open a three month "window" during which competing applications may be filed, see Carlisle Broadcasting Associates, 59 F.C.C. 2d 865 (1976), it is clear that Shurberg had no such right as of December 1, 1983, to file a competing application against the renewal application for Station WHCT-TV pending in this proceeding.

8. Shurberg asserts that the factual situation in this proceeding is very similar to the situation faced by the U.S. Court of Appeals for the District of Columbia Circuit in New South Media Corp. v. FCC, (New South), 685 F. 2d 708 (1982). New South involved a situation where the Commission had, in 1977, granted several of RKO General, Inc.'s renewal applications, although it conditioned those grants on the outcome of the Boston, Massachusetts, comparative television renewal proceeding. In late 1980, following its decision denying RKO's Boston license, the Commission decided to hold non-comparative hearings to determine what action, if any, should be taken against RKO's remaining thirteen stations. Rather than wait for the license of each station to expire in the normal course and call at that time for renewal applications which would be subject to competing applications, the Commission chose to "reopen," i.e., designate for hearing, the 1977 grants which had been expressly conditioned on the outcome of the Boston proceeding.

9. Thus, in the New South situation, the Commission chose to proceed without waiting for challenges by competing applicants, primarily because the "public interest need for clear resolution of RKO's qualifications outweighs the benefits of possibly having a choice of applicants." RKO General, Inc., 82 F.C.C. 2d 291, 310 (1980). On appeal, the Court reversed the Commission. New South Media Corp. v. FCC, supra. Although the Commission had designated all thirteen 1977-79 RKO license renewals for hearing shortly before three of the licenses in question were due to expire, it had set no specific time for the actual commencement of the hearing; rather, it had stated that the hearings would begin after all court appeals in the Boston proceeding had been completed. In 1982, when the Court issued its New South decision, all but one of the thirteen license renewals had run past three years, no renewal hearing had actually commenced, and there was "no evidence-taking underway, no proceeding in mid-stream or even launched." 11/ Thus, the Court determined that the situation in New South whereby conditional renewals were, in effect, extended, was similar to the renewal deferred for three years in Carlisle Broadcasting Associates, supra, and that competing applicants should be allowed to file against RKO's license renewal applications.

10. Clearly, New South does not directly dictate the result that we should reach in this case. In New South the court distinguished between the

11/ 685 F. 2d. 708, 716.

situation in which an application remains in hearing status, protected from competing applications, because some relevant action, such as an evidentiary hearing, is actually under way and the situation in which an application that, while designated for hearing, is in effect simply being deferred because no action is being taken or is reasonably foreseeable. 685 F.2d at 715-16. In this case action was not simply deferred on Faith Center's renewal application. The application was designated for hearing to permit Faith Center to invoke our distress sale policy. 12/ Faith Center did, in fact, twice propose assignments of its license to minority-controlled buyers. If it had been able to consummate either of those transactions, it would have been promptly replaced by a new licensee that would have furthered the minority ownership goal of increased diversity of broadcast station ownership. Unfortunately, as discussed above, Faith Center has been unable to consummate either of these two previous distress sale assignments that we have authorized. 13/ Faith Center has now sought a third distress sale authorization more than three years after we first designated its application for hearing. We are, therefore, now faced with determining whether the public interest in permitting competing applications to be filed, as articulated in New South, outweighs the goals of our minority ownership policies in this case.

11. Although this is a close question, it is our judgment that the Commission's minority ownership policies, as reflected here in the distress sale proposal, are sufficiently important to warrant maintaining Faith Center's renewal application in hearing status, protected from competing applications, for a sufficient additional time to permit us to consider the pending application to assign the license to Astroline. A successful assignment of Station WHCT-TV's license pursuant to our distress sale policy would result in the rapid conclusion of this renewal proceeding, would swiftly end Faith Center's tenure as a licensee of this station and provide residents of the station's service area with a new licensee whose qualifications are not in doubt, would advance our important policy of increasing diversity of programming and ownership in the broadcast industry by providing for minority group ownership and control of this station, and would avoid a lengthy and expensive comparative renewal proceeding. Therefore, we have decided to give Faith Center an opportunity to effectuate the currently proposed distress sale of WHCT-TV. If this distress sale does not come to fruition promptly, however, we will move expeditiously to provide Shurberg and other interested parties an opportunity to file competing applications for WHCT-TV's channel.

12. In light of the foregoing, we shall grant Faith Center's Petition for

12/ See Faith Center, Inc., 48 Rad. Reg. (P&F) 2d 741 (1978). The Commission's distress sale policy permits licensees "whose renewal applications have been designated for hearing on basic qualification issues . . . to transfer or assign their licenses at a 'distress sale' price to applicants with a significant minority ownership interest" 68 F.C.C. 2d 979, 983 (1978).

13/ Although the record is not clear on this point, it appears that each of these assignments fell through largely because of difficulties incurred by the minority-controlled assignees in obtaining adequate financing. Our studies have shown that one of the major stumbling blocks to increased minority ownership and participation in broadcasting is the difficulties that minority controlled applicants traditionally have faced in obtaining financing to acquire and operate stations. See Strategies for Advancing Minority Ownership Opportunities in Telecommunications: The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the FCC (May 1982).

Special Relief filed June 28, 1984, by which it proposes to assign WHCT-TV's license to Astroline, subject to the conditions that the Mass Media Bureau finds Astroline qualified to be a Commission licensee 14/ and that the contemplated assignment is consummated within 60 days of the Bureau's grant of the assignment application. If either of these conditions is not met, we shall promptly require Faith Center to file a supplemental renewal application for Station WHCT-TV. Potential applicants would then be afforded a 90-day period to file applications for the station's frequency in Hartford. Thereafter, all timely-filed applications, including the application (File No. BPCT-831202KF) previously filed by Shurberg, would be designated for a comparative renewal proceeding.

13. Shurberg's arguments that our distress sale policy amounts to reverse discrimination in that only entities controlled by minority group members may purchase a station from an incumbent licensee which has been designated for a revocation or renewal hearing are without merit. In our Policy Statement on Minority Ownership, we found that there was an acute underrepresentation of minorities among the owners of broadcast stations and that views of racial minorities were inadequately represented in the broadcast media. 68 F.C.C. 2d 979 at 980-82. We also observed that increasing minority ownership of broadcast stations would result in diversity of control of a limited resource, the broadcast spectrum, and would result in a more diverse selection of programming for the entire viewing and listening public. Ibid. Report on Minority Ownership in Broadcasting, issued May 17, 1978 by our Minority Ownership Task Force.

14. In addition to our own conclusions regarding minority ownership, the District of Columbia Circuit, which has exclusive jurisdiction to review FCC licensing decisions, has repeatedly defined as an important public interest objective the participation of heavily underrepresented minorities in the ownership and operation of broadcast stations. See, e.g., West Michigan Broadcasting Co. v. FCC, 735 F.2d 601, 609-611 (D.C. Cir. 1984); Garrett v. FCC, 513 F.2d 1056, 1063 n.52 (D.C. Cir. 1975); TV 9, Inc. v. FCC, 495 F.2d 929, 937 (D.C. Cir. 1973); cert. denied, 419 U.S. 986 (1974); Citizens Communications Center v. FCC, 447 F.2d 1201, 1213 n.36 (D.C. Cir. 1971). Moreover, Congress has recently reaffirmed the importance of fostering minority ownership of broadcast stations. In amending Section 309(1) of the Communications Act, 47 U.S.C. 309(1), to facilitate the development of a random selection system (i.e., a lottery) as an alternative to the comparative evaluation process, See Pub. L. No. 97-259, 96 Stat. 1087, 1094-95, Congress explicitly required that significant preferences for minority applicants be incorporated into any random selection licensing scheme. In West Michigan Broadcasting Co., the court stated that the passage of that legislation must be viewed as Congressional approval for the Commission's minority ownership promotion policies and confirmation of the factual bases of those policies' remedial nature. See 735 F.2d at 615-16. In this regard, the Conference Report contained a specific Congressional finding that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications, as it has adversely affected their participation in other sectors of the economy as well." H.R. Conf. Rep. 97-765, 97th Cong., 2d Sess. 43 (1982), reprinted in 1982 U.S. Code Cong. & Adm. News 2237, 2287. See also West Michigan Broadcasting, 735 F.2d at 603 n.5. Further, the Conference

14/ We hereby direct the Mass Media Bureau to act as expeditiously as possible upon the application (File No. BALCT-840629KS) by which Faith seeks authority to assign the license of Station WHCT-TV to Astroline.

Report cited our 1978 minority ownership policy statement and the Report on Minority Ownership in Broadcasting, as evidence of the need for the type of preferential treatment of minorities contained in the legislation. 1982 U.S. Code Cong. & News 2237, 2288. Thus Congress, which has the broadest remedial power of any governmental entity, 15/ has recognized the need for and approved the implementation of the minority ownership policies set forth in the 1978 policy statement. We therefore must reject Shurberg's arguments against our distress sale policy.

15. After having reviewed Faith's Petition for Special Relief filed June 28, 1984, pleadings filed in relation thereto, and all the pertinent data on this docket, we have determined that the proposed sale of Station WHCT-TV from Station Management, Inc. to Astroline Communications Company Limited Partnership (Astroline) complies with our principle with our distress sale policy. See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 (1978), as revised, 92 F.C.C. 2d 849 (1982). The relevant assignment application (File No. BALCT-840629KS) still be reviewed by the Mass Media Bureau. In this Memorandum Opinion and Order we deal only with the question of whether Faith's proposed distress sale of Station WHCT-TV meets the basic requirements for a distress sale; other aspects of the assignment application involving Astroline's basic qualifications will be determined by the Mass Media Bureau pursuant to its delegated authority. 16/ With regard to the basic requirements for a distress sale, Shurberg contends that Astroline is not controlled by a minority group member and that Station WHCT-TV has not been properly evaluated for purposes of determining an appropriate distress sale price. As we shall explain, Shurberg's arguments are without merit.

16. Astroline is a limited partnership comprised of two general partners and one limited partner. Richard P. Ramirez, an Hispanic-American, is a general partner with a twenty-one percent ownership interest and a seventy percent voting interest in Astroline. WHCT Management, Inc., a corporation, is also a general partner with a nine percent ownership interest and a thirty percent voting interest in Astroline. 17/ Astroline Company, which is an investment company separate and distinct from Astroline Communications Company Limited Partnership (Astroline), is the limited partner and holds seventy percent ownership in Astroline. Astroline explains that its two general partners have complete authority over its affairs and vote in accordance with their respective partnership interests. Although Astroline Company will provide Astroline with \$500,000 by means of a capital contribution, loan or a combination of the two, Astroline Company and Astroline have stated that Mr. Ramirez' ownership interest in Astroline and his voting control over Astroline

15/ Fullilove v. Klutznick, 448 U.S. 448, 483 (1980).

16/ Shurberg has made several allegations to the effect that Faith has failed to comply with relevant Commission rules and policies since the time its renewal application for Station WHCT-TV was designated for hearing. Even if the allegations are assumed to be true, they would not prevent us from approving the distress sale herein and do not require any action by us at this time, since the renewal applicant's qualifications are not a relevant consideration in a distress sale situation. If the distress sale proposed herein is not effectuated and a comparative renewal proceeding ensues, Shurberg is free to raise any of these allegations in that proceeding.

17/ Astroline has also expressed its intention to transfer 4% of Astroline's ownership (4/9ths of WHCT Management, Inc.'s 9% interest) to minority group members in order to increase the total minority group interest in Astroline to twenty-percent.

average out to \$6,500,000. Thus the proposed sale price, \$3,100,000, is well below the ceiling we have set for distress sale prices, namely 75 percent of the average fair market value. 21/

20. ACCORDINGLY, IT IS ORDERED, That:

- (a) the Petition for Extraordinary Relief filed April 19, 1984, by Shurberg Broadcasting of Hartford, Inc. IS GRANTED to the extent indicated in this Memorandum Opinion and Order and IS DENIED in all other respects;
- (b) the Petition for Special Relief filed June 28, 1984, by Faith Center, Inc., IS GRANTED subject to the conditions set forth in paragraph 12, supra;
- (c) the Mass Media Bureau SHALL ACT AS EXPEDITIOUSLY AS POSSIBLE on the application (File No. BALCT-840629KS) by which Faith Center, Inc. seeks authority to assign the license of Station WHCT-TV to Astroline Communications Company Limited Partnership;
- (d) the Petition for Expedited Processing filed June 28, 1984, by Faith Center, Inc. and Astroline Communications Company Limited Partnership and the Supplemental Motion for Expedited Processing filed October 24, 1984, by Astroline Communications Company Limited Partnership ARE GRANTED to the extent indicated in this Memorandum Opinion and Order and ARE DISMISSED as moot in all other respects;
- (e) the Motion for Acceptance of Late-Filed Reply Comments filed August 3, 1984, by Astroline Communications Company Limited Partnership and the Motion to Accept Late-Filed Reply Comments filed August 3, 1984, by The Department of Communications of the Capital Region Conference of Churches, the Management Team of the Christian Conference of Connecticut and Sherman G. Tarr ARE GRANTED;
- (f) the Reply Comments filed August 16, 1984, by Interstate Media Corporation ARE DISMISSED as an unauthorized pleading; and
- (g) the Motion to Strike filed September 6, 1984, by Faith Center, Inc. IS GRANTED to the extent indicated in footnote 2 herein and IS DENIED in all other respects.

appraisers of WHCT-TV specifically considered the cost of such equipment in their 1981 appraisals. See paragraph 8 of our Order in Faith Center, Inc., FCC 83-448, released September 30, 1983.

21/ The settlement agreement entered into between Astroline and Citizens in connection with the assignment of Station WHCT-TV's license and filed with us on July 27, 1984, and the Petition for Special Relief filed by Media Access Project (MAP) on July 23, 1984, by which MAP seeks our approval of the reimbursement provisions of that settlement agreement, will be considered in a subsequent order.

21. IT IS FURTHER ORDERED That, if Faith Center, Inc. and Astroline Communications Company Limited Partnership fail to effectuate the assignment of Station WHCT-TV's license in accordance with the conditions set forth in paragraph 12, supra:

(a) Faith Center, Inc.'s renewal application (File No. BRCT-348) IS RETURNED to the processing line;

(b) Faith Center, Inc. IS REQUIRED to file a supplemental renewal application for Station WHCT-TV for the license period of April 1, 1984 through April 1, 1989 within 30 days after the relevant condition set forth in paragraph 12, supra, is not satisfied; and

(c) applications which are mutually exclusive with Faith Center, Inc.'s renewal application for Station WHCT-TV, as supplemented, MAY BE FILED during a 90-day period following the filing of the supplemental renewal application for Station WHCT-TV and WILL BE DESIGNATED FOR HEARING with the renewal application for Station WHCT-TV and the mutually exclusive application of Shurberg Broadcasting of Hartford, Inc. (File No. BPCT-831202KF).

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

SBH Exh. 71

PEABODY & BROWN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
 ONE BOSTON PLACE
 BOSTON, MASSACHUSETTS 02108
 (617) 723-8700

CABLE ADDRESS "PEABODY8"
 TELEX NUMBER 951019

September 11, 1985

FEDERAL EXPRESS

Thomas A. Hart, Jr., Esq.
 Baker & Hostetler
 818 Connecticut Avenue N.W.
 Washington, D.C. 20006

Dear Tom:

This will confirm that the following transfers of Partnership Interests in Astroline Communications Company Limited Partnership have been completed as of the dates indicated:

<u>Date</u>	<u>Transferor & Capacity</u>	<u>Transferee & Capacity</u>	<u>% Interest Transferred</u>
8/14/85	Astroline Company Limited Partner	Martha Rose Limited Partner	6%
8/16/85	Astroline Company Limited Partner	Thelma N. Gibbs Limited Partner	6%
9/6/85	WHCT Management, Inc. General Partner	Don O'Brien Limited Partner	1%
9/6/85	WHCT Management, Inc. General Partner	Terry Planell Limited Partner	1%
9/6/85	WHCT Management, Inc. General Partner	Danielle Webb Limited Partner	1%
9/10/85	WHCT Management, Inc. General Partner	Thomas A. Hart General Partner	1%

As you know, the transfers to Don O'Brien, Terry Planell and Danielle Webb are subject to certain buy-back rights of WHCT Management. Copies of the agreements setting forth those rights (to be filed next week as an amendment to the Ownership Report) will be sent to you shortly. I have provided Jack Whitley with the addresses of each transferee.

DEPOSITION
 EXHIBIT

102

1-2-91

Federal Communications Commission

Date: _____
Presenter: _____

Disposition: _____

Reporter: George Holmes

Date: 9-23-68

Identified _____
Received _____
Rejected _____

Exhibit: Shurberg & Broadcasting

71

PEABODY & BROWN

Thomas A. Hart, Jr., Esq.
September 11, 1985
Page Two

I am enclosing for your reference a chart showing the ownership of the Partnership following the transfers referred to above.

I understand that you will file an Ownership Report with the FCC regarding the above transfers in accordance with applicable requirements by Friday, September 13 at the latest.

Please call if you have any questions.

Yours truly,

CSB/aa

Carter S. Bacon, Jr.

CSB/aa
Enclosures

cc: Richard P. Ramirez
Jack W. Whitley
Herbert A. Sostek
Fred J. Boling, Jr.
William C. Lance

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

Schedule A

<u>General Partners</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
Richard P. Ramirez c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06105	\$ 210	21%
WHCT Management, Inc. 231 John Street Reading, MA 01867	\$ 50	5%
Thomas A. Hart 1862 Ingleside Terrace, N.W. Washington, D.C. 20010	\$ 10	1%
<u>Limited Partners</u>		
Astroline Company 231 John Street Reading, MA 01867	\$440,616	58%
Martha Rose and Robert Rose as Joint Tenants 18 Morgan Street Wenham, MA 01984	\$ 30,042	6%
Thelma N. Gibbs 227S South Ocean Blvd. Palm Beach, FL 33480	\$ 30,042	6%
Don O'Brien c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06105	\$ 10	1%
Terry Planell c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06105	\$ 10	1%
Danielle Webb c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06105	\$ 10	1%



SBH Exh. 72

PEABODY & BROWN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ONE BOSTON PLACE
BOSTON, MASSACHUSETTS 02108
(617) 723-8700

CABLE ADDRESS "PEABODYB"
TELEX NUMBER 951019

October 2, 1985

Thomas A. Hart, Jr.
Baker & Hostetler
818 Connecticut Avenue N.W.
Washington, D.C. 20006

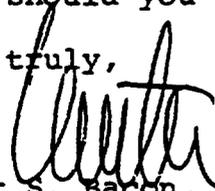
Dear Tom:

Enclosed are copies of the Agreements relating to the 1 1/2 limited partnership interests recently transferred by WHCT Management, Inc., to three employees of Astroline Communications Company.

It is my understanding that the enclosed Agreements will be filed as exhibits to the ownership report filed with the FCC on September 13.

Please do not hesitate to call should you have any questions.

Yours truly,



Carter S. Bacon, Jr.

CSB/aa
Enclosures

cc: Herbert A. Sostek
Jack Whitley
(with encl's)

Federal Communications Commission	
Docket No.	Exhibit 72
Presented	Shurberg Broadcasting
Disposition	Identified <input checked="" type="checkbox"/>
	Received 9-28-98
	Rejected
Reporter	George Holmes
Date	9-23-98

SDH Exh. 73

BAKER & HOSTETLER

ATTORNEYS AT LAW

WASHINGTON SQUARE, SUITE 1100

1050 CONNECTICUT AVE., N.W.

WASHINGTON, D.C. 20036

(202) 861-1500

TELECOPIER: (202) 466-2387

TELEX 650-235-7276

IN DENVER, COLORADO
SUITE 1100, 303 EAST 17TH AVENUE

DENVER, COLORADO 80203
(303) 861-0600

IN ORLANDO, FLORIDA
13TH FLOOR BARNETT PLAZA

ORLANDO, FLORIDA 32801
(305) 841-1111

IN VIRGINIA

437 N. LEE STREET
ALEXANDRIA, VIRGINIA 22314
(703) 548-1294

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 821-0200
TWX 810 421 8375

IN COLUMBUS, OHIO
65 EAST STATE STREET
COLUMBUS, OHIO 43215
(614) 228-1541

IN MARYLAND
5000 SUNNYSIDE AVE. SUITE 301
BELTSVILLE, MARYLAND 20705
(301) 937-4111

April 18, 1986

WRITER'S DIRECT DIAL NO.:
(202) 861 - 1658

Mr. Richard P. Ramirez
General Partner
Astroline Communications Company
18 Garden Street
Hartford, CT 06105

Herbert A. Sostek
President
Astroline Company
231 John Street
Reading, MA 01867

Gentlemen:

Enclosed please find a copy of a Public Notice released on April 1, 1986 accepting for filing the construction permit application to modify the facilities of WHCT-TV which was filed on March 25, 1986. I will keep you posted of any new developments regarding this filing.

Also enclosed is a recent Order from the Federal Communications Commission ("FCC") concerning contracts, agreements and understandings which should be kept on file at the station and made available for inspection upon request by the FCC. It is not necessary to include these documents in the public file.

If you have any questions regarding these matters or require further clarification, please give me a call.

Sincerely,

Thomas

Thomas A. Hart, Jr.

Enclosure
TAH/tdh

Federal Communications Commission	
Date	Exhibit 73
Presented by	Shurberg Broadcasting
Identified	X
Date received	9-24-98
Rejected	
Reporter	George Holmes
Date	9-23-98

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

3903

In the Matter of

Oversight of the Radio
and TV Broadcast Rules

)
)
)
)

ERRATUM

Released: April 18, 1986

In the above captioned Order, released March 7, 1986 and published in the Federal Register on March 24, 1986 at 51 FR 9963, there was an error in paragraph 10 of the rules Appendix pertaining to revision of Section 73.3613. The correction of the error, as published in the Erratum on April 9, 1986, was incomplete.

It is corrected to read:

10. 47 CFR 73.3613 is amended by removing paragraphs (a)(2) [Reserved], (a)(5) [Reserved] and (a)(6) [Reserved] and redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3) respectively; and revising paragraph (d) to read as follows:

§73.3613 Filing of contracts

* * * * *

(d) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: Contracts relating to the sale of broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary