ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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DEC - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 97-128
	)	
Martin W. Hoffman,	)	
Trustee-in-Bankruptcy for Astroline	)	FCC File No. BRCT-881201LG
Communications Company Limited	)	
Partnership	)	
	)	
For Renewal of License of Station	)	
WHCT-TV, Hartford, Connecticut	)	
	)	
Shurberg Broadcasting of Hartford	)	FCC File No. BPCT-831202KF
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 18, Hartford, Connecticut	)	

TO: The Honorable John M. Frysiak
Administrative Law Judge

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF MARTIN R. HOFFMAN, TRUSTEE-IN-BANKRUPTCY, RICHARD P. RAMIREZ AND TWO IF BY SEA BROADCASTING CORPORATION

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SUMMARY

This proceeding commenced more than 15 years ago and, unfortunately, has not yet concluded. The record reflects that at every turn, Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("Shurberg"), a competing applicant for the facilities of television station WHCT-TV, Hartford, Connecticut, has attempted to thwart those who have received FCC approval to be the licensees of the station, first Astroline Communications Company Limited Partnership and now Martin W. Hoffman, Trustee-in-Bankruptcy.

The hearing in September 1998 was the result of allegations made by Shurberg to the Commission in 1993 -- allegations that were derived from arguments and documents in the Connecticut bankruptcy proceeding involving WHCT-TV. But Shurberg neglected to advise the Commission that the allegations had all been resolved in favor of ACCLP in a decision issued by the Chief Judge of the Bankruptcy Court in October 1995. And, to make matters worse, Shurberg neglected to tell the Commission that the Connecticut District Court and the Second Circuit Court of Appeals both affirmed the Bankruptcy Court decision.

As a result of Shurberg's deliberate omissions, this case was designated for hearing on matters which had already been resolved by the federal courts. Specifically, the federal courts delved deeply into the subjects of who controlled the programming, personnel, and finances of WHCT-TV, considered ACCLP's tax records, and heard the testimony of ACCLP's principals and accountants -- the precise questions raised under Issue (1). The federal courts reached one inalterable finding -- that Richard Ramirez ("Ramirez"), ACCLP's managing general partner and an Hispanic American, had control. The federal court decisions covering the same matters as those set forth in Issue (1) are entitled to full faith and credit. Moreover, as a purported creditor

of the bankrupt estate, Shurberg is collaterally estopped from relitigating the matters resolved by the federal courts.

Aware that the federal court action actually rejected his core contentions, during the hearing Shurberg paid little attention to the allegations that formed the basis for the designated issues. In fact, Shurberg did not even ask those he deposed about the allegations raised in his petition to deny. And the majority of Shurberg's questions of witnesses at the hearing had little to do with the allegations that formed the basis for the issue. For instance, Mr. Hoffman, the Trustee, traveled all the way from Connecticut for five minutes of cross-examination by Shurberg on what constituted the station's licensed assets. Instead, Shurberg has chosen to dwell on extraneous matters -- such as whether a December 31, 1985 amendment to the ACCLP Partnership Agreement was duly filed with the FCC, and whether ACCLP erred by filing a letter reporting its ownership structure on August 3, 1987 in lieu of using an ownership report form.

Shurberg's attempt to litigate this proceeding for another 15 years should be rejected. The record reflects that ACCLP's unique structure was approved by the full Commission; that Ramirez had a 21% ownership interest in ACCLP; that Ramirez was an experienced minority broadcaster who had full control of the day-to-day operation of the partnership and the station at all times; and that Ramirez and ACCLP endeavored to abide by FCC rules and regulations at all times. The record further reflects no evidence of an intent to deceive the Commission -- the *sine qua non* of misrepresentation -- by ACCLP or Ramirez at any time.

The new matters that Shurberg has belatedly proffered do not constitute evidence of misrepresentation. It cannot be definitively determined whether or not the amended agreement dated December 31, 1985 was ever filed with the FCC because the FCC no longer has any

WHCT-TV ownership records from the 1980s. In any event, however, the record shows that the agreement was publicly filed with the Secretary of the State of Massachusetts and was forwarded to Ramirez for the station's Public Inspection file. The agreement was also an exhibit in the bankruptcy court proceeding. Thus, if Shurberg really thought that ACCLP was trying to hide the agreement, he could have raised the matter years earlier. Similarly, if Shurberg felt that the August 3, 1987 ownership letter was inadequate, he could have raised that matter years earlier as well and sought appropriate issues. Like the restated partnership agreement, the August 3, 1987 letter was an exhibit in the bankruptcy proceeding, and there is a stamped receipt copy demonstrating that it was filed with the FCC. The FCC itself never raised any questions concerning the letter or sought additional information.

The record amply demonstrates that there was no misrepresentation on the part of ACCLP. Clearly, there was no intent to deceive. And the record further dictates that Shurberg's attempts to allege new instances of misconduct, long after the fact, must be rejected. Issue (1) should be favorably resolved.

Under designated Issue (2), the public interest, convenience and necessity will be served by grant of the Trustee's renewal application in light of the following: (I) ACCLP made no misrepresentations, (ii) ACCLP did not intend to deceive the Commission, (iii) preserving the station's value as an asset for innocent creditors promotes public policy, (iv) upholding the integrity and reliability of final Commission action is in the public interest, (v) duplicative litigation like that which Shurberg has brought here wastes public and private resources and must be discouraged, and (vi) rewarding Shurberg's concealment of the relevant federal actions regarding common matters will encourage further concealment and undermine the Commission's need for full candor from its applicants.

In sum, this proceeding should be finally concluded with full exoneration of ACCLP and Ramirez, consistent with the decisions of the federal bankruptcy and appeals court in Connecticut and the decision of the Second Circuit Court of Appeals.

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FEDERAL COMMUNICATIONS COMMISSION
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In re Applications of Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership For Renewal of License of Station WHCT-TV, Hartford, Connecticut Shurberg Broadcasting of Hartford For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	MM Docket No. 97-128 FCC File No. BRCT-881201LG FCC File No. BPCT-831202KF

TO: The Honorable John M. Frysiak
Administrative Law Judge

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF MARTIN R. HOFFMAN, TRUSTEE-IN-BANKRUPTCY, RICHARD P. RAMIREZ AND TWO IF BY SEA BROADCASTING CORPORATION

Martin R. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Corporation Limited Partnership (hereinafter "Hoffman" or the "Trustee"), Richard P. Ramirez ("Ramirez") and Two If By Sea Broadcasting Corporation ("TIBS"), by their respective counsel and pursuant to Sections 1.263 and 1.264 of the Commission's Rules and the Presiding Judge's Orders, FCC

98M-117, released October 2, 1998, and FCC 98M-126, released November 19, 1998, hereby submit Joint Proposed Findings of Fact and Conclusions of Law in the above-referenced proceeding.[1/]

I. Preliminary Statement

1. By Memorandum Opinion and Order & Hearing Designation Order, FCC 97-146, released April 28, 1997 (the "HDO"), the Commission designated for hearing the application for renewal of license of Station WHCT-TV, Hartford, Connecticut, filed December 2, 1988. The renewal applicant is Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership (hereinafter "ACCLP" or "Astroline"). The HDO specified the following issues:

> (1) To determine whether Astroline misrepresented facts to the Commission and the Federal Courts in connection with statements it made concerning its status as a minority-controlled entity;
>
> (2) To determine, in light of the evidence adduced under the preceding issue, whether the public interest, convenience and necessity would be served by a grant of the renewal application filed by the Trustee (File No. BRCT-881202KF).

The initial burden of going forward with the introduction of evidence on Issue (1) was placed on Shurberg Broadcasting of Hartford and the burden of proceeding with the introduction of evidence and the ultimate burden of proof on Issues (1) and (2) was placed on Astroline and the Trustee.

[1/] In these Findings, the Trustee/Ramirez/TIBS exhibits are referred to as TRT Ex. followed by the appropriate exhibit number and Shurberg exhibits are referred to as Shur. Ex. followed by the appropriate number. The Mass Media Bureau did not introduce any exhibits.

2. The issues specified in the HDO were based on allegations against ACCLP made by Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("Shurberg") who filed an application for a new television station to operate on Channel 18 at Hartford. Citing a pleading filed by the Trustee with the Connecticut Bankruptcy Court, Shurberg alleged that "Astroline's representations that it qualified as a minority-controlled entity for the purpose of the minority distress sale policy were untrue." Shurberg alleged that "... the supposedly non-active, non-minority participants who Astroline had presented to the Commission as limited partners, held themselves out to be general partners in formal documents related to Astroline's relationship with a financing bank, often signed Astroline's checks, and had prior approval rights for the payment of all of WHCT-TV's expenses." In addition, Shurberg alleged that "Richard Ramirez, the General Partner of Astroline, had a less than 1% interest in Astroline." (HDO, para. 5). Shurberg did not inform the Commission that the Bankruptcy Court case in which these allegations were raised had been resolved in favor of Astroline's limited partners. Shurberg also did not inform the Commission that the Bankruptcy Court decision was affirmed by both the United States District Court, District of Connecticut (Nevas, J.) and by the United States Court of Appeals for the Second Circuit.

3. By Memorandum Opinion and Order, FCC 97M-109, released June 2, 1997, the Presiding Judge granted Ramirez's Petition for Leave to Intervene As a Matter of Right.[2/] On the same day, by Memorandum Opinion and Order, FCC 97M-110, the Judge also granted the TIBS

[2/] Ramirez was the General Partner of ACCLP during the period in question (FCC 97M-109, para. 2).

Motion for Leave to Intervene. [3]

4. Both the Mass Media Bureau and Shurberg filed motions requesting the production of numerous documents. As described by Shurberg:

> ...[i]n response to those requests, some 17 boxes of documents, numbering in the tens of thousands of pages, have been produced. Those documents include multiple volumes of trial testimony from a nine-day hearing held in Bankruptcy Court in Hartford, as well as several hundred exhibits introduced during that hearing and thousands of pages of deposition transcripts compiled prior to that hearing. The documents also include approximately 14 boxloads of miscellaneous unindexed documents apparently compiled in the course of the bankruptcy proceeding." [4]

5. On October 2 and 3, 1997, Shurberg filed Notices of Deposition for ACCLP limited partners Fred J. Boling, and Herbert A. Sostek; for ACCLP corporate attorneys Carter S. Bacon, Jr. and William C. Lance at the firm Peabody & Brown; for ACCLP FCC attorneys Lee H. Simowitz, Edward Hayes, Jr., Thomas A. Hart, Linda Bocchi, and Dan J. Alpert; and for ACCLP accountants Kent W. Davenport and George R. Neble of Arthur Andersen. On July 21, 1998, Shurberg also noticed ACCLP FCC attorneys Dale R. Harburg and David Dudley for deposition. Shurberg did not conduct any depositions until August 1998. On August 13, 1998, Shurberg withdrew his notices for the depositions of Messrs. Boling, Sostek, Lance, Simowitz

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[3] TIBS is the proposed assignee of WHCT-TV (FCC 97M-110, para. 5).

[4] Shurberg Petition for Modification of Procedural Dates, filed August 5, 1997, pp. 1-2. In addition, Shurberg had access to the files of Baker & Hostetler, ACCLP's FCC counsel, (Tr. 650) and to the files of Peabody & Brown, which prepared corporate documents for ACCLP. (Tr. 513).

and Neble. (Shur. Ex 141, p. 35-36). Shurberg subsequently withdrew his notices for Messrs. Bacon, Hayes and Davenport.

6. The prehearing session was held on June 2, 1997, and hearing sessions were held on September 23, 24, 28 and 29, 1998. At the end of the September 29th hearing session, the record was closed. (Tr. 670).

II. Proposed Findings of Fact

A. Background

The Commission 1984 Decision and Appeals

7. This proceeding has a lengthy history. In November 1980, the license renewal application of Station WHCT-TV, then licensed to Faith Center, Inc. ("Faith Center"), was designated for hearing to determine whether Faith Center was qualified to remain a Commission licensee. Faith Center, Inc., 83 F.C.C. 2d 401 (1980), recon. denied, 86 F.C.C. 2d 891 (1981). Faith Center indicated its intention to use the Commission's distress sale policy. See Clarification of Distress Sale Policy, 44 R.R. 2d 401 (1980), recon. denied, 86 F.C.C. 2d 891 (1981).

8. On December 7, 1984, the Commission granted a Petition for Special Relief filed June 28, 1984, in which Faith Center proposed to assign WHCT-TV to ACCLP pursuant to the Commission's distress sale policy. Shurberg opposed the assignment, arguing that "Astroline [was] not controlled by a minority group member and that Station WHCT-TV [had] not been properly evaluated for purposes of determining an appropriate distress sale price." Faith Center, Inc., 99 F.C.C. 2d 1164, 1172 (1984). In denying Shurberg's arguments, the Commission stated as follows:

> 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. [footnote omitted] 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, a 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 will not be diminished by Astroline Company's capital contribution. Further, Astroline and Astroline Company assert that they will structure all transactions to maintain Mr. Ramirez' voting control over the affairs of the company and to insure that minority group persons have at least a 21 percent ownership interest in Astroline.
>
> We hold that Astroline's ownership structure complies with our distress sale policy, as revised in *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting,* 92 F.C.C. 2d 849 (1982).

Faith Center, Inc., supra, at 1173.

9. Shurberg filed an appeal of the Commission's December 7, 1984 decision with the U.S. Court of Appeals for the D.C. Circuit in early 1985, but disposition of the appeal was delayed pending a remand so that the FCC could take whatever action was appropriate in light of its Docket 86-484 inquiry into the minority ownership policies. After the passage of congressional legislation prohibiting the FCC from continuing its Docket 86-484 proceeding, the

Commission reaffirmed its order granting Faith Center's request to assign WHCT-TV to Astroline pursuant to the minority distress sale policy. See Faith Center, Inc., 3 FCC Rcd 868 (1988). In 1989 a divided Court of Appeals invalidated the Commission's minority distress sale policy. Shurberg Broadcasting of Hartford, Inc. v. FCC, 876 F.2d 902 (D.C. Cir. 1989). Petitions for rehearing and suggestions for rehearing en banc were denied, and the Supreme Court granted certiorari with regard to the Shurberg case and a companion case. 493 U.S. 1017 (1990). In Metro Broadcasting, Inc. v. F.C.C., 497 U.S. 547, 110 S.Ct. 2997 (1990), the Supreme Court held that the FCC minority ownership policies, including the minority distress sale policy, were constitutional. The Shurberg appeal, which was part of the Metro Broadcasting case, was remanded to the FCC for proceedings consistent with the Supreme Court's opinion. 110 S. Ct. at 3028. Ramirez was the primary point of contact and made the key decisions relative to the course of actions taken during the appellate court and Supreme Court litigation. (Tr. 265-266; TRT Ex. 4).

The Connecticut Bankruptcy Proceeding

10. In the midst of the federal court litigation concerning the FCC's minority distress sale policy, on October 31, 1988, an involuntary Chapter 7 Petition was filed against ACCLP by creditors Lorimar Telepictures Corporation and Lorimar Distribution, Inc., MCA Television Limited and Orion Television Syndication. On December 1, 1988, the Astroline bankruptcy case was converted to a voluntary Chapter 11 proceeding. (TRT Ex. 1, p. 1; TRT Ex. 2, p. 2). On May 5, 1989, the Mass Media Bureau of the FCC approved the assignment of WHCT-TV to Astroline Communications Company, Debtor-in-Possession. (FCC File No. BALCT-881227KE). On April 9, 1991, the case was converted to a voluntary Chapter 7 proceeding. Martin W.

Hoffman was appointed as the interim trustee on April 9, 1991 by the Office of the United States Trustee (Case No. 88-21124RCK). Pursuant to 11 U.S.C. Section 702(d), Mr. Hoffman became the permanent Trustee on June 13, 1991. (TRT Ex. 1, p. 1). During this time period, the FCC granted an application to assign Station WHCT-TV to the Bankruptcy Court approved Trustee. (FCC File No. BALCT-910506KH). (HDO, para. 4; TRT Ex. 1, p.1). Commission records reflect that the assignment application was granted on May 24, 1991. Public Notice of that fact was given on May 31, 1991 (Report No. 21125), and the grant became final on July 10, 1991.

11. Listed in the Debtor's petition as an asset was a "Potential Claim Against General and Limited Partners, Liabilities and Amount Undetermined." Upon investigating this matter, Mr. Hoffman was advised by the law firm of Paul, Hastings, Janofsky and Walker ("Paul Hastings") (which represented the creditors who had filed the involuntary petition against Astroline) that a possible claim existed that the Limited Partner and its individual partners were liable as de facto general partners pursuant to 11 U.S.C. § 723. Under bankruptcy law and partnership law, a general partner is liable for all debts of a partnership. On or about April 24, 1991, Mr. Hoffman filed as Interim Trustee an application with the Bankruptcy Court to appoint Paul, Hastings as a special attorney for the Trustee to "investigate, evaluate and, if appropriate, prosecute actions against Astroline Company, Astroline Company, Inc., Herbert Sostek, Fred J. Boling, Richard H. Gibbs, Randall L. Gibbs and the estate of Joel Gibbs for a declaratory judgment that said individuals and entities were de facto general partners of the Debtor and therefore liable to the estate pursuant to Section 723 of the Bankruptcy Code." This application was granted by the Bankruptcy Court on April 30, 1991. (TRT Ex. 1, p. 2)

12. In approximately November 1992, Alan Shurberg, the principal of Shurberg Broadcasting of Hartford, met with the Trustee and advised that in his view the Astroline estate had a claim against the Limited Partner under § 19 of the Massachusetts Limited Partnership Act as a de facto general partner, and Shurberg urged the Trustee to pursue this claim. (Shurberg was on file as a creditor of Astroline at this time. The Trustee has subsequently filed an action in the Bankruptcy Court to have Shurberg's proof of claim disallowed.) On November 13, 1992 and November 16, 1992, Shurberg faxed several documents to the Trustee in support of his allegations. At one point, Shurberg offered to purchase the alleged claim against the Limited Partner in connection with his unsuccessful bid to purchase the WHCT assets and FCC license at an auction in the Bankruptcy Court. (The court ultimately found that Two If By Sea Broadcasting ("TIBS") was the highest bidder in that auction.) (TRT Ex. 1, pp. 2-3).

13. In a letter dated April 5, 1993 addressed to the Trustee, Shurberg cited the Trustee's fiduciary duties and possible litigation against Mr. Hoffman as Trustee in demanding that a complaint be filed against the Limited Partner by Wednesday, April 7, 1993. Shurberg offered to provide a draft complaint to the Trustee for this purpose. On or about April 9, 1993, the Trustee was advised by Paul, Hastings that the firm was unwilling to prosecute the aforesaid litigation without funding from its original clients and was unwilling to represent the Trustee on a contingency basis. Thereafter, the law firm Day, Berry & Howard was appointed by the Bankruptcy Court as the Trustee's special counsel in regard to these matters. In the course of investigating Astroline, the Trustee had collected well over twenty boxes of documents and numerous transcripts of depositions taken during the Chapter 11 proceeding. The Trustee calculated the amount of the claim that could be made against the Limited Partner to be

approximately $30-40 million. (TRT Ex. 1, p. 3 and Appendix).

14. Based upon the advice of Day Berry, the strong insistence of Shurberg, and his own investigations, the Trustee concluded that he had a fiduciary duty to maximize the potential distribution to creditors by filing a lawsuit against the Limited Partner and its general partners in the Bankruptcy Court. The Trustee was represented in the law suit by Day, Berry & Howard, although the Trustee and his associate attended various depositions. (TRT Ex. 1, pp. 2-3).

15. During the bankruptcy court case, there was an extensive and exhaustive inquiry into the same allegations that Shurberg raised before the FCC. There was a lengthy proceeding in the Connecticut bankruptcy court with full discovery and a nine day trial which included Ramirez's testimony, the testimony of limited partners, the testimony of other managerial level employees at WHCT and the testimony of two Arthur Andersen accountants. Ramirez cooperated fully in the bankruptcy court proceeding, never shirking or avoiding his responsibilities as a general partner, and he personally made substantial payments to achieve a settlement with the Trustee concerning his general partnership liabilities. (TRT Ex. 2, p. 26; Tr. 308-09).

16. The nine day trial took place before Chief Judge Robert L. Krechevsky of the Connecticut Bankruptcy Court. (TRT Ex. 1, p. 4). After the trial, the Trustee submitted to the Court Proposed Findings of Fact and Conclusions of Law on behalf of the creditors of the estate (including Shurberg). (Shur. Ex. 30). Therein, through his counsel, Day Berry & Howard, the Trustee sought to fulfill his fiduciary duty to maximize the potential distribution to creditors from ACCLP's partners, and thus depicted and argued the record adversely to those partners. (Id; TRT Ex. 1, pp. 1-2). In particular, the Trustee argued to the Court that ACCLP's limited partners, and not Ramirez, controlled ACCLP's business. (Shur. Ex. 30, pp. 13-24). And, based

on ACCLP's tax returns for 1985, 1986, and 1987, he argued that Ramirez's ownership of ACCLP had been reduced from 21% to below 1%. (Id., pp. 12-13).

17. On October 24, 1995, Judge Krechevsky issued a Decision in which he concluded that "Astroline Company's activities in connection with the Debtor [ACCLP] do not meet the standard of substantially the same as the exercise of the powers of a general partner." The Decision continues:

> Despite the intense level of investigation undertaken by the Trustee of the Debtor's prepetition history, the court would have to engage in conjecture and surmise to find any control of the Debtor's day-to-day operation of the Channel 18 television station. The court credits the testimony of Ramirez, supported by that of Planell and Rozanski, that he, as managing general partner, exercised fully his powers as such, and that Astroline Company had no equal voice in his decisions.
>
> The Cash Management System, with Astroline Company in control of the Debtor's checkbook and the sweeping of all of the Debtor's income to the out-of-state bank, certainly justifies the Trustee's questioning the status of Astroline Company as simply a limited partner of the Debtor. The court, however, cannot find as a fact that Astroline Company ever did anything more than prepare the checks as directed by Ramirez or Rozanski and add to the Debtor's bank account those funds necessary to make good the issued checks. Funding in this manner reduced the borrowing costs of Astroline Company. While Astroline Company had the power to empty the Debtor's bank account, it never did so; neither did it refuse to prepare checks in order to override any decision of Ramirez. Ramirez testified that until the funding by Astroline Company ceased, every invoice was paid that he wanted paid. All of the relatively few checks which were signed by the Astroline Company partners, except for two, were adequately explained as either being payable to Ramirez himself, necessarily signed due to Ramirez's absence, or for other reasonable considerations.

Hoffman v. WHCT Management, Inc. (In re Astroline Communications Co. Ltd. Partnership), 188 B.R. 98, 101-02 (Bankr. D. Conn. 1995). (TRT Ex. 3, pp. 8-9). Having heard the testimony of the Arthur Andersen accountants, the Court did not adopt the proposed finding that ACCLP's 1985, 1986, and 1987 tax returns meant that Ramirez's ownership had fallen below 21% (TRT, Ex. 3, passim). The Court further concluded that "Astroline Company (and its general partners) were not liable as a general partner of the Debtor to satisfy the deficiency in the estate's property to pay the claims of creditors." (TRT Ex. 3, pp. 8-9; TRT Ex. 1, p. 4).

18. On August 12, 1996, the United States District Court, District of Connecticut (Nevas, J.) affirmed the judgment of the Bankruptcy Court. (TRT Ex. 3, pp.15-23). On behalf of the estate's creditors, the Trustee appealed to the United States Court of Appeals for the Second Circuit. (Shur. Ex. 31). The Trustee's Brief to the Second Circuit again contended: (a) that the limited partners, not Ramirez, controlled ACCLP (id. at pp. 12-20); and (b) that ACCLP's 1985, 1986, and 1987 tax returns showed that Ramirez's ownership had been reduced to less than 21% (id. at p. 11). Indeed, the Trustee's Brief specifically argued that the evidence established that the limited partners exercised control at a level that met the FCC's meaning of control as set forth in FCC and related judicial decisions (id., pp. 40-44) -- the identical issue involved in this case. By Summary Order, filed April 17, 1997, a three judge panel of the United States Court of Appeals for the Second Circuit rejected the Trustee's arguments and affirmed the judgment of the Bankruptcy Court. The Second Circuit stated:

> The Bankruptcy Court's factual findings, which are not challenged as clearly erroneous, demonstrate that whatever the extent of their control over the Debtor's finances, the Limited Partners did not participate in and did not exercise any quantum of control over numerous and significant aspects of the Debtor's

> business. Their control of the Debtor was not "substantially the same as the exercise of the powers of a general partner."

(TRT Ex. 3, pp. 10-14).

The Hearing Designation Order

19. The FCC's HDO was adopted on April 25, 1997 and released on April 28, 1998. It addressed a Petition to Dismiss or Deny filed by Shurberg in 1993 against both the pending WHCT-TV license renewal application and the assignment application to TIBS. The HDO referenced the allegations advanced by the Trustee in the Connecticut Bankruptcy Court litigation which were the basis of Shurberg's petition but made no mention of the rulings in the bankruptcy case in the opinions described in ¶¶ 17-18 above.

B. The Misrepresentation Issue

The Origins and Formation of ACCLP

Ramirez - Background and Broadcast Experience

20. Ramirez is an Hispanic American whose father emigrated to the United States from Cuba and whose mother was born in Puerto Rico. Ramirez was born in New York City in 1953 and was raised in the South Bronx. He attended St. Athanasius Grammar School in the Bronx and Immaculate Conception School in Queens and graduated from Holy Cross High School in Flushing in 1972. In 1976, Ramirez graduated from Boston College's School of Management with a Bachelor of Science degree in Finance, and he later attended an executive broadcast management program at the Wharton Business School at the University of Pennsylvania. (TRT Ex. 2, p. 1).

21. In 1976, after graduating from college, Ramirez began working in the communications industry as an account executive at WROR-FM, an RKO station, in Boston, Massachusetts. He spent approximately 20 months in this position and then was promoted and moved to New York City to be a part of RKO's national sales representative team. As a member of the national sales team, he represented more than 35 radio stations in the sale and marketing of advertising time in radio markets across the United States, ranging in size from Columbus, Ohio to New York City. RKO then promoted and moved Ramirez back to Boston as a local sales manager at WRKO(AM). After about ten months, Ramirez was promoted to general sales manager where he had complete responsibility for all the sales activities and marketing activities of the station. From late 1978 to mid-1980 Ramirez managed a staff of seven or eight account executives and oversaw the research department and traffic department at WRKO(AM). (TRT Ex. 2, p. 1).

22. Ramirez next moved to Houston, Texas where he was national sales manager for Corinthian Television's Station KHOU-TV, Channel 11, a CBS network affiliate. He held this position from approximately June or July of 1980 until June or July 1981. Then Ramirez rejoined RKO as the western regional manager for the RKO radio network based in Los Angeles. His responsibilities were to service and develop network radio advertising clients for the radio network. His region included everything west of Denver, giving him responsibility for clients in Denver, Seattle, San Francisco, Phoenix, Los Angeles and San Diego. (TRT Ex. 2, p. 2).

23. From approximately January 1982 until July 1984, Ramirez worked for Greater Media as general sales manager, participating in the re-building of an FM radio station in Boston, Massachusetts. He hired all of the sales, traffic and marketing personnel as well as support and

research personnel. He trained and developed the sales and marketing departments, and he had some additional oversight functions in the areas of promotion and community affairs. (TRT Ex. 2, p. 2).

24. Ramirez left the position with Greater Media to pursue the purchase and acquisition of Station WHCT-TV, Channel 18, Hartford, Connecticut in 1984 by ACCLP. He began working on the WHCT project on a full-time basis in approximately August 1984 and continued full-time on the project until approximately May 1989. He continued to be actively involved in WHCT matters until the bankruptcy proceeding was converted from Chapter 11 to Chapter 7 in April 1991. WHCT-TV ceased operations on April 9, 1991, and later returned to operation under the Trustee-in-Bankruptcy. (TRT Ex. 2, pp. 2-3).

25. From approximately May - September 1989, Ramirez was general manager and vice-president of WGIR(AM) and FM, Manchester, New Hampshire. The stations were licensed to Knight Radio Group. He then became the director of sales for the Univision television station in Los Angeles, California, KMEX(TV), a Spanish-language station. The chief executive officer of Univision recruited Ramirez for the purpose of solidifying sales activities at that station. As director of sales, Ramirez was responsible for the sales and marketing, research and traffic operations of the nation's largest Spanish-language television station. After about eight months he was promoted to general manager of KMEX(TV). In that position he was responsible for total operations of the television station which had annual revenues on the order of $50 million a year and approximately 135 employees. Ramirez had overall responsibility for the news department, promotions, operations, marketing, engineering, sales and community involvement as well as full responsibility for profits and losses. (TRT Ex. 2, p. 3).

26. Univision then promoted Ramirez to senior vice president in charge of stations and general manager of its New York City area Station WXTV, Channel 41. He was responsible for ensuring that Univision's stations in New York, San Francisco, Fresno and Albuquerque delivered their cash flows, which involved meetings with the managers of those stations to review their business plans, helping in the construction of their annual budgets, and helping evaluate their personnel, news talent, news operations and expenses. His responsibilities in New York included turning around that station, which was in financial distress when he arrived. (TRT Ex. 2, pp. 3-4; Tr. 213).

27. In February 1993, Ramirez joined Prime Ticket Networks in Los Angeles, California as vice president of special projects, working toward the development of the first Spanish language cable sports network in the United States. He remained in this position until November 1994, when he became Vice President and General Manager of La Cadena De Portiva, a Spanish language sports network. In April 1998, Ramirez became Executive Vice President and in August 1998 Chief Operating Officer of Ethnic-American Broadcasting Co. in Ft. Lee, New Jersey. He oversees all operating departments of the company, which delivers foreign-language programming via digital satellite to ethnic populations in the United States and Canada. (TRT Ex. 2, p. 4).

Ramirez's Interest in Ownership of a Broadcast Station

28. In 1984, when he joined WHCT, Ramirez knew from his experience in the industry that minorities owned a very small percentage of broadcast licenses, and that the FCC had therefore created several policies to enhance minority ownership, including the minority tax certificate program and the minority distress sale policy. The objective of the policies was to try

and correct the historic imbalance in the representation of minorities in the ownership of broadcast properties. Since Ramirez was a qualified minority under the FCC's definitions and since he had a successful career as a manager in the broadcast industry, it was his desire to move into the ranks of ownership. He had written to the FCC as early as 1977 requesting information about its minority ownership and tax incentive policies. Ramirez had also researched the Commission's rules and policies, followed the trade press and discussed the possibility of projects involving the minority incentives with various banks, venture capital firms and FCC attorneys. He believed that he was exactly the type of person whom the FCC had in mind when it formulated the minority ownership policies. (TRT Ex. 2, p. 5; Tr. 230-33, 238-39).

29. In the fall of 1983, Ramirez met Thomas Hart, a Washington, D.C. communications attorney, in Boston. At the time Ramirez was general sales manager of Greater Media Radio's FM station in Boston, Massachusetts. Tom Hart was a long time friend of Ramirez's boss at Greater Media, Bill Campbell, the vice-president and general manager of the station. Bill Campbell and Richard Ramirez had developed a very close working relationship and had become good personal friends. (TRT Ex. 2, p. 4).

30. Ramirez and Hart met at the radio station in Boston and spent a few hours discussing various interests, specifically minority ownership. Mr. Hart is an African American and for most of his career has been involved in finding investors for minority-owned enterprises. (TRT Ex. 2, p. 4; Tr. 659). When he met Ramirez, Mr. Hart was working with some clients on a project involving an independent television station in Houston, Texas. Hart and Ramirez spent time discussing television marketing, sales, ratings, and formats. (TRT Ex. 2, pp. 4-5). Tom Hart mentioned to Ramirez at that time that he was working on various other projects that involved the

FCC's minority incentives. (TRT Ex. 2, p. 5).

31. Over the course of the months following this meeting, Ramirez met with Tom Hart a few additional times, sometimes in Boston and at least once in Washington. They also spoke on the phone. They discussed the FCC's minority policies and the policies' future, as well as opportunities for applying the policies in the broadcast industry. (TRT Ex. 2, p. 5; Tr. 232). They discussed the television project in Houston on which Mr. Hart was working (Ramirez worked previously at KHOU-TV in Houston), the launch of a national music network to compete with MTV (a project in which Ramirez had an interest) and other opportunities. It was at some point during these meetings that Ramirez learned of the opportunity to buy and manage WHCT-TV. Mr. Hart gave Ramirez a prospectus on the station which was prepared by a previous party that had attempted to purchase the facility from Faith Center. (TRT Ex. 2, p. 5).

32. Mr. Hart and Ramirez continued to talk about both Houston and Hartford after Mr. Hart initially discussed WHCT-TV, but Ramirez began to feel that Hartford presented the better opportunity. At that time Connecticut had a robust economy whereas Houston was coming out of a recession in the real estate and oil industries. Connecticut had one of the nation's lowest state unemployment rates and substantial growth in retail sales. Tom Hart and Ramirez began to focus on the Channel 18 opportunity. (TRT Ex. 2, p. 6).

33. During the period of these discussions, Ramirez reviewed the prospectus Mr. Hart gave him concerning Channel 18 and looked at data from television fact books to understand the Hartford market and the competitors in that market. He prepared some preliminary pro forma financial plans. Tom Hart kept Ramirez informed, mostly by phone at this point, about the prospects of buying the station. As part of these discussions, Mr. Hart told Ramirez that he had

clients who were men of very substantial means in the oil industry who were engaged in efforts to diversify their interests. It was Ramirez's understanding that they had set up a company called Astroline Company, which was intended to invest in communications as well as other properties. (TRT Ex. 2, p. 6).

Ramirez's Discussions with the Principals of Astroline Company

34. In the Spring of 1984, Tom Hart arranged to have Ramirez meet Fred Boling and Herb Sostek, principals of Astroline Company, to discuss a possible purchase of WHCT-TV by a company controlled by Ramirez in which Astroline Company would invest. Ramirez met Fred Boling, Herb Sostek and Bill Lance, who was their attorney, at a meeting at the Meridian Hotel in Boston which occurred over the Memorial Day weekend in May 1984. Prior to the meeting Ramirez had done some research on Astroline Company and its principals. He had learned the approximate annual sales of Astroline Company. Mr. Boling and Mr. Sostek later shared with Ramirez the fact that they had done some research into his background. (TRT Ex. 2, p. 6).

35. Mr. Boling and Mr. Sostek possessed limited knowledge of the television industry. (Tr. 217-218). At the meeting, which lasted for a number of hours, Ramirez's personal, educational and professional background, as well as his interests and ambitions, were discussed. Ramirez initiated discussion about what it would take to restore WHCT to a competitive position in the market and the work it would take to modernize the equipment and programming. He presented preliminary financial projections and estimates of the amounts that needed to be invested. He outlined the economics of the Hartford market, its historic growth rate and the trends in advertising expenditures. He spoke generally about the television business and the availability and cost of programming as well as program syndication. They discussed engineering

issues and engineering consultants needed to do a preliminary evaluation of WHCT's facilities. They talked about FCC regulations and the necessity to be in strict compliance with FCC rules. (TRT Ex. 2, pp. 6-8; Tr. 216-219).

36. After the initial discussion, Sostek and Boling proposed the formation of a new company to pursue the acquisition of the station and license for WHCT-TV. Thomas Hart suggested a partnership structure for the venture, (which he had previously discussed with Ramirez) that would allow Astroline Company to invest as a limited partner and Ramirez to control the operation of the station as general partner and general manager. (TRT Ex. 2, p.7; Tr. 220).

37. After an afternoon of further discussion, the parties agreed to form a limited partnership. Central to the parties' understanding was that Ramirez, who had experience in broadcasting and management, would have not less than 21% of the equity for which he would contribute sweat equity participation as general partner and general manager in charge of the operation of the station. There would also be a corporate general partner, WHCT Management, Inc., and Astroline Company would be the limited partner, providing the financial backing and lending power necessary to make WHCT-TV viable. All of the voting powers would be held by the general partners. The parties discussed the importance of the independence and authority that an ethnic minority general partner such as Ramirez must have. It was critical to Ramirez that they operate in accordance with FCC rules and policies because he understood the importance of FCC compliance; he was concerned about his reputation in the broadcasting industry; and he ultimately wanted to own additional stations. Ramirez wanted Mr. Boling and Mr. Sostek to be comfortable with the control that he would have in a company in which Astroline Company was to invest large

amounts of money. Following a thorough discussion of these issues, Ramirez received assurances from Mr. Boling, Mr. Sostek and Mr. Lance that their interest was also that he be in control of station affairs and to follow not only the letter of the law but the intent of the law as well. The fact that these men had no prior experience in the broadcast industry made these assurances meaningful to Ramirez. (TRT Ex. 2, pp. 7-8; Tr. 223-226, 238-239).

38. At the time of the meeting, Ramirez knew that WHCT was not in good condition. The station had been running the sermons of Faith Center's Dr. Scott 24 hours a day. Several hours were broadcast live over satellite, and during the rest of the day repeated taped sermons were broadcast. A lot of the equipment was old. Faith Center had a rented studio but the lease had been forfeited. He discussed with Messrs. Boling and Sostek the capital requirements necessary to rehabilitate the station. They contemplated that the limited partners would capitalize the company with \$500,000 and they would need approximately \$15,000,000 to be obtained from bank borrowings. (TRT Ex. 2, p. 8).

39. Although the amount of money that Ramirez would invest in the partnership was nominal (\$210), he was well acquainted with the concept of sweat equity and believed that the structure they planned -- a union of his broadcasting experience and sweat equity with the financial resources of the investors -- would advance the goals of the FCC's policies. It was Ramirez's understanding that sweat equity deals were a common business practice, and that the whole premise of the FCC's distress sale policy was to foster mechanisms whereby members of minority groups, like Ramirez, could control station affairs and assure that minority perspectives would be brought to bear on programing, despite a lack of personal financial resources or lines of credit from lending institutions. Ramirez was giving up a lucrative position where he had

achieved success with a great company to pursue his desire for ownership of a broadcast station. (TRT Ex. 2, pp. 8-9; Tr. 226).

40. Shortly after this meeting, Ramirez was provided with a copy of a limited partnership agreement, which he took to his personal attorney in Boston for review. He had already discussed the potential of this event with his attorney, and he understood that a general partner is liable, jointly and severally, for all of the obligations of the partnership. (TRT Ex. 2, p. 9; Tr. 223, 306). After receiving the partnership agreement, Ramirez discussed liability issues and FCC issues with his personal attorney. Thereafter, he signed the limited partnership agreement and sent it to the law firm of Peabody & Brown in Boston, which was responsible for filing it with the State of Massachusetts. (TRT Ex. 2, p. 9; Tr. 240-241).

41. Astroline Communications Company Limited Partnership ("ACCLP") was formed as a Massachusetts limited partnership. All of the voting powers were vested in the general partners, Ramirez and WHCT Management, Inc. Ramirez had 21% of the equity and a 70% voting interest, and WHCT Management, Inc. had 9% of the equity and a 30% voting interest. Astroline Company owned all of the stock of WHCT Management, Inc. Fred Boling, Jr. was the President of WHCT Management, Inc. and William Lance was the Clerk. WHCT Management, Inc. was established for two reasons. It was to be a vehicle for ultimately transferring ownership interests in the station to minority and non-minority employees who committed to work at the station without affecting Ramirez's control as managing general partner. It was also to function as a second general partner when Ramirez was unavailable. (TRT Ex. 2, p. 9; Tr. 241-242). Mr. Bacon testified that he could not remember who suggested that ACCLP be set up with two general partners but he did recall that Ramirez was certainly involved in the decision. (Tr. 469-

470). ACCLP was split in terms of equity with the limited partner, Astroline Company, having 70% of the equity and the general partners, Ramirez and WHCT Management, Inc., having 30%. Astroline Company had five partners, Fred Boling, Jr., Herbert Sostek, Joel Gibbs, Richard H. Gibbs and Randall L. Gibbs. Ramirez met Randall Gibbs once, by happenstance, in a restaurant and never spoke to him subsequently by phone or in person until post-bankruptcy proceedings. (TRT Ex. 2, pp. 9-10). Joel Gibbs died on May 18, 1986. (Tr. 615). Ramirez had no dealings with Joel Gibbs or Richard Gibbs other than informal encounters during infrequent visits to Astroline Company offices in Reading, Massachusetts and a single visit they made to Hartford in mid-1985 and perhaps one other time when they were driving through town. (TRT Ex. 2, p. 10).

The Petition for Special Relief and Assignment Application

42. Mr. Hart assisted in drafting a letter signed by Faith Center's counsel that was submitted to Judge Frysiak, the FCC Administrative Law Judge in the Faith Center FCC proceeding, on May 29, 1984. The letter informed the Judge that Faith Center and ACCLP had entered into an agreement to transfer the assets of WHCT-TV for $3.1 million pursuant to the Commission's minority distress sale policy. In addition, the letter outlined the ownership of ACCLP. The letter described ACCLP as a Massachusetts limited partnership with two general partners, Ramirez (with a 21% equity interest) and WHCT Management, Inc. (with a 9% equity interest) and one limited partner, Astroline Company. The letter stated that "WHCT Management, Inc. will be wholly-owned by Astroline Company, which will be a limited partner of Astroline Communications Company and will hold a seventy percent (70%) equity interest in the station," and the letter noted that WHCT Management, Inc. was reserving four percent of its nine percent equity interest for other minority management personnel. (TRT Ex. 2, Appendix A, p. 2;

Shur. Ex. 14). Ramirez flew to Washington and appeared at a hearing conference on May 30, 1984 before Judge Frysiak. Mr. Hart, Mr. Boling, Mr. Sostek and Mr. Lance were also present. The Judge provided Faith Center and ACCLP additional time to file the necessary paperwork. (TRT Ex. 2, p. 10).

43. On July 28, 1984, a Petition for Special Relief and FCC Form 314 assignment of license application and related documents were filed with the FCC. Exhibit 3 of the FCC Form 314 application described ACCLP as follows:

> The assignee is a Massachusetts limited partnership having two General Partners, Richard Ramirez and WHCT Management, Inc., and one Limited Partner, Astroline Company. The affairs of the assignee are managed solely by the General Partners and all questions are decided by the majority vote of the holders of general partnership interests, who vote in accordance with their respective ownership interests in the assignee (such interests are referred to in Table 1 as "Voting Interest"). Thus, Mr. Ramirez, having a 70% Voting Interest in the assignee, has complete voting control of the management of the affairs of the assignee.
>
> Astroline Company, the sole Limited Partner of the assignee is a Massachusetts Limited Partnership having the General and Limited Partners set forth on Table 1. In addition to its limited partnership interest in the assignee, Astroline Company is also the owner of all of the outstanding Common Stock of WHCT Management, Inc. Each of the five partners of Astroline Company [Fred Boling Jr., Herbert Sostek, Joel Gibbs, Richard Gibbs and Randall Gibbs] has a 20% Ownership interest in Astroline Company. Each of the four General Partners of Astroline Company [Fred Boling, Jr., Herbert Sostek, Joel Gibbs and Richard Gibbs]. has a 25% Voting Interest.
>
> Three of the partners of Astroline Company, Joel A. Gibbs, Richard H. Gibbs and Randall L. Gibbs, are brothers.

The application also contained affidavits of Fred Boling in his capacity as President of WHCT Management, Inc., General Partner of ACCLP. In the application and associated pleadings, ACCLP proposed that WHCT Management, Inc. would transfer four percent of its nine percent interest to additional minority personnel. (TRT Ex. 2, p. 20-21, Appendices A and B). In the Program Service Statement, attached to the FCC Form 314 application, ACCLP stated that "[s]pecial emphasis is being placed on ascertaining the local needs and interests of the minority citizens residing in the Hartford area." (Shur. Ex. 15, p. 000539).

The Difficulties Incurred By ACCLP Following Grant of The Assignment Application

44. Following the December 7, 1984 Commission grant of the assignment application, ACCLP closed on the acquisition of WHCT from Faith Center in January 1985, over Shurberg's objection. The purchase price for the station was $3,100,000 which was paid by a wire transfer of $500,000 from Astroline Company and a promissory note for approximately $2,600,000 from ACCLP to Faith Center to be paid when the grant of the assignment became final. Ramirez and Fred Boling, Jr. signed the promissory note in their respective capacities as the borrower's -- ACCLP's -- general partner and president of the corporate general partner. (TRT Ex. 2, p. 11; Tr. 263-64).

45. Shurberg's appeal of the Commission's grant of the assignment of license cast a dark shadow on the ACCLP business venture, and the impact of that shadow progressively grew more destructive as the years went on. The case was in the Court of Appeals for several years and during this time after initially supporting the minority distress sale policy, the Commission altered its position on the constitutionality of minority preference policies. This change in the FCC position generated a remand by the Court requiring that the FCC further explain its position. After the remand, the Court of Appeals reversed the grant to ACCLP, holding that the FCC's distress sale policy violated the equal protection rights of non-minority applicants. ACCLP filed a

petition for certiorari and the Supreme Court decided to hear the case. ACCLP ultimately prevailed at the Supreme Court, gaining affirmation of the FCC grant made six years earlier on the minority distress sale purchase of WHCT. However, the uncertainty generated by these appeals cast a substantial cloud over the license and caused ACCLP to expend substantial funds for attorneys fees. While, after review with counsel, ACCLP had consummated its acquisition of the station in January 1985, the appeals affected ACCLP's ability to obtain bank financing and to lease equipment because ACCLP was in litigation and did not have a final grant from the FCC. The principals of ACCLP believed at the outset that the appeals would be dealt with quickly and that the company would be able to recover. But in the meantime, it became evident that Astroline Company was going to have to come up with the additional funds not only to restore the station to operation and continue operations until there was a positive cash flow, but also to continue the unanticipated expensive litigation generated by Shurberg. Since the litigation involved a constitutional challenge to the FCC's minority distress sale policy, the cost of the litigation was very substantial. Moreover, ACCLP's funding requirements increased over the years because whenever ACCLP filed a motion or document with the Administrative Law Judge or the Commission, Shurberg typically would file a pleading which required a response from ACCLP which in turn generated a reply from Shurberg, sometimes provoking yet a further pleading from ACCLP. (TRT Ex. 2, pp. 12-13).

46. In addition to the Shurberg litigation, ACCLP was also faced with litigation from Faith Center which alleged that ACCLP had breached its contract with them. Payments on the promissory note to Faith Center were scheduled to commence when the grant of the assignment

became final, but as a result of the Shurberg appeals, finality had not occurred. (TRT Ex. 2, p. 13).

47. Finally, ACCLP was also adversely affected to a substantial extent by the "Quincy-Turner" court decision in the summer of 1985 which unexpectedly struck down the must-carry rules and resulted in the denial of cable carriage to WHCT. One of the attractive elements of the Hartford market had been the very high cable penetration rate. When WHCT went on the air on September 30, 1985, instead of reaching 600,000 to 700,000 homes through cable which it had anticipated, and which had previously been enjoyed by Faith Center, the station was refused access by most of the cable companies. In contrast to its market competitors who were enjoying cable carriage to a minimum of 700,000 - 900,000 homes, WHCT had fewer than 150,000 cable homes when it signed on as a result of the "Quincy-Turner" decision. (TRT Ex. 2, pp. 13-14; Tr. 275-276). The difficulties the station incurred as a result of the lack of cable carriage are set forth in an Arthur Andersen memo dated October 16, 1985. That memo described a visit that Arthur Andersen representatives had with Ramirez in Hartford and noted that because Channel 18 had not been picked up by the cable companies in New Haven and Hartford, it was not currently available to 65% to 70% of the market. (TRT Ex. 14).

48. Despite these adverse factors, ACCLP's principals were optimistic that the station would be successful. A number of attorneys, including a prior FCC Commissioner, advised ACCLP that Shurberg's court challenge would be unsuccessful, and ACCLP's principals initially anticipated that the appeal would be resolved within a year or so. A timely resolution of the court case would have changed the entire form of funding for the station. As it was, however, banks would not extend funding because ACCLP did not have a "clear title". Additional investors were similarly scared away. In early 1987, Home Shopping Network ("HSN") approached Ramirez

with an offer in excess of $17 million to purchase the station. Ramirez negotiated that offer with a senior official of HSN, James Bocock, but the offer died because it was predicated upon resolution of the license dispute. (TRT Ex. 2, p. 14; Tr. 268-269).

Ramirez's Operational Control

49. The Connecticut Bankruptcy Court held that Ramirez exercised fully his powers as managing general partner. (TRT Ex. 3, pp. 8-9). Mr. Hart described Ramirez as an active manager and general partner in control of the day-to-day operation of WHCT-TV. In Mr. Hart's words:

> Mr. Ramirez was a hands on manager, hands on general partner. He took a very active role in oversight of all aspects of the station's operations and particularly was involved in the development of the documents and other related materials involving the Shurberg litigation. It was very important to him and the station that we succeeded in this effort and he was very much involved in an oversight way of the activities that we were doing at that time.
>
> I was in touch with him regularly and he was a hands on guy.

(Tr. 559). Ms. Linda Bocchi, an associate at Baker & Hostetler from June 1988 to June 1992, described Ramirez as "the client," and said "if ever we had a meeting, that's who came, was Rich Ramirez." (Shur. Ex. 140, p. 11). Dale R. Harburg, an associate at Baker & Hostetler from 1985 to approximately 1991, did not know who Fred Boling was. (Shur. Ex 139, pp. 7, 43). Kent Davenport, a tax partner at Arthur Andersen, who handled ACCLP matters, identified Ramirez as the person who ran the station in Hartford and the individual he contacted concerning tax matters. (Tr. 428-429).

Ramirez's Initial Preparation and Renovation of WHCT-TV

50. Throughout the entire period of time that ACCLP served as the licensee of

WHCT-TV, Ramirez ran the daily operations as majority general partner and the general manager in charge of the television station. From the formation of the partnership, Ramirez was the general partner with the working knowledge of broadcasting and the mandate to manage the station. Ramirez exercised responsibility over all aspects of the station's operation, guiding the renovation of the studio and the construction of a new tower, hiring and firing employees, designating bills to be paid, and selecting the station's programming. (TRT Ex. 2, p. 16-18; Tr. 269). As Ramirez had identified prior to the Memorial Day weekend meeting in 1984, WHCT needed substantial work to raise it to a competitive level within the local market. (TRT Ex. 2, p. 8). Much of WHCT's limited broadcasting equipment was old and the station lacked studio space. At the initial discussions regarding the acquisition of WHCT, the partners estimated that ACCLP would need to obtain approximately $15,000,000 in bank loans in order to rehabilitate the station. (TRT Ex. 2, p. 8).

51. Ramirez's work began immediately following the formation of the partnership and the filing of an application for the purchase and assignment of WHCT-TV. While continuing to wrap up the transition from his then employer WMJX, he simultaneously worked on preparations for the future operation of WHCT. He worked on FCC filings with Mr. Hart, interviewed engineering firms, local law firms, and programming consultants. (TRT Ex.2, p.10). Ramirez personally interviewed three or four law firms in Hartford shortly after the formation of ACCLP and recommended the firm of Schatz & Schatz, which he introduced to the partnership. Schatz and Schatz was the firm hired. (Tr. 394). Ramirez located equipment and program suppliers to allow WHCT to begin broadcasting as expeditiously as possible. (TRT Ex. 2, pp. 15-16). The limited partners never contradicted the selections that he made regarding engineers, attorneys,

program suppliers or consultants for the station. (Tr. 395-396).

52. Ramirez moved to Hartford and took up residence there in the fall of 1984. At that time, he leased office space at CityPlace in Hartford, hired an assistant and outside consultants, and generally set up shop for the management of WHCT. (TRT Ex.2, p.11). Now working full-time on the WHCT-TV project, Ramirez scouted studio space in Hartford, evaluated the existing transmitter site, and retained Arthur Biggs, the chief engineer and vice-president of Corinthian Television, to prepare a preliminary analysis of WHCT's technical facility. (TRT Ex. 2, p. 11). In addition to the work on the physical state of the station, Ramirez engaged in a search for suitable programming and potential employees. He hired Spencer Stuart, an executive search firm, specifically to locate minority management employees. Additionally, he negotiated with program suppliers in both New York and Los Angeles in order to line up programming for the station's new format. (TRT Ex. 2, p. 11).

53. As part of the preparations for the acquisition of WHCT-TV, Ramirez dealt with local citizens' groups concerning ACCLP's plans for the station's programming and its goals for the revitalization of the television station. (Tr. 401-403). Ramirez met with members of the Capitol Region Conference of Churches, lay people, and a group of Christian and Jewish leaders from the greater Hartford area. In meeting with these citizens, he outlined ACCLP's plan for the station and placated their complaints by quickly removing the Faith Center programming from the air. (TRT Ex. 2, p. 12). With the assistance of FCC counsel Thomas Hart, Ramirez drafted an agreement with the local citizens' group. (TRT Ex. 6, pp. 270-285; Tr. 401-403). This action was taken without any input from the limited partners of ACCLP. (Tr. 403). Additionally, Ramirez conducted community ascertainment in the Hartford area, including a broader group than

just those who had voiced concern about Faith Center. (TRT Ex. 2, Appendix B, pp. 81-114; Tr. 402).

54. Prior to the consummation of the WHCT acquisition, Ramirez determined that the station would have to go dark in order to make necessary repairs and to upgrade the station. Following the closing of the sale in January, 1985, he took the sermons of Dr. Scott broadcast by Faith Center off the air and the station remained dark until September 30, 1985, when WHCT-TV resumed on-air operation. (TRT Ex.2, p. 12). Between the closing and the return to the air, Ramirez led WHCT through a complete overhaul. He secured all new programming for the station and determined that WHCT needed new studios, a new master control, transmitter, antenna and tower facilities in order to become commercially viable. (TRT Ex.2, p. 12).

Ramirez Supervised the Renovation of the Station and Day-to-Day Operations of ACCLP

55. After selecting a warehouse office facility on Garden Street in downtown Hartford, Ramirez supervised the renovation of the approximately 14,000 square feet of real estate.[5] Under Ramirez's direction, the office space was converted into new studios and offices for WHCT-TV. He retained an architectural firm, well-known for designing television and studio facilities, as well as an engineering consultant. Ramirez was responsible for hiring these parties and worked extensively with both firms in order to reconstruct the station. In addition, Ramirez hired a construction management company and retained experts to design studio transmitter links (STLs) and transmitter studio links (TSLs) for use with the station's new Garden Street location. A chief engineer was later hired to supervise and participate in the installation and construction of the new

[5] In connection with the purchase of the studio property, Peabody & Brown delivered an opinion letter on March 4, 1985 stating, inter alia, that Richard Ramirez, as a General Partner of the Partnership had all requisite authority to enter into an agreement on its behalf. (TRT. Ex. 15).

studios and transmitter facilities. (TRT Ex.2, pp. 14-15). Throughout the renovation process, Ramirez made the decisions to purchase real estate, construct offices, and upgrade broadcasting equipment. The only discussions he had with the limited partners of ACCLP regarding these operational issues were to ensure that the necessary funding would be available, not to seek approval of the decisions he had made. (Tr. 411-412).

56. Ultimately, WHCT's existing tower capacity was deemed insufficient for the needs of a modern television station that intended to be a market wide competitor. Ramirez sought expert help to negotiate the acquisition of real estate and to resolve the associated zoning and FAA issues. (TRT Ex.2, p. 15; TRT Ex. 6, pp. 25-26). Working with these respective experts, he sought to obtain the necessary approvals to build and develop a new tower site that could handle WHCT's new requirements. (TRT Ex.2, p. 15; TRT Ex. 6, pp. 89-94).

57. In addition to overseeing the initial renovation of the television station, Ramirez exercised control of WHCT-TV on a daily basis. Ramirez, as the majority general partner of ACCLP and the general manager of WHCT, had full responsibility for the day-to-day management and operation of the station. Among other things, Ramirez hired and fired the station's employees; he negotiated and re-negotiated leases, contracts, and programming arrangements; and he determined the payment of the station's monthly bills. (TRT Ex. 2, p. 14; TRT Ex. 6, pp. 106-254; Tr. pp. 273, 279-282). With the assistance of the staff he hired, Ramirez supervised and directed every aspect of the station's daily operations. The principals of Astroline Company lacked any experience in the operation of a broadcast television station and had no role in the day-to-day management of the station. (TRT Ex.2, p. 14; Tr. 217-218).

Ramirez Hired and Managed Station Personnel

58. With the exception of his own employment, Ramirez was solely responsible for locating, hiring, supervising, and, if necessary, ultimately firing the staff members of WHCT-TV. (TRT Ex. 2, p. 17; Tr. 273-274). None of the partners of Astroline Company had any involvement in hiring or firing the station's employees. (TRT Ex. 2, p. 17; Tr. 273). The limited partners of ACCLP "did not meet, interview, hire, fire, in any way evaluate any employee of that business in the entire time it was in existence." (Tr. 273). Ramirez controlled the setting of staff salaries. Neither Boling, Sostek, nor any other partner of Astroline Company had any involvement in setting staff salaries. Only when an employee who had been given an interest in WHCT Management, Inc. departed, did Ramirez inform Mr. Boling, Mr. Sostek, or their counsel, because such a departure involved retrieving a partnership interest. (TRT Ex. 2, p. 17).

59. As the general manager, Ramirez hired all of the department heads and all of the senior level personnel, including the programming and operations people, sales management, engineering, promotion, and accounting personnel. (TRT Ex. 2, p. 17). In the short period between March and July 1985, Ramirez personally hired an administrative assistant, Migdalia Vazquez-Fernandez, and four other key employees for WHCT. Ramirez hired Terry Planell, a native of Cuba with experience in television programming, initially to be program manager and later station manager. (TRT Ex. 2, p. 17; TRT Ex. 6, pp. 3, 9-12). In addition, he hired John Jordan for director of operations, Daniel J. Collins as the chief engineer, and Dan O'Brien as director of sales. (TRT Ex. 6, pp. 3-8, 13-18). Ramirez was responsible for the hiring of these senior employees and is shown on each of their employment agreements as the general partner of ACCLP. (TRT Ex. 6, pp. 1-18). While Ramirez gave discretion to the department

heads to hire people for their departments, he maintained a policy of meeting all employees that were hired at the station. (TRT Ex. 2, p. 17).

Ramirez Made Programming Decisions

60. In addition to the hiring and management of the station's personnel, Ramirez determined the content of WHCT's daily programming. WHCT-TV, Channel 18, was an independent station, not affiliated with a network. As such, it was Ramirez's task to negotiate and obtain syndicated off-network programs, first-run syndicated programs, and movies through off-network packages and off-cable packages. While the station was still dark in early 1985, Ramirez began to seek programs for the station. To assist in the process he engaged George Snowden, a programming consultant who had formerly worked at one of the country's largest independent television stations, WWOR in New York. In addition, Ramirez attended various programming conventions such as the INTV (Association of Independent Television Stations) and the NATPE (National Association of Television Programming Executives) conventions. (TRT Ex. 2, p. 16).

61. Ramirez made the decision of what programming to undertake, often in consultation with the station manager, Terry Planell, and the sales management. (Tr. 293). From 1985 until the station went into bankruptcy, Ramirez signed all the programming agreements for the station, with the exception of a few signed by Ms. Planell. (TRT Ex. 2, p.16). Ramirez would occasionally advise Mr. Boling and Mr. Sostek about his programming strategies and the relative performance of particular programs. (Tr. 293). At no time, however, did Boling or Sostek exercise control over the programming decisions of the station, nor did Ramirez consult the limited partners regarding these decisions. (Tr. 293-294). In rare instances involving "large ticket

liability" items, Ramirez would inform the limited partners of the extraordinary expenditure, but would ultimately make the final decision himself. (Tr. 297-298).

62. In addition to securing programming from suppliers, Ramirez implemented the development of local programming originated by WHCT-TV. He negotiated with off-site production companies and contracted for off-site facilities in order for the station to produce and broadcast the games of local hockey and basketball teams from remote sites. (TRT Ex.2, p. 15). Ramirez worked to secure coverage of the Hartford Whalers home hockey games, thereby obtaining broadcast rights for Connecticut's only professional sports franchise. (TRT Ex. 6, pp. 88, 97-102; TRT Ex. 2, Appendix C, p. 8). Under Ramirez's direction, the station produced a live mass of the Archdiocese of Hartford five days a week from WHCT's studios. Ramirez also oversaw the production of a number of community affairs programs. (TRT Ex. 2, pp.15-16). Additionally, WHCT engaged in negotiations with the Connecticut State Lottery to be able to produce and broadcast the live evening lottery drawings. (TRT Ex. 6, p. 106-108).

63. As a minority broadcast owner and general manager, Ramirez felt an obligation to bring his experiences to bear on the station's programming decisions. (TRT Ex. 2, pp. 15-16). Under Ramirez's direction, WHCT demonstrated a commitment to minority programming by airing various programs responsive to the Hispanic and African-American communities, including bilingual programs and specials celebrating African-American artists. (TRT Ex. 2, Appendix C). In addition, WHCT's production of a daily mass from the Archdiocese of Hartford and a live show covering the coronation of the Auxiliary Bishop at the Cathedral in Hartford reflected Ramirez's sensitivity to the desire of minorities for religious programming. (TRT Ex. 2, pp. 15-16).

Ramirez Negotiated and Re-negotiated Contracts

64. In yet another facet of his role as station head, Ramirez, and/or the manager who reported to him negotiated, and later re-negotiated, all contracts, liabilities, or obligations entered into on behalf of the television station. No partner or employee of Astroline Company ever entered into a contract or created an obligation for ACCLP. (TRT Ex. 2, pp. 19-20). Ramirez, and occasionally Terry Planell, the station manager, contracted with program suppliers, sales representatives, and consulting firms on an ongoing basis to provide for WHCT's existence. Ultimately, "every liability of the business was incurred at [Ramirez's] direction." (Tr. 415).

65. When continued litigation expenses, delays in construction of the station's new tower, and delays in obtaining cable carriage began to prevent WHCT from reaching its projected sales revenue in late 1986 and early 1987, Ramirez began to re-negotiate the station's contracts with its creditors. (TRT Ex. 2, p.16). In an effort to obtain some relief, he negotiated with the station's major trade creditors to grant new payment schedules in order to ease the financial strain on WHCT. (TRT Ex. 2, p. 16). On behalf of ACCLP, Ramirez reached various agreements to defer payments and recalculate the time for repayment of WHCT's obligations. (TRT Ex. 6, pp.106-254). Ramirez contacted dozens of program suppliers and creditors in his effort to reduce the station's obligations and to prevent the station from defaulting on its debts. When an arrangement agreeable to both sides was reached, Ramirez confirmed the understanding in a signed letter to the party involved. (TRT Ex. 6, pp.106-254). As head of the station, the undesirable task of renegotiating the troubled station's debts fell to Ramirez. (TRT Ex. 2, p.16).

Ramirez Controlled Financial Decisions

66. It was also Ramirez's responsibility to make the payments due to suppliers,

vendors, consultants, and others. (TRT Ex. 2, p. 18). At the early stages of the station's existence, Ramirez would approve invoices and send them to Astroline Company which would return checks ready for Ramirez's signature in order to pay the invoices. (TRT Ex. 2, p.18). With the introduction of a Columbine computer system to handle billing and budget projections, the process later became more updated; however, the basic relationship remained unchanged. Ramirez continued to determine the bills that needed to be paid and then to send the requests to Astroline Company, which would return checks ready for Ramirez's signature to cover the particular expenses. The station initially produced no revenues, and even when it did produce revenues, WHCT's expenses always exceeded the revenues that the station generated. For this reason, the station remained partially dependent on the funding that Astroline Company provided. (TRT Ex. 2, p. 18).

67. Ramirez implemented the use of the Columbine computer system as part of the modernization of WHCT-TV. (Tr. 276-277). The Columbine system integrated traffic, continuity, programming, and accounting, and WHCT used the computer to construct and run its general ledger as well as to generate financial reports. Ramirez was familiar with the computer system from prior experience and had attended management programs to learn how to use Columbine. (Tr. 277). The system allowed Ramirez to integrate all aspects of the station's daily operations, from record keeping and tracking sales, to advertising and program inventory. (Tr. 278).

68. Once the bills and payables were entered into the system and put through the general ledger, the payables would be bundled and sent to Astroline for the appropriate checks. (TRT Ex. 2, p. 19; Tr. 278-279). During the normal course of business, WHCT's accounting

department would send the transmittals to Astroline Company's accounting department, which would attach checks and send them back. (Tr. 281). After early 1985, the checks for the station's payables were mainly drawn on an account at State Street Bank in Boston where the limited partners had arranged borrowing lines that covered ACCLP. (TRT Ex. 2, p. 20; Tr. 292). Ramirez signed approximately 95% of the checks from this account up until the time that ACCLP went into bankruptcy. As a normal business practice, Mr. Boling signed checks that were payable to Ramirez and a half dozen or so other checks when Ramirez was unavailable or traveling. (TRT Ex. 2, p. 20).

69. When the financial condition of WHCT started to decline, the process for handling payment of the station's bills changed slightly. Once the information was input into the computer and an invoice was generated, Ramirez would then work through the payables and determine the priority of the payment of the bills. (TRT Ex. 2, p. 19; Tr. 282). Ramirez would then submit those payables that he deemed to be the most critical and Astroline Company would return the necessary checks. In this manner, Ramirez continued to control the payment of the station's debts up to the point at which WHCT was forced into bankruptcy. The bills that he determined had priority over other debts were paid in accordance with his decisions. (TRT Ex. 2, p. 19; Tr. 287-288).

70. In addition to facilitating billing, the Columbine system was used for the station's long term fiscal planning. On a monthly basis, Ramirez, with the assistance of the station manager and the sales manager, would generate an annual budget and an annual operating plan. (Tr. 410). The Columbine system produced a budget plan and tracked the monthly revenues and expenditures to chart the station's progress toward its annual goals. These reports were

ultimately sent to the limited partners to keep them informed of the station's financial status. However, Ramirez "never changed an operating budget to accommodate a suggestion of one of [the] partners." (TRT Ex. 2, p. 19; Tr. 410).

Ramirez Pursued Cable Carriage

71. One of the primary issues facing WHCT throughout the station's existence was obtaining carriage of the independent station on local cable systems. The decision of Quincy Cable TV, Inc. v. FCC, announced just prior to the commencement of WHCT's broadcasting in September 1985, struck down mandatory cable carriage, putting the station at a severe disadvantage. (Tr. p. 276; Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434 (D.C.Cir. 1985)). When WHCT was denied cable carriage, Ramirez was concerned that the station would have difficulty competing with other stations of similar size who were able to reach larger audiences of cable viewers. (TRT Ex. 2, p. 14; Tr. 276).

72. Once the must carry rules were struck down, Ramirez engaged in an active advertising campaign seeking to raise community awareness and force carriage of WHCT by the local cable systems. (Tr. 275-276). He hired the advertising agency of Mints and Hoke to promote Channel 18 and put pressure on the cable companies to carry the station. (TRT Ex. 2, p. 18; TRT Ex. 6, pp. 51-52). Instead of reaching the audience of 600,000 to 700,000 homes that Faith Center had enjoyed, WHCT was refused access by most of the cable companies. (TRT Ex. 2, p. 14). Ramirez remained active on the issue during his tenure as general manager, negotiating with the cable companies, and writing to state utility commissioners, broadcast publications, and other broadcasters in an attempt to raise awareness and get WHCT back on cable. (TRT Ex. 14; TRT Ex. 6, pp. 256-269).

ACCLP's Efforts to Enhance Minority Ownership

73. Throughout the period Ramirez was in charge of WHCT, he actively sought to expand the opportunities for, and influence of, minorities in the communications industry. (TRT Ex. 6, pp. 266-313). Ramirez, as an Hispanic, and Mr. Hart, as an African American, realized the need to enhance the level of minority ownership in the broadcast industry. As a minority broadcaster, Ramirez made a point of hiring qualified minorities for management level positions. (TRT Ex. 2, pp. 11, 17; TRT Ex. 12). From its inception, ACCLP was committed to bringing members of racial minority groups into the organization to enhance minority ownership in broadcasting, and WHCT Management, Inc. was set up, in part, as a vehicle to enhance minority ownership. (Tr. 566, 571). In September 1985, WHCT Management, Inc. transferred a one percent general partnership interest to Thomas Hart and one percent limited partnership interests to Terry Planell, Don O'Brien and Danielle Webb, who were management level employees of WHCT. Ms. Planell was an Hispanic female; Ms. Webb was an African American female and Mr. O'Brien was a Caucasian male. All three had extensive experience in the broadcast industry as well as being management-level employees of WHCT. (Shur. Exs. 4-7; Tr. 245). The ACCLP limited partnership agreement was amended in September 1985 to reflect these interests. (Shur. Ex. 7).

74. Mr. Hart testified that while he executed documents that reflected his one percent general partnership interest, he was unclear whether he actually was a general partner since he never paid for his interest and reassigned his interest back to the partnership some eighteen months later. (Tr. 578, 585). Mr. Bacon also could not recall whether Tom Hart legally became a general partner of ACCLP. (Tr. 475). With respect to the partnership interests given to Ms.

Planell, Mr. O'Brien and Ms. Webb, Ramirez testified that there were discussions among Schatz & Schatz, the Connecticut counsel to ACCLP, and Ms. Planell's attorneys, concerning whether the interests should be general or limited partnership interests. Ultimately, the employees acquired limited partnership interests because if they acquired general partnership interests, they would have stepped into the liabilities of the business which were quite high at that time, and they were unwilling to accept the exposure and liability associated with being a general partner. (Tr. 248, 329). Moreover, Mr. Hart had a concern that the line of authority with respect to station operations should rest with Ramirez (Tr. 567). When Ms. Webb and Mr. O'Brien left WHCT, their interests were retired. (Shur. Ex. 8, p.3; Shur. Ex. 11, p. 17). Ms. Planell stayed at WHCT and acquired an additional two percent limited partnership interest on December 26, 1986. In November 1988, when the station went into bankruptcy, however, Ms. Planell withdrew as a limited partner of ACCLP and retired her interest. (Shur. Ex. 11, p. 18).

The Special Tax Allocation Recommended by the Accounting Firm of Arthur Andersen

75. One of the primary reasons that the Trustee's renewal application was designated for hearing was that Shurberg had alleged that "Richard Ramirez had a less than 1% interest in Astroline." (HDO. para. 5). This allegation was investigated by the Trustee during the Connecticut bankruptcy case. (Shur. Ex. 29, p. 11; Shur. Ex. 30, pp. 12-13; Shur. Ex. 31, p. 11). The allegations in Shurberg's FCC pleadings, which relied on the arguments made by the Trustee in the bankruptcy court litigation, were based on tax forms for ACCLP and Ramirez for the years 1984-1987 which were introduced as exhibits during the bankruptcy proceeding. (Shur. Exs. 25, 26, 27 and 28; Tr. 50-53). The Schedule K-1s for Ramirez contained figures for (a) Profit sharing, (b) Loss sharing, and © Ownership of capital. In Ramirez's 1984 K-1, the Profit sharing

and Loss sharing columns showed "N/A" at the beginning of the year and 21% at the end of the year. No figure was listed beside Ownership of capital. WHCT Management Inc.'s K-1 for 1984 showed "N/A" at the beginning of the year and 9% at the end of the year. (Shur. Ex. 25, p. 9). In Ramirez's 1985 K-1, the figures beside all three columns were 21% at the beginning of the year and 0.7500% at the end of the year. WHCT Management, Inc.'s K-1 for 1985 showed 9% at the beginning of the year and 0.2143% at the end of the year. (Shur. Ex. 26, pp. 22 and 25). Ramirez's 1986 K-1 showed 0.778% beside all three columns at the end of the year, and WHCT Management's K-1 for that year showed 0.1852% beside all three columns for the end of the year. (Shur. Ex. 27, pp. 16 and 19). In 1987, the K-1 for Ramirez showed 0.778% beside all three columns for the end of the year, and the K-1 for WHCT Management, Inc. showed 0.222%. (Shur. Ex. 28, pp. 8 and 10).

76. Kent Davenport, a tax partner at the firm of Arthur Andersen, which prepared ACCLP's tax forms, testified at the hearing. Mr. Davenport has a degree in accounting from the University of Illinois and a J.D. from the University of Illinois. In addition, Mr. Davenport is a certified public accountant. He has been affiliated with Arthur Andersen since 1977, working in the tax division. (Tr. 427).

77. In approximately May 1985, Arthur Andersen began doing tax related work for ACCLP and Mr. Davenport was brought in to work on this account because he had prior experience with other broadcasting companies. Mr. Davenport testified that ACCLP was a limited partnership with two general partners, Ramirez and WHCT Management, Inc., and that Astroline Company was the limited partner. (Tr. 428).

78. In the course of providing ongoing tax services to ACCLP, Mr. Davenport's contacts within the company were Ramirez, the general partner of ACCLP, and Al Rozanski, the Business Manager of the company who handled the financial aspects. (Tr. 429; TRT Ex. 12, p. 2). Mr. Davenport testified that Ramirez was "the individual who actually was running the station in Hartford." (Tr. 428-429). Ramirez was in charge of tax matters for ACCLP. (Tr. 383).

79. Shurberg's appeal had drastically affected ACCLP's original plans to rely on bank financing and equipment leases. The limited partners indicated their willingness to fund the acquisition and renovation of the station as well as operating expenses until the station turned a profit. In the spring of 1985, when it became evident that ACCLP would be relying heavily on the financial resources of its limited partners, Kent Davenport recommended some accounting changes for tax purposes. (TRT Ex. 2, p. 22).

80. On May 7, 1985, Mr. Davenport and Roger Eastman of Arthur Andersen met with Ramirez and Fred Boling to discuss tax issues involving ACCLP. They informed Ramirez and Boling that in order for the limited partners to be able to utilize the losses to be generated by ACCLP, the borrowing from the Bank of Boston would have to be made at the individual limited partner's level. There was also a conference call on May 13, 1985 among Ramirez, Fred Boling, Herbert Sostek, Bill Lance of Peabody and Brown, and Kent Davenport, George Nebel and Roger Eastman of Arthur Andersen. (Tr. 429-432; TRT Ex. 13; Shur. Ex. 14). Although Mr. Davenport had these initial contacts with Mr. Boling and Mr. Sostek, he did not recall continuing to speak with them after that date or having much contact with either of them in regard to partnership matters. (Tr. 457-458).

81. Mr. Davenport recommended a special tax allocation which provided that to the extent that the limited partners were advancing funds to finance ACCLP, they would receive a special reallocation of losses during the early years of the limited partnership for tax purposes, and then, once the venture became profitable, the limited partners would be reimbursed for their prior allocated losses to get everyone back at the starting point, at which time the regular allocations among the ACCLP partners would come into play. (Tr. 435-436). According to Mr. Davenport, in May of 1985, the partners of ACCLP were very optimistic about the success of WHCT. (Tr. 437).

82. Mr. Davenport said that Arthur Andersen suggested the profit/loss allocation and the suggestion was not at anyone's direction. Rather, when he became involved with the ACCLP account, he reviewed the current structure and provided ACCLP with his analysis, explaining how the tax allocation would work. (Tr. 458-459). From Mr. Davenport's perspective, his advice benefitted the ACCLP partnership as a whole because the idea behind the special allocation was to lower the overall cost of financing ACCLP's activities. (Tr. 456). He stated that the use of such a special tax allocation was fairly common in business and he had seen it used in other limited partnership situations such as venture capital partnerships and real estate partnerships. He has seen situations where such a tax allocation was used when a general partner had a carried interest, i.e., an interest that a general partner receives that is attributable to considerations other than his capital contributions, such as sweat equity. He has also seen special tax allocations used where the general partner's interest was approximately 20%. (Tr. 435-436, 444-446). Subsequent to the memos prepared for ACCLP, legislation was enacted which, according to Mr. Davenport, "tends to make it more common to allocate losses to partners who have actually

contributed the funds that finance those losses." (Tr. 436-437).

83. Mr. Davenport explained how the special tax allocation was reflected on the tax returns of the partners. He testified that the first two numbers, reflected under the headings "Profit" and "Loss," basically report how the profits and losses earned by the partnership in that particular year would be allocated pursuant to the special allocation. He further stated that the "Ownership of Capital" number "in theory is how the assets would be distributed if the partnership were liquidated at this point in time" but he added: "in an ongoing business, especially if a significant portion of that business is an unrecorded, intangible asset, that number has very little significance. In fact, it would be very difficult to determine what that number would be in a particular year in which the assets are not actually distributed." (Tr. 440). While the Profit and Loss lines were based on the special allocation, the Ownership of Capital line was computer-generated based on the special allocation. (Tr. 441). By way of example, Mr. Davenport explained that if the station had been sold at the end of 1985 for $20 million, which was about $10 million more than had been invested, the proceeds would be allocated first to restore the limited partners for prior allocated losses, and then to the extent of their capital contributions. Then the limited partners would receive a special allocation to cover the interest on those capital contributions. After that, a special allocation of $1 million would have gone to Ramirez and Thomas Hart, and the remainder of the profit would revert to the original 30/70 allocation that was provided for in the amended partnership agreement which reflects the special allocation. Ramirez would thus have received his special allocation plus 21/30ths of the amount allocated to the general partners, which would have been approximately $1.8 million. (Tr. 441-443).

84. Mr. Davenport said that the purpose of the tax return is to reflect history, i.e., what happened, for instance, in 1985. The ACCLP tax forms showed how that tax information should be allocated to the partners for purposes of preparing their related tax returns for 1985, but the forms did not predict the future. He stated that the tax returns were consistent with the end of the year audited financial statements prepared by Arthur Andersen for ACCLP during the years 1984 - October 1988. (Tr. 438; TRT Exs. 7,8,9,10).

85. Ramirez understood that profits and losses could be reallocated in the manner proposed by Mr. Davenport without affecting the established ownership and control of ACCLP and that at all times he would remain 21% owner of ACCLP and the controlling general partner. Such a reallocation of profits and losses seemed entirely reasonable to Ramirez because it would enable the limited partners to utilize the passive losses that the general partners were not able to use, and because he would retain his 21% ownership interest and therefore receive 21% of profits after the limited partners recouped their losses. Ramirez expected the appeal process would be concluded quickly and there would be profits. (TRT Ex. 2, p. 22) He testified that the allocations of profit and loss reflected on the K-1 forms were irrelevant to his share of the equity in ACCLP and his voting interest. (Tr. 324).

86. The audited financial statements that Arthur Andersen prepared annually for ACCLP confirmed Ramirez's belief that he always held at least 21% ownership. For example, the Arthur Andersen audited financial statement for the year ended December 31, 1985, declares that, after the special allocations of losses to the limited partners and of $1 million to Ramirez and Hart:

> all further profits, losses and cash flow are allocated in accordance with the ownership percentages in the Partnership agreement. The limited partners have a 72% ownership in the Partnership with the remaining 28% ownership allocated to the general partners.

(TRT Ex. 7, p. 7) (emphasis added). Thus, while the 1985 K-1's for the general partners (Ramirez and WHCT Management, Inc.) listed their respective percentages of profit and loss sharing as 0.7500% and 0.2143%, a total of 0.9643%, Arthur Andersen's audited financial statements still reported their combined ownership as 28%, which included the 21% of the company owned by Ramirez. Similarly, while the general partners' K-1's for 1986 and 1987 continued to list their aggregate percentages of profit, loss sharing, and capital at 1% or less (¶75 supra), Arthur Andersen's audited statements for 1986, 1987 and October 31, 1988 continued to report their combined ownership interests in ACCLP at 28%, which included Ramirez's 21% ownership interest. (TRT Ex. 8, p. 8; TRT Ex. 9, p. 7; TRT Ex. 10, p.13). Ramirez reviewed these annual financial statements prepared by Arthur Andersen during the audit process. (Tr. 206-209). Every schedule reflecting the ownership of ACCLP supports his testimony that he had at all times a 21% ownership interest in ACCLP. (See e.g. Shur. Ex. 1, p. 3; Shur. Ex. 2, p. 29; Shurberg Ex. 6, p. 4; Shur. Ex. 7, p. 3; Shur. Ex. 9, pp. 39 and 45; Shur Ex. 92, p. 2).

ACCLP's Filings With The FCC

87. From the very first communication with the FCC on May 29, 1984, ACCLP made clear to the Commission that Ramirez would be a general partner, that WHCT Management, Inc. would be a general partner, and that WCHT Management, Inc. would be wholly-owned by Astroline Company, a Massachusetts limited partnership, which would also be a limited partner of ACCLP. (TRT Ex. 2, p. 20 and Attachment A).