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

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)	File No. BRCT-881201LG
Communications Company Limited)	
Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	
)	
SHURBERG BROADCASTING OF HARTFORD)	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		

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW OF
ALAN SHURBERG D/B/A SHURBERG BROADCASTING OF HARTFORD

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Summary

From 1984 through 1990, Astroline Communications Company Limited Partnership ("ACCLP") held itself out to the Commission, the U.S. Court of Appeals for the D.C. Circuit, and the Supreme Court of the United States as being a minority-owned and minority-controlled entity within the meaning of the Commission's minority ownership rules and policies.

Contrary to that public posture, however, the record evidence plainly demonstrates that, as early as 1985 (or earlier) ACCLP did not meet any of the Commission's criteria for minority-owned and minority-controlled limited partnerships. Richard Ramirez, who was said at all times to own a 21% interest in ACCLP, was shown to have contributed less than one one-thousandth of one percent of ACCLP's capital. Under any valid measure of "ownership" (including particularly the means by which the Commission has measured ownership of limited partnerships since 1985), Ramirez's holdings in ACCLP did not even come close to the level specified in the Commission's policies.

Similarly, Ramirez was not exercising "complete control" of ACCLP. The Commission had made clear, as early as 1985, that "complete control" of a limited partnership by a general partner meant that limited partners would have to be completely insulated from the activities of the partnership. At no time, however, were ACCLP's limited partners ever "insulated" in any way from ACCLP's activities. To the contrary, ACCLP's limited partners

were involved in virtually all aspects of ACCLP day-to-day business. In fact, Ramirez -- the supposed general partner supposedly in "complete control" of ACCLP -- did not even have a company checkbook at the station's offices in Hartford. Instead, he had to request that the limited partners (or their employees) in Boston prepare checks and provide funds to pay all the station's expenses. ACCLP never even made a pretense of insulation.

ACCLP was aware of its shortcomings under the Commission's rules and policies, but ACCLP chose not to apprise the Commission of them. Even when ACCLP was clearly required to provide a full report (with supporting documentation) concerning its ownership and control structure, ACCLP elected instead to submit an incomplete letter "in lieu of" its full report. Further aggravating ACCLP's misconduct in this matter, that letter misrepresented the reasons why ACCLP supposedly could not file an ownership report.

ACCLP was able to withhold information about its structure and operations because, even though it was in litigation relative to those matters at all times from its 1984 formation, the litigation did not afford the opposing party any right to discovery. However, in late 1988, ACCLP faced the prospect that it might be designated for a comparative renewal hearing, which would focus attention directly on its ownership and structure. Accordingly, it took steps to reorganize itself to bring itself at least arguably more into compliance with the Commission's

criteria.

ACCLP recognized that its late 1988 reorganization would require Commission approval, and it filed for such approval on November 22, 1988. But ACCLP failed to tell the Commission that the reorganization had actually been accomplished, without Commission approval, a week before that application was filed.

The record establishes that ACCLP did not comply with the Commission's standards, that ACCLP knew that it did not comply with the Commission's standards, and that ACCLP intentionally elected not to advise the Commission of that non-compliance, even though ACCLP had repeatedly asserted that it was in compliance. ACCLP has engaged in misrepresentation and lack of candor before the Commission and the Federal Courts. Because of that gross misconduct, its license for Station WHCT-TV cannot be renewed.

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Appearances

Peter D. O'Connell (Wiley, Rein & Fielding) on behalf of Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership; Harry F. Cole (Bechtel & Cole, Chartered), on behalf of Alan Shurberg d/b/a Shurberg Broadcasting of Hartford; Howard A. Topel (Fleischman & Walsh, L.L.P.), on behalf of Two If By Sea Broadcasting Corporation; Kathryn R. Schmeltzer (Fisher, Wayland, Cooper, Leader & Zaragoza L.L.P.) on behalf of Richard P. Ramirez; James W. Shook and Catherine M. Withers, on behalf of the Chief, Mass Media Bureau

Preliminary Statement

1. This case was designated for hearing by the Commission in a Memorandum Opinion and Order & Hearing Designation Order ("HDO"), 12 FCC Rcd 5224 (1997). The issues specified for hearing in the HDO are as follows:

- (1) To determine whether Astroline [Communications Company Limited Partnership ("ACCLP")] 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 [i.e., Martin W. Hoffman, Trustee-in-Bankruptcy for ACCLP ("Hoffman")] (File No. BRCT-881201LG).

HDO, ¶15.

2. In the HDO, Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH"), an applicant for a construction permit to operate on Channel 18 in Hartford, Connecticut -- i.e., the channel presently occupied by Station WHCT-TV -- was made a party to the proceeding. HDO, ¶16. The "initial burden of going forward with the introduction of evidence on issue (1)" was placed on SBH, while the burden of proceeding with the introduction of evidence on all designated issues, and the burden of proof with respect to all issues, were placed on Hoffman and ACCLP. HDO, ¶17. ^{1/}

3. Two If By Sea Broadcasting Corporation ("TIBS") and Richard Ramirez each sought separately to intervene herein. SBH opposed intervention by both TIBS and Ramirez. By Orders, FCC

^{1/} Hoffman had previously litigated, in the context of the bankruptcy proceeding involving ACCLP, a number of factual issues relevant to the issues in the instant proceeding. In the bankruptcy proceeding, for example, Hoffman had argued (without apparent contradiction) that "[n]otwithstanding the FCC minority preference guidelines, [a December 31, 1985 amendment of ACCLP's partnership agreement] resulted in Ramirez no longer owning 21% of the equity in ACCLP". See, e.g., SBH Exh. 31, p. 11. It is unclear how Hoffman can meet his burden of proof in light of such circumstances.

97M-109 and 97M-110, both released June 20, 1997, the Presiding Judge granted both TIBS and Ramirez status as parties to this proceeding.

4. ACCLP filed no notice of appearance and did not participate in any aspect of the evidentiary hearing.

5. Prehearing conferences were held on June 2, 1997 and August 25, 1998, all in Washington, D.C. Hearing sessions were held on September 23, 24, 28 and 29, 1998, also in Washington, D.C. The record was closed on September 29, 1998. Tr. 670; Order, FCC 98M-117, released October 2, 1998. Proposed findings of fact and conclusions of law were initially scheduled to be submitted on November 24, 1998, and replies were scheduled to be submitted on December 15, 1998. Order, FCC 98M-117, released October 2, 1998. By Order, FCC 98M-126, released November 19, 1998, those deadlines were extended to December 8, 1998 and January 8, 1999, respectively, at the joint request of Hoffman, TIBS and Ramirez, and over the objection of SBH.

Background

6. The license of Station WHCT-TV, Channel 18, Hartford, has been in dispute for more than 20 years. While the designated issues, and the evidence adduced thereunder, involve relatively narrow factual matters concerning ACCLP's conduct, those issues, that evidence and those factual matters must be viewed in the context of the overall history of the WHCT-TV proceedings in which ACCLP's conduct occurred. Accordingly, SBH offers the following background information concerning the factual and legal

milieu in which ACCLP's conduct occurred and with respect to which ACCLP's conduct must be assessed.

A. The WHCT-TV Proceeding, 1978-1991 -- An Overview

7. In 1978, Station WHCT-TV was licensed to Faith Center, Inc. ("Faith Center"), which also held licenses for television stations in San Bernardino and San Francisco, California. Questions had been raised concerning Faith Center's qualifications to remain a licensee. See Faith Center, Inc., 82 FCC2d 1 (1980), recon. denied, FCC 81-235 (1981), aff'd mem., Faith Center, Inc. v. FCC, 679 F.2d 261 (1982), cert. denied, 459 U.S. 1203 (1983).

8. As a result of those questions, Faith Center's 1977 application for renewal of the WHCT-TV license was designated for hearing in December, 1980. See Shurberg Broadcasting of Hartford, Inc. v. FCC ("Shurberg Broadcasting"), 876 F.2d 902, 904 (D.C. Cir. 1989). Shortly thereafter, Faith Center sought to avoid a hearing by proposing to assign the station's license pursuant to the Commission's minority distress sale policy.^{2/} The Commission granted that relief, but the proposed assignment was never consummated. Id.; see also Faith Center, Inc., 88 FCC2d 788 (1981).

9. In September, 1982, Faith Center tendered a second application seeking relief pursuant to the minority distress sale policy. The proposed buyer was Interstate Media Corp. ("IMC"), whose principal was Joseph Jones ("Jones"). The Faith Center/IMC

^{2/} The minority distress sale policy is described in some detail below at ¶¶23-24.

assignment was approved in September, 1983, Faith Center, Inc., 54 RR2d 1286 (1983).

10. On December 2, 1983, SBH filed its application for authority to construct and operate a station on Channel 18 in Hartford. That application was mutually exclusive with the WHCT-TV renewal application, and SBH sought comparative consideration against either IMC (if the Faith Center/IMC assignment were consummated) or Faith Center (if the assignment were not consummated).

11. In February and April, 1984, Faith Center and IMC advised the Commission that they would not consummate their proposed minority distress sale. Shurberg Broadcasting, 876 F.2d at 905. The WHCT-TV proceeding was thereupon reactivated, with a prehearing conference initially scheduled for May 16, 1984. That conference was ultimately postponed to May 30, 1984.

12. Meanwhile, Thomas Hart ("Hart"), a Washington, D.C. attorney specializing in communications law, and one of Hart's clients, a limited partnership named Astroline Company ^{3/} whose members included Fred J. Boling ("Boling") and Herbert A. Sostek ("Sostek") ^{4/}, were seeking some arrangement pursuant to which Hart's clients could acquire some interest in Station WHCT-TV. E.g., SBH Exh. 32, 34. Since neither Boling nor Sostek is a minority individual, Tr. 225, they needed to find some means by

^{3/} Astroline Company should not be confused with ACCLP.

^{4/} Boling and Sostek were partners in Astroline Company and other related businesses. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 100. They had previously been involved in at least one application for a television construction permit. SBH Exh. 15.

which they might claim to qualify as a minority-controlled entity which would qualify for the minority distress sale policy. E.g., Hoffman/TIBS/Ramirez Exh. 3, 188 BR 100. The circumstances of their efforts to acquire an interest in WHCT-TV are described below at ¶¶34-36.

13. On May 29, Hart advised the Presiding Judge in the Faith Center/WHCT-TV proceeding that an agreement for the sale of the station to ACCLP had been entered into. SBH Exh. 14. On June 28, 1984, an application for consent to that assignment was filed, along with other related pleadings. SBH Exh. 15. SBH opposed the application, arguing, inter alia, that the minority distress sale policy was unconstitutional discrimination and that, in any event, ACCLP could not be said to be a legitimate minority-owned entity as the Commission used that term for purposes of its minority ownership policies; for its part, ACCLP expressly denied SBH's claims in that regard. See, e.g., SBH Exh. 18, pages 39-44. ^{5/}

^{5/} At the time of the briefing of the Court of Appeals case, SBH had no access to any documents or other evidence concerning ACCLP's internal operations. SBH did have a newspaper article, published after the Commission granted the Faith Center/ACCLP application in December, 1984, which article indicated that Ramirez, the supposedly controlling minority general partner of ACCLP, routinely conferred with his non-minority limited partners. SBH proffered that article to the Court; in response, ACCLP stated

Assuming that the extra-record material [i.e., the newspaper article] cited by SBH is properly before the Court, it is not inconsistent with Mr. Ramirez's complete authority for the operation of the station. There is no rule, either of the Commission or in partnership law generally, that requires limited partners to wall themselves off from the partnership in

(continued...)

14. On December 7, 1984, the Commission issued its Memorandum Opinion and Order, Faith Center, Inc., 99 FCC2d 1164 (1984), rejecting SBH's arguments and approving the requested distress sale relief. SBH immediately appealed the Commission's decision to the U.S. Court of Appeals for the District of Columbia Circuit. That appeal was briefed during the first half of 1985 (see, e.g., SBH Exh. 18), and oral argument was held on January 8, 1986, Shurberg Broadcasting, 876 F.2d at 902.

15. Among the issues raised by SBH in its appeal were (a) the constitutionality of the minority distress sale policy and (b) the extent to which ACCLP could legitimately be said to be a minority-controlled entity within the meaning of the Commission's policies. Id., 876 F.2d at 906.

16. While the case was pending before the Court, a different panel of the Court issued a decision in Steele v. FCC, 770 F.2d 1192 (D.C. Cir. 1985), in which the Commission's female comparative preference policy was invalidated by the Court. Shortly thereafter, however, the Court vacated the panel opinion in Steele and set the case for rehearing en banc. In its brief in the en banc rehearing in Steele, the Commission advised the Court that the Commission "had concluded that race, sex or national origin per se should not be a basis for licensing determinations." See Shurberg Broadcasting, 876 F.2d at 907. The Commission also effectively conceded to the Court that the

^{5/}(...continued)

which their funds are invested.

SBH Exh. 18, p. 42, n. 24.

FCC's race and gender preferences violated the Constitution. Id.

17. In light of the developments in the Steele case, in September, 1986, the Court in the Shurberg Broadcasting appeal ordered the Commission to file a supplemental brief clarifying its position relative to the constitutionality of the minority distress sale policy. Instead of filing such a brief, the Commission requested that the case be remanded to the agency to permit inquiry into the constitutionality of all the FCC's minority ownership policies, including the distress sale policy. Shurberg Broadcasting, 876 F.2d at 907. By Order filed June 25, 1987, the Court granted that request and remanded the record of the case to the Commission, subject to certain conditions discussed below at ¶21. SBH Exh. 90; see also Shurberg Broadcasting, 876 F.2d at 907.

18. In December, 1986, the Commission commenced an inquiry into the validity of its minority ownership policies. Race and Gender Preferences, 1 FCC Rcd 1315 (1986). However, that inquiry was terminated in 1988 as a result of certain provisions in the FCC's 1988 appropriations from Congress. See, e.g., Faith Center, Inc., 3 FCC Rcd 868 (1988). In its 1988 termination of the minority ownership inquiry, the Commission merely announced that it would continue to implement its minority ownership policies as it had prior to the September, 1986 submission of the Commission's brief in the Steele case. Id.

19. SBH then promptly moved for the Court to take the case back and resolve it on its merits; the Court granted that motion in part and announced that it would issue a decision on the

merits in the ordinary course of its business. Shurberg Broadcasting, 876 F.2d at 907. On March 31, 1989, the Court issued its decision in Shurberg Broadcasting, concluding that the minority distress sale policy was unconstitutional. Rehearing en banc was denied. ACCLP sought review of the decision by the Supreme Court, which agreed to hear the case. ACCLP asserted that the minority distress sale policy was constitutional and that, as an entity qualifying under that policy, it was entitled to seek reversal of the decision of the Court of Appeals. See Metro Broadcasting, Inc., 497 U.S. 547, 67 RR2d 1353, 1356 (1990) (majority opinion of Brennan, J., characterizes, without discussion, ACCLP as a "minority applicant"). On June 27, 1990, the Supreme Court reversed the decision of the Court of Appeals in Shurberg Broadcasting. Metro Broadcasting, Inc., supra.^{6/} SBH sought rehearing, but its petition for rehearing was denied.

20. Because of the pendency of SBH's appeal, the Faith Center/ACCLP application was pending at all times from its initial submission, in June, 1984, until denial of rehearing by

^{6/} The Supreme Court has since expressly overruled the Metro Broadcasting decision. Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). In Metro Broadcasting, a majority of the Supreme Court held that a standard of judicial review more relaxed than "strict scrutiny" should be applied to, inter alia, the minority distress sale policy. In Adarand, a majority of the Court held that the Metro Broadcasting decision was wrong in precisely that regard; according to Adarand, the "strict scrutiny" standard is the standard to apply to discriminatory governmental policies such as the minority distress sale policy. It should be noted that in Shurberg Broadcasting, a majority of the Court of Appeals panel had applied the "strict scrutiny" standard. In other words, it is clear that, under the appropriate judicial standard of review, the minority distress sale policy is unconstitutional, as SBH has consistently argued since 1984.

the Supreme Court in October, 1990. See 47 C.F.R. §1.65(a). And, since SBH had raised as early as 1984 the question of the legitimacy of ACCLP's claimed partnership structure and the compliance of that structure with the Commission's rules and policies, that question was also pending at all times from mid-1984 to late 1990. ^{2/}

21. As noted above, when the Court of Appeals remanded the Shurberg Broadcasting case in June, 1987, that remand was subject to certain conditions. The Court ordered the Commission to resolve the case consistently with the Commission's resolution of its then on-going inquiry into the constitutionality of its minority ownership policies. SBH Exh. 90. But the Court specifically provided that

if the FCC has not made a final determination in [the minority ownership inquiry] before the date on which the [WHCT-TV] license would ordinarily be due for renewal, the FCC shall call for and consider competing applications at the appropriate time, and promptly process such applications according to established FCC procedures. . . . If the FCC should initiate a comparative renewal proceeding concerning this license prior to the resolution of the [minority ownership inquiry], in light of the representations made to this Court at the time [SBH] sought a stay of the FCC's order, the FCC shall conduct such proceedings without according [ACCLP] any competitive advantage that would ordinarily accompany incumbency.

Id. ACCLP's next renewal application was due to be filed, and

^{2/} See, e.g., ACCLP's brief in the SBH appeal, where ACCLP argued at length that it was a bona fide limited partnership within the meaning of the Commission's rules and policies. SBH Exh. 18, pp. 39-44. See also Tr. 503-04. Ramirez, Lance and Sostek were all involved in the preparation of ACCLP's brief. See SBH Exhs. 69, 70; Tr. 265-266 (Ramirez testifies that he made "the key decisions" in connection with ACCLP's prosecution of the appeal).

was in fact filed, on December 1, 1988.

22. In October, 1988, ACCLP was forced into bankruptcy by various creditors. It converted that bankruptcy to a Chapter 11 proceeding in which ACCLP held its own assets as "debtor-in-possession". In April, 1991, the bankruptcy proceeding was once again converted, that time to a Chapter 7 liquidation proceeding, with Hoffman appointed to serve as ACCLP's Trustee-in-Bankruptcy.

B. The Commission's Regulatory Treatment of Limited Partnerships, 1978-1988

23. In 1978, the Commission adopted its minority distress sale policy. Minority Ownership of Broadcast Facilities, 68 FCC2d 979 (1978) ("1978 Policy Statement"). In relevant part that policy created opportunities for certain minority-controlled applicants to acquire broadcast licenses from licensees whose qualifications were the subject of serious questions. Where such a licensee had been designated for noncomparative hearing relative to such questions, the licensee could avoid the hearing by agreeing to assign its license(s) to a qualified minority-controlled assignee. Id. This was referred to as the Commission's minority distress sale policy.

24. In 1982, the Commission expressly expanded the minority distress sale policy to include certain limited partnerships within the universe of minority-controlled assignees qualified to take advantage of the minority distress sale policy. Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982) ("1982 Policy Statement"). According to the Commission, it would authorize minority distress sales to limited

partnerships where the general partner (or partners) owned more than 20 percent of the broadcasting entity and was a member (or were members) of a minority group. Id. In doing so, the Commission repeatedly emphasized its understanding that limited partners "do not exercise any managerial control" and "lack a voice in the operation of the enterprise", while general partners wield "complete control". Id. The Commission also emphasized that it recognized that the potential for "sham" arrangements existed and, accordingly, the Commission intended to review limited partnership agreements carefully. Id. See also Citizenship Requirements of Section 310, 58 RR2d 531, 537, n.36.

25. While the Commission had no opportunities to expound further on its treatment of limited partnerships in the particular context of the minority distress sale policy, the Commission did provide additional insight into the regulatory treatment it intended to accord such partnerships less than 18 months after the 1982 Policy Statement. In Corporate Ownership Reporting and Disclosure by Broadcast Licensees ("Ownership Attribution"), 97 FCC2d 997, 55 RR2d 1465 (1984), the Commission considered how to treat limited partnerships in the analogous context of ownership attribution. There the Commission articulated its understanding that a limited partnership interest "conferr[ed] no influence or control over the licensee". 55 RR2d at 1485, ¶51. Still, recognizing that variable treatment of limited partnerships at the state law level could lead to the circumvention of the "appropriate insulation of the general partner from any possibility of control or influence by the

limited partners", id., ¶52, the Commission announced that it would rely on the Uniform Limited Partnership Act of 1976 ("ULPA") as the appropriate standard.

26. The Ownership Attribution decision was released in April, 1984, approximately one month before ACCLP was formed.

27. One year later, in June, 1985, the Commission reconsidered Ownership Attribution. Corporate Ownership Reporting and Disclosure by Broadcast Licensees ("Ownership Attribution Reconsideration"), 58 RR2d 604 (1985). The Commission concluded there that it could not properly rely on compliance with the ULPA (or the Revised Uniform Limited Partnership Act ("RULPA")) to assure achievement of the Commission's regulatory objectives. 58 RR2d at 618, ¶42. The Commission reached this conclusion because the RULPA allows the possibility of influence or control by the limited partner over the partnership's activities. Since any such influence or control would be inconsistent with the Commission's insistence that the general partner retain "complete control" and that, conversely, the limited partner have "no material involvement" in the partnership's activities, the Commission expressly abandoned the RULPA as a reliable regulatory standard relative to limited partnerships. Id.

28. In place of the RULPA standard, the Commission announced in the 1985 Ownership Attribution Reconsideration decision a set of criteria with which it would evaluate limited partnership agreements. To satisfy those criteria, a limited partnership agreement would have to expressly provide that

limited partners could have no material involvement in the management or operation of the station. For example, the limited partnership agreement would have to state, "in express terms, that the exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership." 58 RR2d at 620, ¶50. Similarly, the partnership agreement would restrict limited partners from communicating with the general partner "on matters pertaining to the day-to-day operations of its business". 58 RR2d at 619, ¶48.

29. The day after the release of Ownership Attribution Reconsideration, the Commission released Citizenship Requirements of Section 310, 58 RR2d 531 (1985), in which the Commission further considered its regulatory treatment of limited partnerships. In particular, the Commission there addressed how a partner's ownership interest in a partnership should be calculated. The Commission concluded that it would define ownership interests in a limited partnership "in terms of the equity contributions" of the partners. 58 RR2d at 538, ¶16.

30. On reconsideration of that latter decision approximately 15 months later (in October, 1986), the Commission reaffirmed that definition. Citizenship Requirements of Licensees, 1 FCC Rcd 12, 61 RR2d 298, 306-307, ¶¶16-18 (1986). In so doing, the Commission expressly rejected the notion that it should consider such concepts as "partnership shares" as an adequate measure of ownership of a partnership:

We recognize that contribution may not accurately measure the ownership interests in a limited partnership, particularly in situations in which a

general partner obtains "sweat equity" in exchange for active participation in business management. However, based on our experience at this time, we are not convinced that reliance upon partnership share as the measure of ownership interest would provide a more appropriate measurement.

Id. at ¶17.

31. The Commission's cautious approach to limited partnerships was applied not only to alien ownership and multiple ownership attribution questions, but also to situations involving claims of comparative preference based on minority ownership. See, e.g., Family Media, Inc., 102 FCC2d 752, 59 RR2d 165 (Rev. Bd. 1985); Bogner Newton Corporation, 2 FCC Rcd 4792, 4803-04 (ALJ Frysiak 1987).^{8/} It was emphasized that review of the underlying partnership agreements would be an important element in the Commission's consideration of the legitimacy of limited partnerships. E.g., id. In Family Media, the Review Board specifically cited the 1982 Policy Statement in conjunction with Ownership Attribution Reconsideration and emphasized that the caution which the Commission had expressed relative to treatment of limited partnerships in the latter was consistent with the regulatory treatment to be accorded in connection with the former. 59 RR2d at 166-67, n. 4.

^{8/} Significantly, in Family Media the standards of the Ownership Attribution Reconsideration were applied to partnership agreements submitted to the Commission two years before those standards were adopted. The Commission's action in that regard signalled the Commission's clear expectation that limited partnerships should take prompt steps to bring their partnership structure into compliance with Commission policies, even if the partnership structure at issue may have been in technical compliance with agency policies at the time the structure was first adopted.

32. Since then, the Commission has consistently sought to scrutinize limited partnership agreements -- and the actual operation of supposed limited partnerships -- to ensure that the business arrangements are bona fide and not sham constructs. See, e.g., Pacific Television, Inc., 62 R.R.2d 653 (Rev. Bd. 1987) Royce International Broadcasting, 5 FCC Rcd 7063, 7065, n. 10 (1990); Evergreen Broadcasting Company, 6 FCC Rcd 5599, 5602, ¶20 (1991); Mableton Broadcasting Company, Inc., 5 FCC Rcd 6314, 6318, ¶13 (Rev. Bd. 1990); Gloria Bell Byrd, 7 FCC Rcd 7976 (Rev. Bd. 1992), aff'd, 8 FCC Rcd 7126 (1993).

33. It is against this procedural and precedential backdrop that the evidentiary record of ACCLP's conduct must be assessed.

PROPOSED FINDINGS OF FACT

I. The Formation of ACCLP and ACCLP's Acquisition of Station WHCT-TV

34. Following the failure of the second Faith Center distress sale (with IMC) to close, Hart, Boling and Sostek engaged in discussions with Jones in an effort to obtain, for Astroline Company (not ACCLP), an opportunity to participate, with Jones, in the acquisition of Station WHCT-TV. SBH Exh. 34, p. 3. Those discussions were conducted under the assumption that any further distress sale application would have to be submitted no later than the then-scheduled May 16, 1984 hearing conference. See SBH Exh. 32.

35. The Jones/Hart/Boling/Sostek discussions continued until approximately May 14, 1984, i.e., two days before the

deadline (at least as perceived by those parties) for the conclusion of some arrangement. SBH Exh. 33; SBH Exh. 34, p. 5. On May 15, 1984, the Presiding Judge postponed the date of the reconvening of the Faith Center hearing to May 30, 1984, thereby effectively extending the perceived deadline for reaching an agreement for a third distress sale. SBH Exh. 35, p. 4. By letter dated May 14, 1984, Hart advised Faith Center that efforts to strike a deal between Jones and Astroline Company had failed, but that Astroline Company was interested in negotiating a deal directly with Faith Center. SBH Exh. 33. Thereafter, Hart, Boling and Sostek negotiated directly with Faith Center for the purchase of Station WHCT-TV. SBH Exhs. 33 and 35.

36. By May 26, 1984, the terms of an agreement had been negotiated by Faith Center and Hart (acting in consultation with Boling and Sostek). SBH Exh. 35, pp. 6-7. Those terms were a "fait accompli", in Hart's view, as of Monday, May 28, 1984, which was Memorial Day. SBH Exh. 35, p. 7. But at that point, ACCLP had still not been formed, and neither Boling nor Sostek had ever met Richard P. Ramirez ("Ramirez"), who was ultimately to be held out as the controlling partner of ACCLP. Id.

37. On Memorial Day ^{2/}, Hart introduced Ramirez to Boling

^{2/} Ramirez testified that he was not sure whether he first met Boling and Sostek on the Monday of Memorial Day Weekend, 1984, or on Saturday or Sunday of that weekend. Tr. 215-26. However, he acknowledged that that meeting could have occurred on Monday, May 28. A reasonably contemporaneous (i.e., one dated in August, 1985) detailed account of the events of that weekend indicates that Ramirez/Boling/Sostek meeting did not occur until sometime on Monday, May 28, after Hart had presented the negotiated agreement to Boling and Sostek as a "fait accompli". SBH Exh. 35, p. 7.

and Sostek. Hart had met Ramirez through a mutual acquaintance several months earlier. Hoffman/TIBS/Ramirez Exh. 1, p. 4. The two had spoken on "a few" occasions thereafter; those discussions had included the possibility that Hart might be able to place Ramirez in a deal involving a Houston television station. Hoffman/TIBS/Ramirez Exh. 1, p. 5. At some point in those "few" discussions Hart mentioned the possibility of a transaction involving the Hartford station. Hoffman/TIBS/Ramirez Exh. 1, p. 5. However, there is no record evidence indicating that Ramirez was himself involved in any aspect of the WHCT-TV acquisition until he met with Boling and Sostek in Boston on or about May 28, 1984 and accepted their proposal to form ACCLP. ^{10/}

38. Ramirez's testimony reflects that, as of May, 1985, he had served as sales manager for several broadcast stations, primarily radio stations. Hoffman/TIBS/Ramirez Exh. 1, pp. 1-2. He had never served as general manager of a television station, nor had he ever owned a controlling interest in any broadcast

^{10/} In fact, the available evidence indicates that it is extremely unlikely that Ramirez could not have been involved in any aspect of the transaction prior to the Memorial Day meeting. Hart had been negotiating with Jones on behalf of Astroline Company until May 14, 1984. E.g., SBH Exh. 33. The signature page of the agreement with Faith Center bears what appear to be Hart's initials, next to a notation "5/25/84", which suggests that the agreement had been essentially finalized in only nine days. But during those nine days, Ramirez remained a stranger to Boling and Sostek and Astroline Company, since they did not meet until, at the earliest, Saturday, May 26, 1984, and conceivably not until Monday, May 28, 1984.

stations at all. E.g., SBH Exh. 30, pp. 6-7. ^{11/} Since leaving Station WHCT-TV, he has held a number of management-level positions which he believes afforded him the same or greater levels of responsibility as his position with ACCLP at Station WHCT-TV. Tr. 212-15; Hoffman/TIBS/Ramirez Exh. 2, pp. 3-4. However, in none of those positions was he offered any substantial ownership interest in the stations in question, much less a controlling interest. Tr. 212-15. ^{12/}

39. The Memorial Day meeting lasted approximately two hours (e.g., Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 100), after which Boling and Sostek requested that Ramirez leave so that Boling and Sostek could confer. Approximately 45 minutes later, Boling and Sostek offered Ramirez a general partnership position in a partnership to be formed, the partnership which ultimately became ACCLP. Id.

40. Also attending the Memorial Day meeting was William Lance ("Lance"), an attorney with the Boston law firm of Peabody & Brown ("P&B"). P&B had represented Astroline Company or related entities since 1975. Tr. 468-69. In addition to

^{11/} As Hoffman characterized Ramirez's professional history:

Except for approximately a one year period, Ramirez had worked only for radio stations. All of his experience had been in sales. . . . Prior to May, 1984, Ramirez had never been the general manager of a radio or television station nor had he been in charge of any business.

SBH Exh. 30, pp. 6-7.

^{12/} According to Ramirez, the largest ownership interest he was offered was "between 1 and 3 percent" at an AM-FM station in Manchester, New Hampshire. Tr. 214. In another position, he was offered options worth "tenths of a point". Tr. 215.

attending the Memorial Day meeting, Lance was an official (Clerk) of WHCT Management, Inc. (Hoffman/TIBS/Ramirez Exh. 1, Att. D, p. 39), a corporation which was formed the day after the Memorial Day meeting (see SBH Exh. 63, pp. RC007788-92) and which served as a corporate general partner in ACCLP; he attended multiple meetings relating to ACCLP's organizational structure, e.g., SBH Exh. 39, and he reviewed and edited materials drafted by Hart's firm (Baker & Hostetler ("B&H")) relating to ACCLP, e.g., SBH Exh. 60, Tr. 478-79. ^{13/}

41. The following day, a draft partnership agreement which had been drafted by P&B was delivered to Ramirez. Tr. 222-23. Ramirez provided a copy of the draft to his personal counsel for review, but the record does not indicate that Ramirez requested any changes to the draft. Id. The agreement was executed by all ACCLP partners and filed with the Secretary of State in Boston on May 29, 1984 -- the day after Memorial Day, 1984, and the day before the Faith Center hearing was scheduled to reconvene in Washington. SBH Exh. 2.

42. The original May 29, 1984 ACCLP partnership agreement appears in the record as SBH Exh. 2. According to the definition

^{13/} Carter S. Bacon, Jr. ("Bacon"), another P&B attorney who had also represented Astroline Company, was also involved in the formation of ACCLP. Corporate records of WHCT Management, Inc. reflect that Bacon was the Incorporator of that company. Hoffman/TIBS/Ramirez Exh. 1, Att. D, p. 39. Additionally, the record reflects that Bacon was directly involved in multiple meetings and communications relating to ACCLP's organization. E.g., SBH Exh. 37, 39, 41, 62, 89. Notwithstanding his extensive, demonstrable involvement with ACCLP, however, Bacon testified that he particularly sensitive to the interests of Astroline Company. Tr. 502-03.

set forth in Article I of that agreement, each partner's "Partnership Interest" would be defined as "the proportionate interest of each Partner in the profits, losses and distributions of the Partnership as set forth in the Schedule". SBH Exh. 2 at 4. According to Article VIII of that agreement, all profits, losses, tax credits and distributions were to be shared "in accordance with [each partner's] Percentage Interest". SBH Exh. 2 at 23. According to Schedule A to the original ACCLP partnership agreement, Ramirez's capital contribution amounted to a total of \$200 ^{14/}, while Astroline Company (which was the original limited partner in ACCLP) contributed \$700 and WHCT Management, Inc. (a corporation owned by Astroline Company) contributed \$100. SBH Exh. 2 at 29. Also according to the Schedule A, Ramirez's "Percentage Interest" was listed as 21%, while Astroline Company's was 70% and WHCT Management, Inc.'s was 9%. Id. In other words, as the ACCLP partnership agreement was originally structured, the "Percentage Interest" of each ACCLP partner was proportionate to the level of "capital contribution" made by such partner (assuming Ramirez's contribution to have been \$210).

43. Ramirez testified that he believed that he was entitled to some form of "sweat equity", i.e., that his contribution of effort (as opposed to cash) would entitle him to some greater

^{14/} While the original partnership agreement appeared to credit Ramirez with only a \$200 capital contribution, other documents in the record indicate that his contribution was \$210. E.g., SBH Exh. 9, p. 39. SBH is willing to assume that Ramirez's contribution was the higher of those two numbers. i.e., \$210.

degree of ownership than his cash contribution would otherwise warrant. Tr. 223-24. However, the May 29, 1984 ACCLP partnership agreement contains no provision whatsoever for any such non-tangible "capital contribution"; to the contrary, the term "capital contribution" is defined exclusively in terms of "cash" and "other property contributed to the Partnership". SBH Exh. 2, p. 3; see also Tr. 240 (Ramirez acknowledges that the term "sweat equity" does not appear in the ACCLP partnership agreement). Had Ramirez and the other ACCLP partners wanted to provide some mechanism for increasing a partner's ownership share based on contributions of something other than cash or property, they could presumably have done so; the original ACCLP partnership contains no evidence of any such intent. SBH Exh. 2.

44. On May 29, 1984 -- the day ACCLP was formed -- Hart advised the Presiding Judge that ACCLP had been formed and had entered into an agreement to acquire Station WHCT-TV pursuant to the minority distress sale policy. Hart's letter advised the Presiding Judge that ACCLP was a minority-owned and minority-controlled entity as required by the minority distress sale policy, with 21% ownership and "operational control" resting with Ramirez. SBH Exh. 14. ^{15/}

45. On May 30, 1984, a prehearing conference in the Faith

^{15/} Hart's notification to the Presiding Judge did not disclose that ACCLP had been formed that same day, that Ramirez -- said in Hart's letter to be the controlling general partner of ACCLP -- had not met the organizers of ACCLP (i.e., Boling and Sostek) until approximately 24 hours earlier, or that the agreement for the purchase of Station WHCT-TV had been negotiated over the course of the previous two weeks not by Ramirez, but by Hart, Boling and Sostek. SBH Exh. 14.

Center hearing was held. Following that conference, the hearing was stayed for 30 days to permit the preparation of an application for consent to the assignment of the license to ACCLP.

46. On June 28, 1984, that application was filed with the Commission. SBH Exh. 15. In a Motion for Expedited Processing filed simultaneously by Faith Center and ACCLP, ACCLP again specifically asserted that its structure was in compliance with the requirements of the minority distress sale policy. SBH Exh. 15, p. 000490. As set forth in its assignment application, ACCLP proposed to pay the \$3.1 million purchase price for the station by relying on loan financing. Specifically, ACCLP included in its application a letter from the Bank of Boston expressing that bank's willingness to provide a \$10 million line of credit to ACCLP. SBH Exh. 15. In addition, Astroline Company provided a letter (also submitted with the Faith Center/ACCLP assignment application) indicating its willingness to provide an additional \$500,000 in financing. Id. ^{16/}

47. In a Petition for Special Relief drafted by Hart (but submitted to the Commission over the signature of counsel for

^{16/} This was consistent with the past practices of Astroline Company. Prior to the formation of ACCLP, the single largest investment made by Boling and Sostek through Astroline Company in any business had been \$1 million; Boling and Sostek did not expect that their (i.e., Astroline Company's) investment in ACCLP would exceed that level. Hoffman/TIBS/Ramirez Exh. 3, 188 BR 101. As suggested by the materials submitted with the Faith Center/ACCLP assignment application, Boling and Sostek expected to finance Station WHCT-TV through third parties in amounts of approximately \$10-15 million. SBH Exh. 15; Hoffman/TIBS/Ramirez Exh. 3, 188 BR 101.

Faith Center, Tr. 536-37, SBH Exh. 66), Ramirez was said to hold a 21% interest and "full operational control" of ACCLP; by contrast, Astroline Company was said to hold "no operational control" of ACCLP. SBH Exh. 66. This echoed representations made in the June 28, 1984 Motion for Expedited Processing (see the preceding paragraph) and in the assignment application itself, see SBH Exh. 15, p. 000529.

48. Over SBH's opposition, the Commission granted the Faith Center/ACCLP request for distress sale relief on December 7, 1984. Faith Center, Inc., 99 FCC2d 1164, 57 RR2d 1185 (1984).

49. ACCLP then began plans to consummate its acquisition of the station, notwithstanding the fact that SBH appealed the Commission's decision immediately. See SBH Exh. 67. Those plans included a list, prepared by Bacon, of individual projects to be completed in preparation for, and following, the closing of the acquisition. SBH Exh. 67. According to Bacon's proposed list, responsibility for preparation of an Ownership Report (FCC Form 323) and submission of that report to the Commission was to be shared by Hart and Bacon. SBH Exh. 67, p. 440; Tr. 539-40.

50. This was an early demonstration of a sharing of responsibilities among Hart, Bacon and their respective law firms. In contrast to Hart, who had developed an expertise in and familiarity with communications law and the Commission's rules and policies, neither P&B nor Lance nor Bacon had any such expertise or familiarity. Tr. 539; 486; 492. Accordingly, Bacon and ACCLP looked to Hart (and the law firms with which he was associated) for representation before the Commission. Id.

Generally, when ACCLP matters arose which required attention by both P&B and Hart, Bacon would provide such advice as was within his expertise as business counsel, and would otherwise look to Hart to assure compliance with FCC rules and policies. Tr. 486, 492, 502. On occasion, Bacon would be asked to review certain matters relating to FCC regulatory matters; in those cases, he did provide advice. Tr. 492; 502. However, he viewed Hart as the FCC expert. Tr. 487. ^{17/}

51. Consistent with this perceived division of responsibility, Hart (together with the law firms with which he was associated) was responsible for preparing materials to be filed with the Commission by or on behalf of ACCLP. Tr. 301-02; 314. Drafts of such materials would be prepared by Hart (or his firm) and sent out to ACCLP and P&B for review and comment. Tr. 301-02; 314; 554-57. Bacon reviewed such materials with an eye toward protecting his client, Astroline Company. Tr. 502-03.

Once the content of the materials had been agreed to, they would be put in final form, provided to ACCLP for signature (if necessary), returned to Hart (or his firm), submitted to the FCC by Hart (or his firm), and a copy would be sent by Hart (or his firm) to the station for placement in the station's local public inspection file, if necessary. Tr. 301-02; 314; 348. Bacon

^{17/} Hart viewed himself to be an expert in communications law. Virtually his entire private practice, since approximately 1982, had involved that particular area. Tr. 531-33. He specifically testified that he had followed developments in the Commission's limited partnership rules since 1984, e.g., Tr. 583-84. For his part, Ramirez (although not an attorney) testified that he, too, had maintained on-going familiarity with the Commission's ownership policies, Tr. 231-32.

testified that, while he might occasionally be asked to review an FCC filing, neither he nor P&B ever filed anything with the FCC on ACCLP's behalf, nor did they provide copies of materials to the station for its local public inspection file, since that was one of Hart's responsibilities. Tr. 486. Ramirez similarly testified that ACCLP looked to B&H to file materials with the Commission on ACCLP's behalf. Tr. 302.

52. On January 23, 1985, with the SBH appeal pending, ACCLP closed on the sale of Station WHCT-TV. Hoffman/TIBS/Ramirez Exh. 2, p. 11; SBH Exh. 18, p. 13. Since SBH's appeal had been filed in December, 1984, and was then pending, the grant of the assignment application was not final and, therefore, subject to reversal. While ACCLP was free to consummate the transaction in the meantime, such consummation -- and any consequent investment by ACCLP -- were undertaken at ACCLP's risk. E.g., Teleprompter Corp., 50 Rad. Reg. 2d (P&F) 125, 127 (CATV Bur. 1981); Improvement Leasing Co., 73 F.C.C.2d 676, 684 (1979), aff'd, Washington Ass'n for Television and Children v. FCC, 665 F.2d 1264 (D.C. Cir. 1981).

II. ACCLP's Initial Ownership Report to the Commission

53. On February 22, 1985 -- 30 days after the consummation of the sale -- Hart submitted an Ownership Report (FCC Form 323) to the Commission on behalf of ACCLP. SBH Exh. 16. That submission included, as appendices, copies of the original ACCLP partnership agreement and the organizational documents (by-laws and articles of organization) of WHCT Management, Inc. Id. In a

separate exhibit (Exhibit 2) to the Ownership Report, ACCLP advised the Commission that Ramirez held an "equity interest" of 21% and that the ACCLP Limited Partnership Agreement conformed in all significant respects with the ULPA. Id.

54. Apparently after the February 22, 1985 Ownership Report was filed, Bacon reviewed it. On April 9, 1985, he sent Hart a letter raising a number of questions concerning the report. SBH Exh. 68. Bacon recommended that an amended report be filed following review of the relevant Commission rules and policies governing "the exact amount of disclosure" required. Id. Bacon noted that WHCT Management, Inc. might be "deemed to control" ACCLP, although such control would "go[] against everything we've put before the FCC to date". Id.

55. On May 16, 1985, Hart filed a "supplement" to the February 22, 1985 Ownership Report. SBH Exh. 17. In his transmittal letter, Hart stated that the purpose of the "supplement" was to "clarify the information" which had been provided in the February 22, 1985 report by "set[ting] forth more clearly" the "ownership composition and structure of the licensee". Id. It does not appear that the Ownership Report which accompanied Hart's May 16, 1985 letter was signed by any official of ACCLP. Id. ^{18/}

^{18/} By contrast, the record contains an Ownership Report form bearing Ramirez's signature and the date of "5/29/85". Hoffman/TIBS/Ramirez Exh. 2, Attachment D, p. 57. It appears from markings on that particular report that it was filed with the Commission, although the precise circumstances surrounding that filing are not clear. That report reflects, on the first page, that Astroline Company was a "General Partner" in ACCLP.

(continued...)

III. Developments Relating to ACCLP's Structure -- 1/85-11/85

56. Almost immediately after the January, 1985 closing on the station, changes in ACCLP's structure were contemplated and, in some instances, agreed to. On February 1, 1985 -- barely more than a week after ACCLP had consummated its acquisition of Station WHCT-TV -- Bacon sent Ramirez some documents for Ramirez's signature. SBH Exh. 36. Ramirez returned those to Bacon, along with a copy of Bacon's original cover letter to Ramirez. On the bottom of that letter, Ramirez wrote:

Carter -

Any further news on my "Sub-S" status"? I'm growing concerned over the "quickly growing" status of ACC's liabilities. I need to know if the "Sub-S" route is viable. Thank you for your attention to this.

Rich

SBH Exh. 36. As a general partner of ACCLP, Ramirez was concerned about his potential personal liability for ACCLP's "quickly growing" debts, and he sought advice on the possibility of transferring his interest in ACCLP from himself personally to a corporation of which he would be the sole principal as a means of "reducing [his] exposure to liabilities." SBH Exh. 37, p. 2; Tr. 306. ^{19/}

^{18/} (...continued)

Id. By contrast, in the corresponding paragraph on the unsigned Ownership Report form which was filed by Hart on May 16, 1985, Astroline Company was described as a "Limited Partner".

^{19/} Ramirez's early efforts to avoid personal liability were contrary to the Commission's stated understanding of limited partnerships, which understanding assumed that the supposedly controlling minority individual would be personally liable for
(continued...)

57. Bacon responded with a letter dated February 25, 1985. SBH Exh. 37. Bacon reviewed a number of relevant considerations, including the requirement that any corporate general partner have a net worth of at least 15% of the partnership's total capital contributions; according to Bacon, this meant that Ramirez's proposed corporation would have to have a net worth of \$75,150 (in contrast to the \$210 which constituted Ramirez's sole investment in ACCLP). In closing his letter, Bacon included a paragraph headed "FCC Matters":

It is my understanding that the above actions would require the filing of a notice with the FCC outlining such actions. Such a notice would be available to the public and would probably be seen by the Shurberg interests. Therefore, before undertaking any changes in ownership of the Partnership, we should confer with Tom Hart as to the advisability of raising before the FCC any questions regarding your ultimate control of the Partnership.

SBH Exh. 37, p. 4. Bacon's letter indicates that copies were sent to Boling, Sostek, Hart and Lance.

58. In the spring of 1985, other, more sweeping, changes to ACCLP's structure were contemplated. Contrary to their initial plans, ACCLP had not been able to arrange for third party loan financing; as a result, it was decided that Astroline Company (or

^{19/} (...continued)

the partnership's debts. See, e.g., 1982 Minority Ownership, 52 RR2d at 1306, ¶9. While Ramirez did not ultimately utilize the corporate approach envisioned in his February, 1985 correspondence with Bacon, it should be noted that Ramirez nevertheless managed to avoid personal liability for ACCLP's debts. Even though those debts ultimately exceeded some \$30 million, e.g., Hoffman/TIBS/Ramirez Exh. 1, p. 3, Ramirez was able to relieve himself of any further liability through a payment of less than \$100,000 (and possibly as little as \$50,000) to Hoffman, Tr. 306-309.

its individual partners) would provide the necessary funding. E.g., Hoffman/TIBS/Ramirez Exh. 2, p. 22; SBH Exh. 39. ACCLP estimated that such funding would require at least \$10-12 million. SBH Exh. 39, p. 4. That far exceeded the \$500,000 which the Boling, Sostek and Astroline Company had originally contemplated in May, 1984, a year earlier. It also far exceeded the level of Astroline Company's investment in any other enterprise previously. Hoffman/TIBS/Ramirez Exh. 3, 188 BR at 101 In light of this change in plans, changes in the ACCLP partnership agreement were contemplated. SBH Exh. 40, p. 2.

59. Consideration of various options had begun at least as early as May 6, 1985, when Kent W. Davenport ("Davenport"), an accountant with Arthur Andersen & Co. ("Andersen"), prepared a Memorandum for the Files setting out a possible reallocation of profit/loss sharing ratios. SBH Exh. 38. In that memorandum Davenport suggested that the partnership could allocate 95% of its initial losses to the limited partners (and the remaining 5% to the general partners), with the understanding that 95% of the partnership's profits would also be allocated to the limited partners until a "breakeven" point, after which all partners would share profits and losses according to the "partnership interest" allocation reflected in the original ACCLP partnership agreement.

60. A conference call including Sostek, Boling, Ramirez, Lance, Davenport and two other Andersen representatives was held on May 13, 1985. SBH Exh. 40. The participants discussed various revisions to the ACCLP structure, including the admission

of additional limited partners ^{20/} and the possible reallocation of profits and losses. According to Davenport's May 14, 1985 Memorandum for the Files concerning the conference call, the participants agreed that

[b]ecause of the change in the structuring of the borrowings such that they are now at the Astroline Company level and not the Astroline Communications level, the partnership agreement will have to be revised accordingly.

SBH Exh. 40, p. 2. Lance was to draft the necessary amendments to the ACCLP partnership agreement. Id. Copies of Davenport's May 14, 1985 Memorandum were sent to Boling, Ramirez and Lance on May 24, 1985. Id.

61. On May 20, 1985, a meeting was held at P&B to discuss ACCLP matters. Participants included Ramirez, Sostek, Boling, Hart, Lance and an Andersen representative. At that meeting various decisions were made concerning the ACCLP partnership agreement, according to a Memorandum prepared by Lance the following day (May 21, 1985) which was distributed to all

^{20/} The additional partners mentioned during this conference call included Martha and Robert Rose ("the Roses") -- who ultimately became limited partners in August, 1985, see SBH Exh. 6, p. 2 -- as well as "various new employees" who were to be offered small ownership interests in ACCLP in partial compensation for their employment. In the original Faith Center/ACCLP assignment application, ACCLP had suggested that it would make ownership interests available to employees, and particularly minority employees. SBH Exh. 15, p. 533; Hoffman/TIBS/Ramirez Exh. 2, Attachment B, p. 483 (while this particular document was submitted to the Commission over the signature of Faith Center's counsel, it was drafted by Hart, see SBH Exh. 66). The representations which ACCLP had made did not include any suggestion that the ownership interests to be provided to such employees would be conditional; however, as reflected in SBH Exh. 40, Boling insisted that any interests which might be provided to employees would have to be returned upon termination of the employment.

participants as well as to Bacon and an ACCLP attorney in Hartford. SBH Exh. 40. Those decisions included according Hart a general partnership interest, and the transfer of limited partnership interests to Terry Planell ("Planell") (a minority employee of the station) and the Roses. SBH Exh. 40, pp. 1-3. The meeting participants also decided that ACCLP would be funded through its limited partners (other than Planell) -- i.e., those limited partners would themselves borrow the funds -- and that the ACCLP partnership agreement would be amended to provide for reallocation of profits and losses. According to Lance's memorandum, the ACCLP partners agreed that "95% (or some similar percentage greater than their 70% partnership interest)" of the losses would be allocated to the limited partners, and an equivalent percentage of profits would be allocated to those same limited partners

until the Limited Partners have received allocations of profit equal to the aggregate of the prior losses allocated to them and cash flow equal to their total capital contributions to the Partnership in excess of \$500,000 (i.e., equal to the amount borrowed by the Limited Partners from the First National Bank and contributed to ACC[LP] as additional capital) plus all interest and other costs incurred by the Limited Partners with respect to such borrowings from The First National Bank.

SBH Exh. 39, p. 5. In concluding his memorandum, Lance stated:

Mr. Hart, working with Peabody & Brown, will prepare the notices and other documents to be filed with the Federal Communications Commission to reflect the changes in the ownership of ACC[LP] involved. All documents will be executed and all filings will be made with the Federal Communications Commission immediately following the filing of a Reply Brief by Shurberg Broadcasting of Hartford with the United States Court of Appeals for the District of Columbia in the matter of Shurberg Broadcasting v. FCC or the expiration of

the time for filing of any such brief, estimated to be on or about June 20, 1985.

SBH Exh. 39, p. 7.

62. From Bacon's February 25, 1985 letter (SBH Exh. 37) and Lance's May 21, 1985 memorandum (SBH Exh. 39), it is clear that ACCLP was well aware that changes in its partnership agreement would have to be reported to the Commission. It is also clear from those documents that ACCLP was concerned that, once reported, those changes would be available to SBH, and the fact of that availability would affect how and when ACCLP would elect to file any such materials. In particular, it appears from the last portion of the Lance memo (SBH Exh. 39) quoted above that ACCLP intended in any event not to notify the Commission of any partnership changes until after SBH's reply brief was due in the Court of Appeals case -- i.e., after SBH's last opportunity to be heard as a matter of right in that case.

IV. Changes in ACCLP Ownership -- 8/85-11/85

63. Notwithstanding the fact that, according to the Lance and Davenport memos, ACCLP's partners had agreed in May, 1985 to various changes in the partnership's membership and structure, it does not appear that any changes were implemented until August-September, 1985, at which point some, but not all, of the changes discussed in May, 1985 occurred.

64. By agreement dated August 14, 1985, the Roses acquired limited partnership interests in ACCLP. SBH Exh. 6. By agreement dated August 16, 1985, Thelma N. Gibbs acquired a limited partnership interest in ACCLP. SBH Exh. 3. By

agreements dated September 6, 1985, Planell, Danielle Webb ("Webb") and Don O'Brien ("O'Brien") acquired limited partnership interests in ACCLP. SBH Exhs. 4 and 6. ^{21/} And by agreement dated September 10, 1985, Hart acquired a general partnership interest in ACCLP. SBH Exh. 5. On September 10, 1985, as required by the May 29, 1984 ACCLP limited partnership agreement, a Consent and Confirmation was executed by all of these new partners as well as the original partners in ACCLP. SBH Exh. 6. A "First Certificate of Amendment to [ACCLP] Limited Partnership Agreement and Certificate of Limited Partnership" was also executed by all ACCLP partners on September 10, 1985. SBH Exh. 7.

65. On September 11, 1985 -- the day after the completion of the last transactions described in the preceding paragraph -- Bacon wrote to Hart to advise Hart that the ownership transfers had been completed. SBH Exh. 71. Bacon noted that Hart was to file an Ownership Report reflecting these changes "by Friday, September 13 at the latest". Id. ^{22/} Bacon also noted that Bacon would be providing copies of certain of the agreements underlying the various transactions "shortly" so that they could be filed "as an amendment to the Ownership Report". Id.

66. On September 13, 1985, Jack Whitley, an attorney at B&H

^{21/} Planell, Webb and O'Brien were employees of Station WHCT-TV who were receiving their interests as a result of their employment there.

^{22/} September 13, 1985 was exactly 30 days after the earliest of the August/September, 1985 transfers, i.e., the August 14, 1985 transfer of interests to the Roses.

who worked under Hart (Tr. 543), filed a "revised ownership report" with the Commission on behalf of ACCLP. SBH Exh. 19. That report advised the Commission of the transfer of the interests described above. It did not include any reference to any reallocation of profits or losses or other revisions to the partnership agreement relating to such reallocation.

67. By letter dated October 2, 1985, Bacon sent Hart the agreements relating to some of the transferred limited partnership interests. SBH Exh. 72. Bacon stated that he understood that "the enclosed Agreements will be filed as exhibits to the ownership report filed with the FCC on September 13." SBH Exh. 72.

68. On October 31, 1985, Hart filed those agreements with the Commission as part of a "supplemental Ownership Report". SBH Exh. 20.

69. Both Whitley's transmittal letter accompanying the September 13, 1985 filing and Hart's transmittal letter accompanying the October 31, 1985 filing reflected, on their faces, that copies of those materials were also being sent to the "WHCT Public Inspection File". SBH Exhs. 19, 20. This was consistent with the division of labor among ACCLP's counsel -- that is, B&H was responsible for (a) physically delivering to the Commission materials to be filed, (b) obtaining stamped "received" copies evidencing the filing, and (c) providing copies of the filed documents to the station for placement in its local public inspection file. Tr. 301-02; 348; see also Hoffman/TIBS/Ramirez Exh. 6, p. 94 (letter filed with Commission

by Hart, with copy sent to "WHCT Public Inspection File").

70. With the exception of ACCLP's actions relative to Hart's acquisition of a general partnership interest in September, 1985, ^{23/} ACCLP duly and timely reported the August-September, 1985 changes in its ownership to the Commission as required by Section 73.3615 of the Commission's Rules.

V. Changes in ACCLP Ownership and Structure - 12/85-12/86

71. On December 30, 1985, O'Brien signed a letter (effective December 11, 1985) relinquishing his limited partnership interest in ACCLP. SBH Exh. 8.

72. On December 31, 1985, Boling sent a telex to P&B in which he recited that Astroline Company, the Roses and Gibbs had provided to ACCLP certain capital contributions -- amounting to almost \$10 million -- "in accordance with the prior understandings and agreements among the general and limited partners". SBH Exhs. 44 and 45. The telex also stated that

in accordance with such prior understandings and agreements among the general and limited partners, the limited partnership agreement and certificate of limited partnership of the partnership, as heretofore amended, will be amended as soon as possible to reflect the foregoing capital contributions by the above

^{23/} As ACCLP acknowledged in December, 1988, any change in the general partners of a partnership requires prior Commission approval. See Hoffman/TIBS/Ramirez Exh. 2, Attachment D, p. 142; see also Instructions to Form 323 which were sent to ACCLP by B&H, SBH Exh. 74, p. 4. ACCLP did not seek such approval prior to Hart's acquisition of a general partnership interest in September, 1985. In fact, approval for Hart's acquisition of a general partnership interest was not sought until December 1988, more than three years after that acquisition. See Hoffman/TIBS/Ramirez Exh. 2, Attachment D, p. 142. However, ACCLP did report that acquisition in its September 13, 1985 Ownership Report.

limited partners and to provide that, as heretofore agreed among the partners, all profits, losses, tax credits and cash flow of the partnership (a) shall be allocated ninety-nine percent to the above limited partners, to be allocated among them in accordance with their proportionate interests in the partnership as such, until the limited partners shall have received from the partnership cash distributions in an amount at least equal to their capital contributions in excess of an aggregate of \$500,000 plus a reasonable return on such capital contributions and (b) shall thereafter be allocated to the general partners and limited partners in accordance with their percentage interests in the partnership determined without regard to such additional capital contributions.

Id. Thus, Boling appears, through his December 31, 1985 telex, to have been attempting to implement a re-structuring of the profit/loss allocation along the lines which had been discussed, and agreed to, in May, 1985. Ramirez testified that he himself was not involved in the preparation of this telex, nor could he recall when he first saw a copy of the telex. Tr. 316-18.

73. By Memorandum dated January 31, 1986, Lance circulated a draft of an Amended and Restated Agreement and Certificate of ACCLP ("the December 31, 1985 Amended Partnership Agreement"). SBH Exh. 46. According to Lance's memo, the changes in the agreement were "the result of the need to reflect the Additional Capital Contributions made by certain Limited Partners in December, 1985, and to insert additional provisions on the allocation of profits, losses, cash flow, etc. . . . in accordance with the agreement among all the Partners regarding this matter reached during the first part of 1985." Id.

74. By letter dated February 26, 1986, Bacon transmitted to Hart the final version of the December 31, 1985 Amended Partnership Agreement for Hart (as a general partner of ACCLP) to

sign and then to forward to Ramirez for his signature. SBH Exh. 47. Copies of that letter were sent to Ramirez, Sostek, Boling and Lance. Id. On the same day, Bacon wrote to Ramirez, advising him that Bacon was sending the agreement to Hart for signature and forwarding on to Ramirez. SBH Exh. 48. In his letter to Ramirez, Bacon requested that, in addition to signing the amended agreement himself, Ramirez also obtain the signatures of Webb and Planell. Id. Copies of that letter were sent to Hart, Sostek, Boling and Lance. Id.

75. By letter dated March 3, 1986, Hart sent the December 31, 1985 Amended Partnership Agreement to Ramirez, reiterating Bacon's request that Ramirez sign the agreement and also secure the signatures of Webb and Planell. SBH Exh. 50. Ramirez was then to send the fully executed agreement back to Bacon at his earliest convenience. Id. Copies of Hart's letter to Ramirez were sent to Bacon, Sostek, Boling and Lance.

76. On March 13, 1986, Ramirez sent Bacon the executed agreements, with a letter reading, in its entirety:

Dear Carter,

Even though [sic] this package is late this has been the best of my life to get this signed.

Sincerely,

Richard P. Ramirez
General Manager

SBH Exh. 51. Ramirez testified that he had run into difficulties in getting Webb and Planell to sign the December 31, 1985 Amended Partnership Agreement. Tr. 329. When asked about those difficulties, he referred to matters seemingly related to the

initial introduction of Webb and Planell as limited partners. Id. But those two individuals joined ACCLP in September, 1985 (see SBH Exh. 7), so Ramirez's testimony on this point is not reliable. ^{24/}

77. By letter dated March 14, 1986, Bacon forwarded to Boling the executed amended agreements for signature by the limited partners. SBH Exh. 52.

78. The record does not reflect the precise date on which all signatures had been included on the December 31, 1985 Amended Partnership Agreement. However, by letter dated September 2, 1986, Bacon sent to Ramirez two copies of the amended agreement, stating that

I believe one of the copies should be placed in your public record file.

SBH Exh. 53.

VI. The December 31, 1985 Amended ACCLP Partnership Agreement

79. Although not executed until March, 1986 (at the earliest), the December 31, 1985 Amended Partnership Agreement was made effective as of December 31, 1985. SBH Exh. 9. As reflected in Lance's January 31, 1986 memo, SBH Exh. 46 (and the earlier documents dating back to May, 1985), the December 31, 1985 Amended Partnership Agreement included substantial revisions of Article VIII relating to allocations of profits, losses, distributions and like matters. SBH Exh. 9, pp. 27-32.

^{24/} The record does reflect that Webb resigned her partnership position in March, 1986, apparently at the same time that Ramirez returned the executed December 31, 1985 Amended Partnership Agreement to Bacon. SBH Exh. 10.

80. Ramirez claimed in his testimony that, under the December 31, 1985 Amended Partnership Agreement, he owned a 21% equity interest in ACCLP. Tr. 324, 352, 373. This claim was based on the notion that he would supposedly be entitled to a 21% share of the proceeds upon sale of the station. Tr. 227, 374. In fact, however, the record establishes that, in view of the provisions of the December 31, 1985 Amended Partnership Agreement and the extent of capital contributions made by the ACCLP limited partners, Ramirez never could have had any hope at all of receiving any share of the proceeds of the sale of the station.

81. Under the December 31, 1985 Amended Partnership Agreement, if the station were to be sold (i.e., a sale of "all or substantially all the assets" of ACCLP), the proceeds would be distributed as follows:

First, to discharge all partnership liabilities then required to be discharged;

Second, to pay back "Unrecovered Adjusted Capital";

Third, to pay back Initial Capital Contributions;

Fourth, the next \$1,000,000 was to be split between Ramirez and Hart; and

Fifth, the rest would be allocated among all partners according to their respective "Percentage Interests".

SBH Exh. 9, pp. 31-32.

82. The term "Unrecovered Adjusted Capital" was defined in the December 31, 1985 Amended Partnership Agreement as (a) any partner's Additional Capital Contribution plus any Future Capital Contributions less (b) any distributions made to the partner,

plus (c) a return on (a) less (b). SBH Exh. 9, p. 7. ^{25/} As a practical matter, this term applied only to the non-employee limited partners (i.e., Astroline Company, the Roses, Gibbs), as they were the only partners who made any Additional Capital Contributions or Future Capital Contributions. SBH Exh. 9, p. 39.

83. According to ACCLP's 1986 financial statement, in 1985 limited partners had contributed a total of \$9.8 million in capital, while in 1986 limited partners had contributed an additional \$8.5 million, for a total of \$18.3 million. Hoffman/TIBS/Ramirez Exh. 8, p. 5. According to ACCLP's 1987 financial statement, in 1987 limited partners had contributed an additional \$1.99 million, for a total of somewhat more than \$20 million in capital contributions; also, limited partners had, in 1987, advanced an additional \$5 million in loans payable on demand. Hoffman/TIBS/Ramirez Exh. 9, pp. 5, 10. ^{26/} According

^{25/} As set out in the December 31, 1985 Amended Partnership Agreement, such a "return" was indistinguishable from interest -- it was to accrue "at an annual rate equal to the rate charged by The First National Bank of Boston from time to time on 90 day unsecured loans to substantial borrowers and designated by such Bank as its 'base rate,' such return to be compounded on the first day of each calendar month." SBH Exh. 9, p. 7.

^{26/} The circumstances surrounding these 1987 loans is unhelpful to ACCLP. According to Hoffman, it was established during the bankruptcy proceeding that

equity contributions of \$4,000,000 made by Astroline Company during 1987 were "reclassified" as debt in January, 1988. . . . Boling testified that he prepared a Promissory Note, drove to Hartford and demanded that Ramirez sign the note in favor of Astroline Company. . . . Although the "reclassification" was shown on the 1987 audited statements of ACCLP, the 1987 monthly

(continued...)