

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

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

MASS MEDIA BUREAU'S
OPPOSITION TO REQUEST FOR ORAL ARGUMENT

1. The Mass Media Bureau ("Bureau"), pursuant to Sections 1.277 and 1.294 of the Commission's Rules, hereby replies to the Request for Oral Argument ("Request") filed by Shurberg Broadcasting of Hartford ("Shurberg") on June 28, 1999. For the reasons set out below, the Bureau believes that oral argument will not "assist in the resolution of the issues presented," as required by Section 1.277 of the Commission's Rules and, accordingly, urges the Commission to deny Shurberg's request.

2. Shurberg argues that this case "presents issues of such overriding Constitutional importance" that the Commission must hold oral argument to assure "full and deliberate consideration" of the record. Request at 1. Specifically, Shurberg contends that the instant

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proceeding requires that the Commission address what type of "rigorous standards" are necessary for a race-based policy to pass Constitutional muster under Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) ("Adarand").

3. In support of its position, Shurberg states that the "focus of the instant proceeding is the definitional standard(s) which must be met before an entity can be deemed a minority-owned/controlled entity." Request at 3. Moreover, Shurberg claims that the Initial Decision of Administrative Law Judge John M. Frysiaak, FCC 99D-1, released April 16, 1999 ("ID"), and the Bureau's reply to exceptions both failed to apply standards announced by the Commission beginning in 1985 relative to determining ownership and control of limited partnerships. Finally, Shurberg claims that the ID ignored the fact that Astroline Communications Company Limited Partnership ("ACCLP") affirmatively chose not to file information with the Commission which would have established that it was not a minority-controlled entity.

4. As it has consistently tried to do in this proceeding, Shurberg is clouding the issue. At issue in this case is whether or not ACCLP made misrepresentations to the Commission and the federal courts concerning its status as a minority-controlled entity. Hoffman, Martin W., 12 FCC Rcd 5224 (1997). Contrary to Shurberg's claim, the Commission need not address Adarand or specify what standards it should apply to "race-based" policies in order to resolve the designated issues.

5. The ID correctly concluded that ACCLP did not misrepresent its status. A misrepresentation is a material false statement of fact made with an intent to deceive the Commission. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). See also Roy M. Speer, 11 FCC Rcd 18393, 18421 (1996) ("misrepresentation is characterized by making a

material false statement to the Commission"). The record demonstrates that Richard P. Ramirez ("Ramirez"), a minority who was the controlling general partner of ACCLP, reasonably believed that he was in control of the station. Additionally, the record lacks evidence of any intent by ACCLP to deceive the Commission and federal courts regarding Ramirez' control of the station.

6. Shurberg argues that ACCLP has not complied with the standards set forth by the Commission beginning in 1985 relative to determining ownership and control of limited partnerships and that the ID and the Bureau's reply to exceptions have ignored ACCLP's noncompliance. However, the issue in this case is misrepresentation and ACCLP never represented that it was an insulated limited partnership. In fact, the structure of the partnership, as expressly approved by the Commission in 1984, in and of itself precluded ACCLP from being considered an insulated limited partnership. Accordingly, although we may now analyze the structure of ACCLP differently, ACCLP cannot be accused of misrepresentation in this regard.

7. Finally, Shurberg argues that the Commission cannot ignore the fact that ACCLP intentionally chose not to file information with the Commission which would have shown it was not a minority-owned/controlled entity. Shurberg does not explain why oral argument is necessary to a resolution of its claim. In any event, the record does not support Shurberg's allegations. Both Ramirez and Thomas Hart, who served as communications counsel for ACCLP, testified at hearing that there was no conscious decision not to report changes to ACCLP's partnership structure. Trustee/Ramirez/TIBS Ex. 2, pp. 24-25; Tr. 331-36, 654-55. Before a licensee may be found to have withheld information, it must be shown that the licensee "knew that the information was relevant and intended to withhold it." Fox Television

Stations, Inc., 10 FCC Rcd at 8478, citing Abacus Broadcasting Corp., 8 FCC Rcd 5110, 5112 (Rev. Bd. 1993).¹

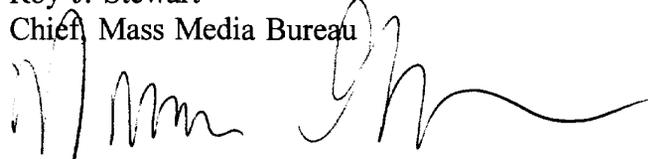
8. Despite Shurberg's claims to the contrary, this is not a complicated proceeding necessitating resolution of the Commission's position on "race-based" policies. Rather, it is a straightforward case looking simply to whether or not ACCLP made misrepresentations to the Commission and federal courts. Oral argument is not needed to decide the designated issues. Rather, the record fully supports the ID's finding of no misrepresentation. Because oral argument will not materially aid in the resolution of this case and because oral argument will unnecessarily prolong an already protracted proceeding,² Shurberg's Request must be denied. See Van Buren Community Service Broadcasters, Inc., 87 FCC 2d 1018, 50 RR 2d 115, 117 (Rev. Bd. 1981), review dismissed, 88 FCC 2d 1733, 50 RR 2d 1433 (1982) (oral argument

¹ In addition, while ACCLP's August 3, 1987 letter, filed in lieu of an ownership report, did not answer all the questions contained in an ownership report, it did not misrepresent the information contained therein.

² See Separate Statement of Richard P. Ramirez in Reply to Shurberg's Exceptions filed June 23, 1999 (Shurberg is attempting to prolong what has already been a 15 year attack on ACCLP).

denied where it would not materially aid resolution of the case and would unnecessarily prolong the proceeding).

Respectfully submitted,
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July 8, 1999

CERTIFICATE OF SERVICE

I, Talya Lewis, a secretary in the Complaints and Political Programming Branch, Mass Media Bureau, hereby certifies that she has on this 8th day of July, 1999, sent by regular first class U.S. mail, copies of the foregoing "Mass Media Bureau's Opposition to Request for Oral Argument" to:

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