

MINORITY TAX CERTIFICATE SOURCEBOOK

**A compilation of references
on FCC Minority Tax Certificates**

Prepared for

"Creative Media Financing in the 1990's"

Published by the

**Minority Enterprise Program
of the
Federal Communications Commission**

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EXECUTIVE SUMMARY

INTRODUCTION TO SECTION 1071

- o Under section 1071 of the Internal Revenue Code, the FCC issues tax certificates that enable grantees to defer recognition of capital gains from sales that directly effectuate the Commission's policies.
- o Congress delegated tax certificate authority in 1943, and, in each FCC appropriations bill since 1987, has expressly sanctioned the "Minority Tax Certificate" program the Commission articulated in the 1978 and 1982 policy statements on minority ownership.
- o The "Minority Tax Certificate" program rests upon the same First Amendment-based "diversity" rationale that led the Supreme Court to validate two other FCC minority ownership policies in Metro Broadcasting Co., Inc. v. FCC and Astroline Communications Company v. Shurberg Broadcasting of Hartford, but has never been litigated.

MINORITY OWNERSHIP POLICY STATEMENTS

- o "Minority-owned firm" means that African-Americans, Asian-Americans, Hispanic-Americans, or Native-Americans own over 50% of a corporation's voting shares, or own over 20% of the total equity in a limited partnership.
- o The FCC grants tax certificates to sellers and investors to facilitate capitalization of broadcasting and cable acquisitions by minority-owned firms, and taxpayers who are granted certificates can elect to reinvest sales proceeds in qualified replacement property, reduce basis in depreciable property, or both.
- o Buyers can use the policy to attract equity investors, or bargain for a reduction of the purchase price with tax savings that accrue to the seller.

CREATIVE MEDIA FINANCE WITH MINORITY TAX CERTIFICATES

- o Tax certificate decisions are made on a case-by-case basis in connection with stock sales and facility transfers.
- o Relevant policy factors include:
 - a media property that qualifies as a "broadcasting" or "cable television system" facility;
 - a sale or exchange of property that facilitates "market entry;" and
 - "significant" minority ownership and "working control" of the facility.
- o Pursuant to section 1071, the FCC has certified a stock sale by a buyer-investor, a sale of stock in a newly constructed station, and a sale of stock warrants.

T. INTRODUCTION TO SECTION 1071

INTERNAL REVENUE CODE
1954, AS AMENDED

26 U.S.C. §1071

§1071. Gain from sale or exchange to effectuate policies of F.C.C.

(a) Nonrecognition of gain or loss. -- If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of section 1033. For purposes of such section as made applicable by the provisions of this section, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, on such sale or exchange to which section 1033 is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property, of a character subject to the allowance for depreciation under section 167, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary or his delegate. Any election made by the taxpayer under this section shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent years.

(b) Basis.--

For basis of property acquired on a sale or exchange treated as an involuntary conversion under subsection (a), see section 1033(b).

TAX CERTIFICATES AND MINORITY OWNERSHIP

Sale of Broadcast Stations

In its May 1978 Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, the FCC announced that when a licensee transfers or assigns a broadcast station to a minority-owned purchaser, a tax certificate may be issued to the seller pursuant to Section 1071 of the Internal Revenue Code. Under Section 1071, the Commission can permit sellers to defer the payment of capital gains tax when a sale is deemed necessary or appropriate to effectuate compliance with the FCC policy of fostering minority ownership.

The 1978 Policy Statement and case precedent hold that a seller of a broadcast station is eligible for a tax certificate if he or she sells to a buyer where the minority ownership is in excess of 50 per cent or controlling. A list of minority-owned facilities granted through the tax certificate policy is available upon request from the FCC's Consumer Assistance and Small Business Division.

Expansion of Tax Certificate Policy

In December 1982, as a result of the Report of the FCC Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, the Commission expanded the use of tax certificates to promote minority ownership.

1) **Sale of Cable Television Systems**: The FCC considers requests for tax certificates from owners of cable TV facilities who sell their interests to minority-controlled entities.

2) **Limited Partnerships as Buyers**: Tax certificates may be issued in transfers to limited partnerships where the general partner is a minority individual and owns more than a 20 per cent interest in the broadcast or cable facility.

3) **Tax Certificates to Investors**: Shareholders in a minority-controlled broadcast or cable entity are eligible for a tax certificate upon the sale of their shares, provided that their interest was acquired to assist in the financing of the acquisition of the facility.

For more information contact the Consumer Assistance and Small Business Division, Office of Public Affairs, (202) 632-7260.

Continuing Appropriations Act For Fiscal Year 1988, Pub. L.
100-202, 101 Stat. 1329 (1987)

That none of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U.S.C. 1071, to expand minority and women ownership of broadcasting licenses, including those established in Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C.2d 979 and 69 F.C.C.2d 1591, as amended, 52 R.R. 2d [1301] (1982) and Mid-Florida Television Corp., [69] F.C.C.2d 607 Rev. Bd. (1978) which were effective prior to September 12, 1986, other than to close MM Docket No. 86-484 with a reinstatement of prior policy and a lifting of suspension of any sales, licenses, applications, or proceedings, which were suspended pending the conclusion of the inquiry.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 300 U. S. 821, 837.

SUPREME COURT OF THE UNITED STATES

Syllabus

METRO BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-453. Argued March 28, 1990—Decided June 27, 1990*

These cases consider the constitutionality of two minority preference policies adopted by the Federal Communications Commission (FCC). First, the FCC awards an enhancement for minority ownership and participation in management, which is weighed together with all other relevant factors, in comparing mutually exclusive applications for licenses for new radio or television broadcast stations. Second, the FCC's so-called "distress sale" policy allows a radio or television broadcaster whose qualifications to hold a license have come into question to transfer that license before the FCC resolves the matter in a noncomparative hearing, but only if the transferee is a minority enterprise that meets certain requirements. The FCC adopted these policies in an attempt to satisfy its obligation under the Communications Act of 1934 to promote diversification of programming, taking the position that its past efforts to encourage minority participation in the broadcast industry had not resulted in sufficient broadcast diversity, and that this situation was detrimental not only to the minority audience but to all of the viewing and listening public. Metro Broadcasting, Inc., the petitioner in No. 89-453, sought review in the Court of Appeals of an FCC order awarding a new television license to Rainbow Broadcasting in a comparative proceeding, which action was based on the ruling that the substantial enhancement granted Rainbow because of its minority ownership outweighed factors favoring Metro. The court remanded the appeal for further consideration in light of the FCC's separate, ongoing

*Together with No. 89-700, *Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford, Inc., et al.*, also on certiorari to the same court.

Syllabus

listening audience, and that the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare. *Associated Press v. United States*, 326 U. S. 1, 20. Safeguarding the public's right to receive a diversity of views and information over the airwaves is therefore an integral component of the FCC's mission, serves important First Amendment values, and is, at the very least, an important governmental objective that is a sufficient basis for the policies in question. Pp. 14-17.

(c) The minority ownership policies are substantially related to the achievement of the Government's interest in broadcast diversity. First, the FCC's conclusion that there is an empirical nexus between minority ownership and greater diversity, which is consistent with its longstanding view that ownership is a prime determinant of the range of programming available, is a product of its expertise and is entitled to deference. Second, by means of the recent appropriations legislation and by virtue of a long history of support for minority participation in the broadcasting industry, Congress has also made clear its view that the minority ownership policies advance the goal of diverse programming. Great weight must be given to the joint determination of the FCC and Congress. Pp. 17-27.

(d) The judgment that there is a link between expanded minority ownership and broadcast diversity does not rest on impermissible stereotyping. Neither Congress nor the FCC assumes that in every case minority ownership and management will lead to more minority-oriented programming or to the expression of a discrete "minority viewpoint" on the airwaves. Nor do they pretend that all programming that appeals to minorities can be labeled "minority" or that programming that might be so described does not appeal to nonminorities. Rather, they maintain simply that expanded minority ownership of broadcast outlets will, in the aggregate, result in greater broadcast diversity. This judgment is corroborated by a host of empirical evidence suggesting that an owner's minority status influences the selection of topics for news coverage and the presentation of editorial viewpoint, especially on matters of particular concern to minorities, and has a special impact on the way in which images of minorities are presented. In addition, studies show that a minority owner is more likely to employ minorities in managerial and other important roles where they can have an impact on station policies. The FCC's policies are thus a product of analysis rather than a stereotyped reaction based on habit. Cf. *Fullilove, supra*, at 524, n. 4. The type of reasoning employed by the FCC and Congress is not novel, but is utilized in many areas of the law, including the selection of jury venues on the basis of a fair cross section, and the reapportionment of electoral districts to preserve minority voting strength. Pp. 28-33.

Syllabus

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which SCALIA, J., joined.

MINORITY OWNERSHIP LISTS

(updated December 31, 1990 by FCC Consumer Assistance and
Small Business Division, Office of Public Affairs)

STATIONS THAT HAVE ELECTED TO SEEK
DISTRESS SALE RELIEF
DISTRESS SALES APPROVED

TAX CERTIFICATES ISSUED
(Broadcast Stations and Cable
Television Facilities Lists)

TOTAL DISTRESS SALES APPROVED

1978: 0
1979: 3
1980: 22
1981: 2
1982: 0
1983: 0
1984: 6
1985: 2
1986: 2
1987: 0
1988: 1
1989: 0
1990: 0
(as of 12/31)

TOTAL TAX CERTIFICATES ISSUED

1978: 4
1979: 12
1980: 10
1981: 15
1982: 15
1983: 10
1984: 11
1985: 17
1986: 16
1987: 31
1988: 32
1989: 39
1990: 38
(as of 12/31)

II. MINORITY OWNERSHIP POLICY STATEMENTS



PUBLIC NOTICE

2734

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

News media information 202/254-7874. Recorded listing of releases and texts 202/632-0002.

May 25, 1978
FCC 78-322
95111

STATEMENT OF POLICY ON MINORITY OWNERSHIP OF BROADCASTING FACILITIES

One decade ago, as a partial response to the concerns expressed in the Report of the National Advisory Committee on Civil Disorders ("The Kerner Report"),¹ the Commission articulated policies and principles which would guide it in its consideration of complaints that its licensees - or those who would be its licensees - had discriminated against minorities in their employment practices.² We observed that "we simply do not see how the Commission could make the public interest findings as to a broadcast applicant who is deliberately pursuing or preparing to pursue a policy of discrimination - of violating the National Policy."³

One year later, July 16, 1969, the Commission adopted rules which, in addition to forbidding discrimination on the basis of race, color, religion or national origin, also required that "equal opportunity in employment...be afforded by all licensees or permittees...to all qualified persons."⁴ To meet this goal, licensees were required to develop a program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. On May 20, 1970, the Commission adopted

1 Report of the National Advisory Commission on Civil Disorders. (New York: Bantam Books, 1968).

2 Petition for Rulemaking to Request Licensees to Show Nondiscrimination in their Employment Practices, 13 FCC 2d 766 (1968). ("(A) petition or complaint raising substantial issues of fact concerning discrimination in employment practices calls for full exploration by the Commission before the grant of the broadcast application before it.")

3 Id. at 769.

4 Nondiscrimination Employment Practices of Broadcast Licensees, 13 FCC 2d 240 (1969). "Sex" was added as an impermissible basis for discrimination in May, 1970. Nondiscrimination Employment Practices of Broadcast Licensees, 23 FCC 2d 430 (1970).

licensees are required to contact community leaders and members of the general public to obtain information about community interests and to present programming responsive to those interests. To aid licensees in these efforts, we have developed a community leader checklist consisting of 20 groupings or institutions which we believe are found in most communities. Reflecting our commitment to the expression of minority viewpoints, we have required that licensees specifically contact minorities in a community as a distinct grouping or institution (among the 20 groupings outlined by the Commission) from which representative leaders are to be drawn. Moreover, the Commission requires that the licensee interview minorities and women within the 19 "non-minority" institutions or groupings which it also expects the licensee to contact as part of its ascertainment procedure.

While the broadcasting industry has on the whole responded positively to its ascertainment obligations and has made significant strides in its employment practices, we are compelled to observe that the views of racial minorities⁸ continue to be inadequately represented in the broadcast media.⁹ This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.

Thus, despite the importance of our equal employment opportunity rules and ascertainment policies in assuring diversity of programming it appears that additional measures are necessary and appropriate. In this regard, the Commission believes that ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming.

As the Commission's Minority Ownership Task Force Report recounts:

"Despite the fact that minorities constitute approximately 20 percent of the population, they control fewer than one percent of the 8,500 commercial radio and television stations currently operating in this country. Acute underrepresentation of minorities among the owners of broadcast properties is troublesome in that it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial

8 For purposes of this statement, minorities include those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction.

9 See Federal Communications Commission's Minority Ownership Task Force, Minority Ownership Report (1978); U.S. Commission on Civil Rights, Window Dressing on the Set (1977); see also The Kerner Report, supra, at 207, 208, 210.

In TV 9 Inc. v. FCC, 495 F. 2d 929 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974), the Court again dealt with the issue of minority ownership. In reversing a decision where the Commission had refused to award merit to an applicant in a comparative proceeding based upon minority ownership and participation the Court emphasized:

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

"We hold only that when minority ownership is likely to increase diversity of content, especially on opinion and viewpoint, merit should be awarded."

*

*

*

"The fact that other applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news." 13

The Court made plain that minority ownership and participation in station management is in the public interest both because it would inevitably increase the diversification of control of the media and because it could be expected to increase the diversity of program content. 14

The Commission has acted in accordance with these judicial expressions. Its Administrative Law Judges have afforded comparative merit to applicants for construction permits where minority owners were to participate in the operation of the station. 15 The Commission itself has ordered the expedited processing of several applications filed by applicants with

13 495 F. 2d at 937-38 (emphasis added).

14 As the Court observed in a subsequent opinion: "The entire thrust of TV 9 is that Black ownership and participation together are themselves likely to bring about programming that is responsive to the needs of the black citizenry, and that that reasonable expectation without 'advance demonstration' gives them relevance." Garrett v. FCC, 168 U.S. App. D.C. 266, 273, 513 F. 2d 1056, 1063 (1975), 1056, 1063 (D.C. Cir. 1975) (footnote omitted).

15 Berryville Broadcasting Co., Docket 21185, FCC 78D-16 (1978); Roseman Broadcasting Co., Inc., Docket Nos. 19887-8, 54 FCC 2d 394 (1976); Robert M. Zitter and Hillary E. Zitter, Docket 20243, FCC 75D-43 (1975).

Electric Broadcasting Company and the National Black Media Coalition.

Moreover, in order to further encourage broadcasters to seek out minority purchasers, we will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to transfer or assign their licenses at a "distress sale" price²¹ to applicants with a significant minority ownership interest, assuming the proposed assignee or transferee meets our other qualifications.

While we normally permit distress sales when the licensee is either bankrupt or physically or mentally disabled, there is precedent for such sales based on other grounds. See, e.g., Radio San Juan, 29 P&F Radio Reg. 2d 607 (1974). The avoidance of time consuming and expensive hearings will more than compensate for any diminution in the license revocation process as a deterrent to wrongdoing. We contemplate grants of distress sales in circumstances similar to those now obtaining except that the minority ownership interests in the prospective purchaser will be a significant factor. The parties involved in each proposed transaction will be expected to demonstrate to us how the sale would further the goals on which we are today basing the extension of our distress sale policy. All such transactions will be scrutinized closely to avoid abuses.

The Congressional Black Caucus has petitioned for rulemaking to permit distress sales to minorities. While we endorse the goal of such a proposal we have concluded that cases should be reviewed as they arise to determine that the objectives of our policies will be met. Consequently, for the present a rigid rule on such sales will not be adopted.

Applications by parties seeking relief under our tax certificate and distress sale policies can be expected to receive expeditious processing.

We are keenly aware that the first steps we announce today do not approach a total solution to the acute underrepresentation problem. They are made possible because proposals raising these issues have been submitted to us and these proposals, the collective comments received thereon, and the findings of our Minority Ownership Task Force provide us with a compelling record upon which to base our action.

Beyond the steps taken today, we intend to examine, among other things, the recommendations set forth in the Minority Ownership Report. Also, while the immediate area of concern of this statement has been broadcasting, it is expected that in the future attention will also be directed towards improving minority participation in such services as cable television and

²¹ In order to provide incentive for broadcasters opting for this approach, we would expect that the distress price would be somewhat greater than the value of the unlicensed equipment, which could be realized even in the event of revocation. See Second Thursday Corporation, 22 FCC 2d 515 (1970), recon. granted 25 FCC 2d 112 (1970); Northwestern Broadcasting Corporation (WLTH), 65 FCC 2d 66 (1977).

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Commission Policy Regarding the
Advancement of Minority Ownership in
Broadcasting

Gen. Docket No.
82-797

POLICY STATEMENT AND NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1982; Released: December 13, 1982

BY THE COMMISSION: CHAIRMAN FOWLER ISSUING A SEPARATE
STATEMENT.

Introduction

1. The Commission has traditionally considered the under-representation of minority points of view over the airwaves as detrimental to minorities¹ and the general public. Accordingly, we have taken steps to enhance the ownership and participation of minorities in the media, with the intent of thereby increasing the diversity in the control of the media

¹ For purposes of this statement, the term "minority" includes American Indians or Alaskan Natives, Asians and Pacific Islanders, Blacks and Hispanics. 47 U.S.C. § 309(i)(3)(C)

of, or the adoption of a new policy by the Commission with respect to the ownership and control of radio broadcasting stations. . . ." A tax certificate enables the seller of a broadcast station to defer the gain realized upon a sale, either by: (1) treating it as an involuntary conversion, under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. § 1071, or both. The distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, prior to the commencement of a hearing, to sell their station to a minority-owned or controlled entity, at a price "substantially" below its fair market value. A licensee whose license has been designated for hearing would ordinarily be prohibited from selling, assigning or otherwise disposing of its interest, until the issues have been resolved in the licensee's favor.⁷ Thus, extension of the tax certificate and distress sale policies fosters minority ownership by providing broadcast licensees with an incentive to transfer their interests to minority-owned or controlled entities.⁸

4. Minority participation in broadcasting was also promoted through other means. The Court of Appeals determined that minority ownership of and participation in broadcasting should be encouraged and afforded merit in a comparative hearing context, recognizing the "connection between diversity of ownership of the mass media and diversity of ideas and expression required by the First Amendment."⁹ Additionally, the Commission has indicated that waivers of the trafficking rule¹⁰ and the multiple ownership rules¹¹ would be considered and might be appropriate where minority ownership is thereby increased.¹² Moreover, we have in fact waived our requirements¹³ and awarded comparative merit to minority applicants¹⁴ in the interest of promoting minority entrepreneurship.

⁷ *Bartell Broadcasting of Florida, Inc.*, 45 RR 2d 1329, 1331 (1979).

⁸ We should point out that licensees whose licenses have been designated for hearing may not avail themselves of a tax certificate in addition to a distress sale. *Blue Ribbon Broadcasting, Inc.*, 76 F.C.C. 2d 429, 431 n. 6 (1980).

⁹ *TV 9, Inc. v. FCC*, 495 F. 2d 929, 937-938 (D.C. Cir. 1973) cert. den., 418 U.S. 986 (1974). Additionally, the Court of Appeals noted that:

The fact that other [licensee] applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proven to be significantly influential with respect to editorial comment and the presentation of news. *Id.* at 938.

¹⁰ 47 C.F.R. §§ 73.35, 73.240 and § 73.636.

¹¹ 47 C.F.R. § 73.3597.

¹² *Minority Ownership of Broadcasting Facilities*, 69 F.C.C. 2d 1591, 1596-1597 (1978). However, given the myriad of potential factual situations and the competing policies underlying those rules, we declined to specify the kind of cases where waivers would be granted.

¹³ *E.g.*, in *Atlas Communications, Inc.*, 61 F.C.C. 2d 995, 997 (1976), the allocation requirements were waived and a Black-owned daytime broadcast station was permitted to operate at night.

¹⁴ *E.g.*, in *Rosemor Broadcasting, Co., Inc.*, 61 F.C.C. 2d 394, 418 (1975), merit was awarded to an applicant whose owner principals were minority women who were also to be involved in the management of the proposed station.

The Advisory Committee noted that "financing has remained the single greatest obstacle" to minority entry into the telecommunications industry. Therefore, the Advisory Committee's recommendations mainly focused upon enhancing minority entrepreneurship by increasing their opportunities to attract investors in their enterprises, and thus secure financing.

We believe it is appropriate to defer immediate consideration of items (5) and (6) above, the Advisory Committee's recommended amendments to our multiple ownership rules. We are in the process of undertaking a comprehensive review of those rules, and we believe it is more productive at this point to consider any minority ownership implications of these rules in the context of our overall review.

Discussion

Limited Partnerships

7. As previously stated, to foster minority ownership of broadcasting facilities, in 1978 we extended the availability of tax certificates and distress sales to minority entities. At that time, we indicated that the purchasing entity would be deemed qualified for purposes of tax certificates where the minority ownership interest in the entity exceeded fifty percent or was controlling.¹⁸ The same ownership requirement has since been applied to distress sales.¹⁹ By so establishing the ownership requirement, we did not intend to preclude from consideration other cases where "minority involvement is significant enough to justify" tax certificates or distress sale treatment. However, the requirement has evolved into a rather rigid standard from which we have departed but once.²⁰ In *William M. Barnard*, we determined that issuance of a tax certificate was justified under the circumstances, because minority group members owned, directly or indirectly, 45.5 percent of the partnership interest in the purchasing entity, and the sole general partner, who had the "exclusive authority to manage and control" its affairs, was a minority individual who owned an 11.4 percent interest individually as well as a 52.4 percent interest in a corporation with a 25 percent limited partnership interest in the entity. By so issuing the tax certificate, we recognized the fact that a limited partnership, by its nature, vests complete control over the station's affairs in the general partner. We also recognized that where the

¹⁸ 1978 Policy Statement, *supra*, at 953, n. 20.

¹⁹ E.g., *Grayson Enterprises, Inc.*, 47 RR 2d 287, 294 (1980).

²⁰ For instance, in *Long-Pride Broadcasting Co.*, 48 RR 2d 1243 (1980), we denied the issuance of a tax certificate in connection with the sale of a broadcast station, where the minority owned 45 percent of the purchasing entity's stock, and was able to acquire an additional 10 percent through a voting trust. We stated that the minority's involvement was not significant enough to justify issuance of a tax certificate, alluding to the "tenuous nature" of voting trusts. *Id.* at 1245.

interest from 28 percent to 99 percent) was insignificant, for "regardless of whether the general partner owned a 28 percent interest in the applicant or a 99 percent interest," the general partner would still have "total operating control."²⁷

11. Thus, in *Anax Broadcasting, Inc. and William M. Barnard*, we already have acknowledged the unique nature of limited partnerships. Accordingly, we are adopting the Advisory Committee's recommendation. We will henceforth consider issuing tax certificates and authorizing distress sales in transfers to limited partnership where the general partner, or partners, owns more than 20 percent of the broadcasting entity and is a member, or members, of a minority group.²⁸ We are, thus, explicitly recognizing the "significant minority involvement" which exists by virtue of a minority general partner's ownership interest and complete control over a station's affairs.²⁹ Moreover, we are increasing minority opportunities by enabling minority entrepreneurs to capitalize their broadcasting ventures by attracting and utilizing the investments of others to a greater extent. Although we are considering such limited partnerships for tax certificate and distress sale purposes, we should make clear that in order to avoid "sham" arrangements, we will continue to review such agreements to ensure that complete managerial control over the station's operations is reposed in the minority general partner(s).

Tax Certificates as Creative Financing Mechanisms

12. As noted previously, a tax certificate enables the seller to defer taxes on capital gains, and thus provides an incentive to transfer a broadcast station to a minority-owned or controlled entity. Moreover, a "tax certificate effectively subsidizes the bargaining position of minority entrepreneurs seeking to enter the telecommunications marketplace" because a "tax certificate is effective only in those situations where the seller's capital gains savings exceeds the difference in purchase price offered by a non-minority and a minority purchaser."³⁰ While the Advisory Committee recognized that tax certificates have successfully contributed to the acquisition of broadcast properties by minorities,³¹ it envisioned a more expansive approach to the administration of tax certificates.

²⁷ *Id.* at 1593.

²⁸ The minimal ownership requirement of 20 percent was recommended by the Committee as reflecting the realities of the financial and business world. We accept their recommendation, in this regard, as a realistic threshold.

²⁹ We have generally found "control" to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters. *Southwest Texas Broadcasting Council*, 85 F.C.C. 2d 713, 715 (1981).

³⁰ *The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications*, pp. 8-9 (May 1982) (hereinafter cited as the *Final Report*).

³¹ See paragraph 5, *supra*.

tax certificate.³⁶ The Commission has since abandoned its strict construction of Section 1071 by recognizing that voluntary divestitures that effectuate specific ownership policies are "appropriate," and by eliminating the "causal relationship" requirements.³⁷ In 1978, we further expanded our tax certificate policy by announcing the availability of such certificates in transactions that further minority ownership.³⁸

15. In accordance with the Advisory Committee's basic recommendations, we believe that a further expansion of our tax certificate policy to include the Advisory Committee's recommendation (See para. 14, *supra*) will facilitate initial investments in minority-controlled stations; will contribute toward the stabilization and improvement of their operation, once established; and ultimately will serve to increase minority ownership of broadcast properties. The use of tax certificates as creative financing tools will facilitate significantly minority entrepreneurs' access to necessary financing, thus effectuating the important policy of promoting minority ownership. Accordingly, we are expanding our tax certificate policy in this area.

16. Generally, to be eligible for a tax certificate, such transactions must not reduce minority ownership of and control in the entity below 51 percent.³⁹ However, our expansion of the tax policy differs in some respects from that contemplated by the Committee. First, tax certificates will only be available to initial investors who provide "start-up" financing, which allows for the acquisition of the property, and those investors who purchase shares *within the first year* after license issuance, which allows for the stabilization of the entity's capital base. (The Committee's recommendations did not include any time limitation.) We believe that to extend the availability of tax certificates beyond those shareholders would invite abuse and overprotect minority entrepreneurs against the realities

³⁶ In this regard, the Commission stated that issuance of a tax certificate was dependent upon its finding as to whether there was a causal relationship between the adoption of a new Commission policy and the sale in question, and whether issuance of the certificate was "necessary or appropriate" to effectuate the new policy. Pertinent factors in determining whether a sale was "necessary or appropriate" included: (1) the occurrence of the sale within a reasonable time span of the adoption of a new policy, such as one license period; (2) a showing that the policy was a significant factor in the sale; and (3) a showing that the sale was consistent with our general experience in the broadcast field. *Issuance of Tax Certificates*, 19 RR 1831, 1832 (1970).

³⁷ *In re Issuance of Tax Certificates*, 59 F.C.C. 2d 91 (1976).

³⁸ Prior to 1978, the tax certificate policy only applied to transfers involving multiple ownership. We recently announced our intent to limit the award of tax certificates to those properties whose sale directly effectuates Commission policy. This revised policy was prompted by the difficulties attaching to the application of the 1976 policy to divestitures arising in the context of our cable television cross-ownership rules, 47 C.F.R. 76.501 *et seq.* We do not anticipate that this revised policy will affect the conferring of tax certificates as creative financing mechanisms to facilitate minority ownership.

³⁹ By so requiring remaining 51 percent minority control, we do not mean to preclude consideration of cases where "minority involvement would have been significant enough" to justify the issuance of a tax certificate in the first instance. (See paras. 8 and 12, *supra*).

that it (rather than the staff) would administer distress sales on a case-by-case basis.⁴³

19. The evolving nature of our distress sale policy necessitated such an individualized approach. However, we believe that the subsequent case law has established sufficient safeguards and standards by which prospective distress sale petitions may be reviewed and processed by our staff.⁴⁴ Therefore, to further facilitate minority ownership and expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions that are *consistent* with established Commission policy and do *not* involve novel questions of fact, law or policy in the area of distress sales.

NOTICE OF PROPOSED RULE MAKING—Seller-Creditors' Rights

20. Given the current economic conditions of the telecommunications market,⁴⁵ the Committee stated that seller financing in station transfers has become a prevalent practice and should be encouraged, particularly since it is obviously one of the ways that minorities can obtain broadcasting properties.⁴⁶ Although a seller-creditor currently may take a security interest in the station's physical assets or stock in the corporate licensee⁴⁷ as protection against the purchaser's possible default, the Committee believed that seller-financed transfers further would be stimulated if the seller were afforded additional protection. Specifically, the Committee recommended that in those cases where the seller provides financing, the seller-creditor's rights be expanded to include a right of reversionary interest in the license.

⁴³ *Id.* at 983.

⁴⁴ We have applied the tax certificate standard (minority ownership which exceeds 50 percent or constitutes a controlling interest—*Policy Statement, supra* at 983 n. 20) to distress sales. We have also established procedures for determining the adequacy of a distress sale price. *Grayson Enterprises, Inc.*, 77 F.C.C. 2d 156, 163-164 (1980); *Northland Television, Inc.*, 72 F.C.C. 2d 51-54-56 (1979).

⁴⁵ The Committee cited two structural problems in the marketplace that affect "all broadcasters, particularly small ones," in obtaining capital as including:

(1) The current high interest rates which reduce the comfort level of lenders in all investments (thereby increasing the level of equity required to attain a given capitalization), and which consume cash flow (reducing immediate return on equity); and

(2) The fact that presently broadcasting is not providing a high enough return on equity invested to attract venture capital participation. *Final Report, supra* at 25-27.

⁴⁶ According to the Committee, "[i]n 1981, of the 487 station transfer filed with the FCC, two-thirds involved some form of seller financing." *Final Report, supra* at 33 (citing *Broadcast Investor*, April 22, 1982, Issue No. 11, p. 1, Paul Kagan Associates, Inc., Carmel, Calif.).

⁴⁷ The Commission already recognizes and approves of contracted arrangements, whereby 50% or more of the stock is pledged, where the contract (1) provides that the licensee-borrower retains the voting rights; and (2) provides for a public or private sale which would ensure that the licensee's equity is protected. Moreover, 49.99% of the stock (representing the absence of positive or negative control) currently may be foreclosed, without prior Commission approval under 47 U.S.C. § 310.

security interests sellers can retain as part of the financing arrangements. We believe it appropriate to inquire as to whether certain limitations could be removed, consistent with the provisions of the Communications Act, so as to further encourage the use of this financing tool, particularly where the transaction would enhance minority ownership of the media of mass communications. Accordingly, interested parties are invited to address themselves to the type of security interest that can be retained by a seller-creditor; whether that interest can or should include a reversionary interest in the license itself; and the legal process, if any, that should be required before the creditor could exercise its reversionary interest.

Conclusion

23. The Commission issues this *Policy Statement* to expand and reaffirm the 1978 *Policy Statement* with the hope that the policies initiated herein will offer meaningful new opportunities to increase minority ownership. Accordingly, this *Policy Statement* is but the latest step in an ongoing effort. The Commission will revisit these policies to assess their effectiveness and, if necessary, explore additional policies and procedures to remedy the underrepresentation of minorities in media ownership. Henceforth we will consider:

- (1) Issuing tax certificates and authorizing distress sales in transfers to limited partnerships where a minority general partner (or partners) owns more than 20 percent of the broadcasting entity; and
- (2) Issuing tax certificates to shareholders upon divestiture of their interest in minority controlled broadcasting entities, where divestiture furthers minority ownership.

Moreover, to expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions which are *consistent* with Commission precedent and policy. Finally, we are instituting a rule making proceeding, subject to public notice and comment, with a view toward expanding seller-creditors' rights and protections.

Regulatory Flexibility Act—Initial Analysis

I. Reason for action:

Since seller-financed transactions represent one method by which minorities may acquire broadcast facilities, we are proposing to examine the protections currently available to seller-lenders with a view towards possibly expanding their protection and thereby stimulating such transactions.

who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, the written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's Rules and Regulations, 47 C.F.R. § 1.1231.

25. Pursuant to applicable procedures set out in Sections 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, 47 C.F.R. § 1.4, § 1.415 and § 1.419, interested parties may file comments on or before March 14, 1983 and reply comments on or before March 29, 1983. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

26. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 C.F.R. § 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

27. For further information contact Ava H. Berland, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

1472

News media information 202/254-7674.

Recorded listing of releases and texts 202/632-0002.

December 22, 1982
FCC 82-524

POLICY STATEMENT ON MINORITY OWNERSHIP OF CABLE TELEVISION FACILITIES

The Commission has traditionally recognized that the public interest is enhanced when available programming reflects a diversity of viewpoints, including the viewpoints of racial and ethnic minority groups. See N.A.A.C.P. v. F.P.C., 425 U.S. 662, 670 n.7 (1976). 1/

In the broadcast area, we first attempted to ensure adequate representation of minority viewpoints through a number of means, including the establishment of equal employment opportunity 2/ and ascertainment requirements 3/, the awarding of merit in comparative hearings 4/, and by indicating our willingness to waive, upon a proper showing, our trafficking 5/ and multiple ownership rules 6/. In May 1978, we announced the use of other means for encouraging minority ownership of broadcasting facilities. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978). As detailed therein, the Commission discussed why additional measures were necessary to ensure that there was adequate representation of minority views in available programming. Id. at 981.

1/ For purposes of this policy statement, racial minorities include Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

2/ Nondiscrimination Employment Practices of Broadcast Licensees, 13 FCC 2d 766 (1968); Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, 54 FCC 2d 354 (1975); Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, 60 FCC 2d 226 (1976).

3/ Ascertainment of Community Problems by Broadcast Applicants, 57 FCC 2d 418 (1976).

4/ Rosemar Broadcasting Co., Inc., 54 FCC 2d 394 (1975); TV 9, Inc. v. FCC, 495 F. 2d 929 (D.C. Cir. 1973).

5/ 47 C.F.R. § 73.3597.

6/ 47 C.F.R. §§ 73.35, 73.240 and 73.636.

engage in program origination. First CATV Report and Order, 20 FCC 2d 201 (1969), aff'd, U.S. v. Midwest Video Corp., 406 U.S. 649 (1972). In addition, the Commission in the past has used broad proscriptions on cross-ownership as one approach intended to promote program diversity. See Second Report and Order in Docket 18397, 23 FCC 2d 816 (1970).

Also in connection with this goal, we have attempted to ensure that the viewpoints of minorities are adequately represented in cable television system programming. Thus, in 1976 we encouraged cable television systems to carry foreign language programming by exempting such programs from limitations otherwise placed upon the carriage of signals from distant non-network stations. Specialty Stations, 58 FCC 2d 442 (1976). Additionally, ten years ago we established EEO and affirmative action guidelines for cable television system operators. Cable Television Discriminatory Employment Practices, 34 FCC 2d 186 (1972); Nondiscrimination -- CATV Employment Practices, 69 FCC 2d 1324 (1978). See also 47 C.F.R. § 76.311. 11/ In promulgating these rules we noted that:

Cable, by virtue of its multi-channel capacity, is uniquely capable of serving the special programming and other communications needs of discriminated against minority groups. But a company which is not an equal opportunity employer is less likely than it otherwise would be, to recognize and respond to those needs. In light of this fact . . . it would certainly be improper for the Commission to countenance discriminatory employment practices by cable systems at the same time as it forbids such practices by broadcast . . . facilities.

34 FCC 2d at 190-191.

Available statistics indicate that the cable television industry has increased, to some extent, the percentage of minorities it employs. 12/ However, and quite analagous to the situation we faced four years ago in the broadcast industry, we are compelled to observe that minorities continue to be

11/ These EEO requirements apply to operators of cable television systems both in that capacity and as licensees and permittees of CARS stations. See 69 FCC 2d 1324 n.2, supra.

12/ See FCC News Release, "1981 Cable Television Employment Statistics and Trend Report" released October 26, 1982, showing minority employment by operating cable television systems to be at 13.9% (up from 11.7% in 1978), and minority employment at central corporate-type offices to be at 14.0% (up from 12.9% in 1978).

(over)

cable television systems to minority purchasers could greatly facilitate minority ownership of these facilities. Id. 15/

After due consideration of the Advisory Committee's recommendation, and in light of the current dearth of minority-owned cable systems, we now adopt a policy encouraging minority ownership of cable television systems. This new policy will be implemented by means of our tax certification authority. Henceforth, we will consider requests for tax certificates from owners of cable television systems who have sold their interests to minority-controlled entities. 16/

As the Advisory Committee has noted, "a tax certificate effectively subsidizes the bargaining position of minority entrepreneurs seeking to enter the telecommunications market." Final Report at 8. By utilizing our tax certificate authority in this fashion, we hope to assist minority entrepreneurs in becoming owners of cable television systems and thus to enhance the presentation of minority viewpoints in programming decisions of cable television systems. 17/

15/ Section 1071 authorizes the Commission to issue tax certificates when we find a sale or exchange of property to be "necessary or appropriate" to effectuate our policies "with respect to the ownership and control of radio broadcasting stations." 26 U.S.C. § 1071. In the past, we have issued tax certificates for sales of cable television systems when we found those sales to be in furtherance of our cross-ownership policies. See Cosmos Cablevision Corp., 33 FCC 2d 293 (1972); King Videocable Co., 49 FCC 2d 1297 (1974); J.A.W. Iglehart, 38 FCC 2d 541 (1972) [all of which were in furtherance of the Commission's broadcast/cable cross-ownership rules]. See also Continental Telephone Corp., 51 FCC 2d 284 (1975); General Telephone & Electronics, 51 FCC 2d 502 (1975) [in furtherance of the Commission's telephone/cable cross-ownership rules]. And see Policy Statement on Issuance of Tax Certificates, FCC 82-497, adopted November 4, 1982.

16/ By our action today, we expressly incorporate the modifications to our tax certificate policy set forth in the expanded Statement of Policy on Minority Ownership of Broadcasting Facilities we have adopted today. Specifically, we will consider issuing tax certificates in transfers to limited partnerships where the general partner (or partners) owns more than 20% of the interests in the cable television system and is a member of a minority group. See FCC 82-____. Additionally, we will consider issuing tax certificates to shareholders upon sales of their interests in a minority-controlled cable television system, when these sales further minority ownership. Id.

17/ This Policy Statement addresses only cable television systems. It is possible, however, that similar considerations may lead us in the future to extend this program to other services where licensees exercise significant editorial discretion over programing transmitted by their facilities.

STATEMENT ON RECOMMENDATIONS OF ADVISORY COMMITTEE ON MINORITY OWNERSHIP

Mark S. Fowler, Chairman, FCC

December 2, 1982

When I became Chairman, one of my most important goals was to create more opportunities for minorities in telecommunications. The more I studied the problem, the more I became convinced that the three major road blocks to more minority ownership are money, money and money. Today's actions aim squarely at the problem of financing minority opportunities. They are the result of hard work by the Advisory Committee, headed ably by my colleague, Henry Rivera.

More than anything, today's actions take a big step in the right direction in fulfilling the goal of full and fair entry into telecommunications for all Americans. By focusing on capital formation, they identify the chief problem and provide the start of a solution. No set of actions, I realize, can bring sudden equality of opportunity to the telecommunications marketplace. But by aiding entry for the minority entrepreneur, we aim our efforts in the right direction.

As President Reagan has said, the best hope for a strong economic future rests with a healthy, growing private sector. And the private sector does best when all have opportunities to enter it.

III. CREATIVE MEDIA FINANCE WITH FCC TAX CERTIFICATES

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

DEC 29 1987

IN REPLY REFER TO:

8940-AG

Stuart A. Shorenstein, Esquire
Friedman, Leeds, Shorenstein & Armenakis
655 Third Avenue
Suite 1100
New York, New York 10017

Dear Mr. Shorenstein:

This is in response to your letter of December 16, 1987, on behalf of PaineWebber Capital, Inc. and PW Partners, L.P., in which you state that on December 16, 1987, they sold their respective beneficial interests in television station WTNH, New Haven, Connecticut, to Cook Inlet Communications, Inc. Television station WTNH is licensed to Cook Inlet Corp., which is a minority controlled entity.

In Minority Ownership in Broadcasting, 52 RR 2d 1301 (1982), the Commission stated that it would issue tax certificates to initial investors in minority licensees, where the investments allow acquisition of a station. Id. at 1308. Your clients qualify for tax certificates under that Commission policy.

In accordance with your request, the enclosed tax certificate certifies that the investments by PaineWebber Capital, Inc. and PW Partners, L.P. provided start-up financing thereby permitting minority acquisition of a broadcast facility in furtherance of the Commission's policy of fostering minority ownership of broadcast facilities.

Sincerely,


Roy J. Stewart, Chief
Video Services Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FED

OCT 11 1989

OCT 11 1989

IN REPLY REFER TO:

8920-KEH

Investors of Southern Star Systems, Inc.
c/o Edward Hayes, Jr., Esq.
Baker & Hostetler
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

In re: WNOO, Chattanooga, TN
WFXU(FM), Soddy-Daisy, TN
(Formerly WYVY(FM))
Investors Application for
Tax Certificate
BAL-871125GI, BALH-871125GF
Granted January 28, 1988

Dear Mr. Hayes:

This refers to your letter of March 20, 1989, on behalf of Southern Star Systems, Inc., requesting that the Commission issue your clients¹ a tax certificate pursuant to Section 1071 of the Internal Revenue Code of 1954, 26 U.S.C. § 1071, as amended.

Your request states that your clients provided start-up capital to Southern Star Systems, Inc., a minority-owned business, in 1983 for the purpose of acquiring broadcast licenses and operating the radio stations WNOO, Chattanooga and WFXU(FM), Soddy-Daisy, Tennessee.² Your request concludes that the financing provided by your clients to Southern Star Systems, Inc. was start-up capital necessary to enable the minority-controlled entity to acquire and operate radio stations WNOO and WFXU(FM) and therefore is consistent with the Commission's policy of granting tax certificates to foster an increase in minority ownership of broadcast facilities, citing Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978), and Policy Statement on Minority Ownership of Cable Television Facilities, 52 RR 2d 1301 (1982).

In the 1978 statement, the Commission stated that it would make use of its authority to grant tax certificates where appropriate to advance its policy of

1 Investors who provided start-up capital and requested the tax certificate were Thomas J. Brooks, Calvin Calhoun, Belinda J. Campbell-Howell, Samuel L. Cosley, Juanita Dawson, Paul A. McDaniel, Lamar Partridge, Richard M. Smith II, Rheubin McGee Taylor, Donald Williams, Albert P. Woodard.

2 Southern Star Systems, Inc. assigned the licenses and sold the assets of WNOO and WFXU(FM) to Pye Broadcasting, Inc. in February of 1988. See Applications Numbers BAL-871125GI and BALH-871125GF, granted January 28, 1988. Pye Broadcasting, Inc. recently assigned the licenses and sold the assets to Tennessee Communications Limited Partnership (BAL-890522GU, BALH-890522GV, granted August 9, 1989).

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JAN 19 1990

IN REPLY REFER TO:

8920-RMK

Edward Hayes, Jr., Esquire
Baker & Hostetler
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, D.C. 20036

In re: KFOX(FM), Redondo Beach, California
Investor's Request for Tax
Certificate
BALH-790420GA

Dear Mr. Hayes:

This is in reference to your request of March 20, 1989, and supplemented October 18, 1989, filed on behalf of Opportunity Capital Corporation ("OCC"), that the Commission issue OCC a tax certificate pursuant to Section 1071 of the Internal Revenue Code of 1954, 26 U.S.C. § 1071, as amended.

In your request you state that OCC provided start-up capital, in the form of debt financing and purchase of Series A, B, and C stock subscription warrants, to KFOX Radio, Inc. ("KFOX Radio"), a company controlled by Black Individuals, in June, 1979 for the purpose of acquiring radio station KFOX(FM), Redondo Beach, California. You further state that: (1) KFOX Radio repurchased the Series A stock warrants in April 1988; (2) KFOX Radio assigned its license (BALH-881208GJ, Form 316) to Torrance Media Partners on January 20, 1989; and (3) J. Dean and Zoe Hazen subsequently purchased the Series B and C stock warrants which were held by OCC. Your request concludes that the financial assistance provided by OCC to KFOX Radio was start-up capital necessary to enable the minority-controlled entity to acquire radio station KFOX(FM) and therefore is consistent with the Commission's policy of granting tax certificates to foster an increase in minority ownership of broadcast facilities. See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978), and Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982).

In the 1978 statement, the Commission stated that it would make use of its authority to grant tax certificates where appropriate to advance its policy of increasing minority ownership of broadcast facilities. Furthermore, in the 1982 policy statement, the Commission stated that tax certificate grants could be used as creative financing tool to significantly increase minority access to the start-up capital necessary to acquire broadcast facilities, thereby effectuating the important policy of promoting minority ownership. Hence, a decision was made by the Commission that "tax certificates will only be available to initial investors who provide 'start-up' financing, which allows for the acquisition of the property" 92 FCC 2d at 857. Since OCC provided an integral part of the critical start-up capital necessary for KFOX Radio to acquire station KFOX(FM), it should be accorded a tax certificate

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

LETTER
June 8, 1989

Released: June 30, 1989

R. Clark Wadlow, Esq.
Schnader, Harrison, Segal & Lewis
1111 19th Street, N.W.
Washington, D.C. 20036

In re:
St. Louis City Communications,
Inc.
CSR-3137

Dear Mr. Wadlow:

The Commission, on its own motion, is hereby reconsidering its action of December 29, 1988 (FCC 88-426).¹

On September 16, 1988, you filed, on behalf of your client, St. Louis City Communications, Inc. (hereinafter "SLCC"), operator of a cable television system serving a portion of St. Louis, Missouri; a petition for special relief. By this petition, SLCC seeks issuance of a tax certificate, pursuant to Section 1071 of the Internal Revenue Code of 1986, as amended, for the sale of SLCC's assets to St. Louis Tele-Communications, Inc., an affiliate of Tele-Communications, Inc. (hereinafter both "TCI"). The instant petition is unopposed.

SLCC states that it is a minority-controlled and operated company: William Johnson, a minority, owns 80 percent of SLCC's stock.² SLCC was incorporated on September 7, 1983, and, on May 15, 1984, entered into an agreement with Mr. Johnson and Chase Enterprises (hereinafter "Chase") to obtain \$2.5 million in financing to meet closing conditions and to commence construction of the cable system. SLCC reports that it has now negotiated an agreement to sell its assets to TCI for approximately \$35 million. SLCC will retire its approximately \$9 million in liabilities, and seeks the requested tax certificate to enable the company, "as a continuing minority-controlled enterprise, to retain the net proceeds of the sale of its assets for the purchase of broadcast properties or cable television systems."

SLCC contends that, as start-up investors in a minority entity, both Chase and Mr. Johnson would be eligible for individual tax certificates upon disposition of their interests in SLCC, citing *Policy Statement and Notice of Proposed Rule Making in Gen. Docket No. 82-797*, 92 FCC 2d 849 (1982), and *Policy Statement on Minority Ownership of Cable Television Facilities*, 52 RR 2d 1469 (1982). In this regard, SLCC claims that in *Connection Communications Corporation*, CSR-3037, Mass Media Bur., released April 23, 1987, the Bureau issued tax certificates to all the initial investors in a minority-owned corporation, including the controlling minority shareholder who was selling its interest in the corporation. Accordingly, SLCC asserts,

Commission policy would be better served by issuing a tax certificate to SLCC instead, on the gain from the sale of its assets to TCI. Chase and Mr. Johnson would thereby be able to retain their investments and profits in SLCC, and SLCC would reinvest \$35 million in cable or broadcast properties controlled by Mr. Johnson. SLCC further notes that its system is surrounded by TCI systems, making TCI the system's only feasible purchaser. SLCC states that both "Chase and Johnson are committed to having SLCC reinvest the proceeds of the sale of the system in controlling interests in operating systems or stations. Thus SLCC . . . will continue as an active and effective owner/operator of cable and/or broadcast properties."

Section 1071 of the 1986 Internal Revenue Code provides:

If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy of, or the adoption of a new policy by, the Commission with respect to the ownership or control of radio broadcast stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033. . . .

With respect to the sale of interests held by initial investors in a minority controlled entity, the Commission's 1982 policy statement clearly stated: "Generally, to be eligible for a tax certificate, such transactions must not reduce minority ownership of and control in the entity below 51%." *Policy Statement and Notice of Proposed Rule Making in Gen. Docket No. 82-797*, 92 FCC 2d at 857. The Commission further explained that "[b]y so requiring remaining 51 percent minority control, we do not mean to preclude consideration of cases whereby 'minority involvement would have been significant enough' to justify the issuance of a tax certificate in the first instance [e.g., limited partnerships]." *Id.* at n. 39. In this case, the controlling minority owner seeks to dispose of his interest in the corporation, and thus the remaining entity would no longer be minority controlled. Under these circumstances, we disagree with SLCC's assertion that Mr. Johnson, the controlling minority shareholder, would be entitled to a tax certificate upon disposition of his 80% controlling interest. In this regard, we note that the facts presented to the Bureau in *Connection Communications Corporation*, did not indicate that the controlling minority owner was selling its interest. It is not apparent that the Bureau would have awarded a tax certificate to the controlling minority shareholder, if it had focused on that fact. Therefore, to the extent that the Bureau's determination in *Connection Communications Corporation* may be interpreted as a departure from our 1982 policy statement, such an interpretation is incorrect. Moreover, it is clear that the Bureau has, in other instances, consistently followed our interpretation of the 1982 *Policy Statement*. See *Ben C. Fisher*, Mass Media Bur., released January 30, 1987 and *Kevin F. Reed*, Mass Media Bur., released January 13, 1986.

It is clear that if the sale of the cable system had been to an entity owned or controlled by a minority, issuance of a tax certificate would be appropriate. See *Minority Ownership of Cable Television Facilities*, *supra*. In this case,

though, we are asked to issue a tax certificate for a sale to TCI, a non-minority. This is clearly beyond the parameters of our current tax certificate policy. The question before us is whether it is appropriate nevertheless to issue a tax certificate to SLCC.

We believe that an extension of our tax certificate policy is not warranted in the instant case. The Commission, by its tax certificate policies, seeks to encourage the acquisition of telecommunications properties by members of minority groups. Thus, in your case, the seller of another cable system is encouraged to sell to your client because of the availability of the tax certificate. Further, your client is encouraged to sell to a member of a minority group for the same reason. If the Commission's policy is successful, therefore, two systems would be under minority control. If the departure from Commission policy you propose were adopted, at best only one cable system would be controlled by members of minority groups. Since your proposal would not serve Commission goals as effectively as the existing policy, we perceive no basis for treating minority- and nonminority-controlled entities differently for tax purposes when they sell to nonminorities.

In view of the foregoing, we find that grant of SLCC's petition is not in the public interest. Accordingly, it is ordered that the petition for special relief (CSR-3137), filed September 16, 1988, by St. Louis City Communications, Inc., IS DENIED.

BY DIRECTION OF THE COMMISSION*

Donna R. Searcy
Secretary

* Commissioner Quello dissenting and issuing a statement; Commissioner Dennis issuing a separate statement.

FOOTNOTES

¹ This action was reported in a News Release, Mass Media Action Report No. MM-365, Mimeo No. 1098, dated December 30, 1988. No text, order, public notice or certificate was ever released.

² The remaining 20 percent of SLCC's stock, pursuant to SLCC's franchise, is owned by St. Louis Philanthropic Organization, Inc. SLCC contends that issuance of this stock was not valid. However, as part of the sale to TCI, this 20-percent stock interest will be retired.

DISSENTING STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

Re: St. Louis City Communications, Inc., CSR-3137

The issue in this case is fairly complex, involving nuances of our investor tax certificate policy that are designed to assist minority ownership in broadcasting and cable. On the specific, indeed unique, facts now before us, I would grant tax certificate to St. Louis City Communications, Inc. (SLCC). In my judgment, the Commission's

decision does not promote minority ownership, contravenes our policy of changing tax certificate policies on a prospective basis and is procedurally defective.

Before proceeding with the specific facts in this case it is important to review the policy goals of our minority tax certificate policy. In 1978, the Commission establishes the important objective of promoting minority ownership through the tax certificate policy. *Policy Statement: Minority Ownership of Broadcast Facilities*, 68 F.C.C.2d 979 (1978) (1978 *Minority Policy Statement*). According to that policy, a tax certificate would be granted to a broadcast licensee that transferred its facility to a minority controlled entity. The policy was designed to benefit the minority purchaser by creating an incentive for the seller, through the tax certificate, to sell to a minority.

Because the 1978 *Minority Policy Statement* was too restrictive, the Commission expanded the tax certificate thereby encouraging further investment in minority enterprises and facilitating the use of tax certificates as a means of creative financing. *Policy Statement and Notice of Proposed Rulemaking*, Gen. Docket No. 82-797, 92 F.C.C.2d 849 (1982) (1982 *Minority Policy Statement*). One innovation adopted was the investor tax certificate. Investors providing "start up" financing, which allows for acquisition of the property, and investors who purchase shares within the first year after the license is issued, which allows for the stabilization of the capital base, are eligible for an investor tax certificate. *Id.* at 857. So as not to unduly restrict the alienability of their interests, the Commission stated further:

Additionally, the identity of the divesting shareholders, as well as the identity of those purchasing the divested shares, is not material, because the goal behind expanding the tax certificate policy is to provide minorities opportunities to procure financing and thereby increase minority ownership of broadcast stations. (emphasis supplied)

Id. at 858. Concerning additional eligibility requirements for obtaining an investor tax certificate, the 1982 Policy Statement concluded:

Generally, to be eligible for a tax certificate, such transactions must not reduce minority ownership of and control in the entity below 51 percent. (emphasis supplied)

Id. at 857. Emphasis should be placed on the word generally, for the Commission stated in a footnote that:

By so requiring remaining 51 percent minority control, we do not mean to preclude consideration of cases where "minority involvement would have been significant enough" to justify the issuance of a tax certificate in the first instance. (See paras. 5 and 12, *supra*).

Id. at 857 n. 39. The paragraphs referenced by this footnote refer to the Commission's decision to reduce eligibility requirements for limited partnerships from 51 percent to 20 percent. The footnote also references a paragraph discussing the need for a more creative and expansive approach to the administration of tax certificates. *Id.* at 855. Therefore, as drafted, the policy statement does not

SEPARATE STATEMENT
OF
COMMISSIONER PATRICIA DIAZ DENNIS

In Re: St. Louis City Communications, Inc., CSR-3137

I write separately to explain why I changed my vote and now oppose SLCC's request for a tax certificate. This does not imply any lack of support for the tax certificate policy. On the contrary, I strongly support it. Minorities own fewer than three percent of all broadcast stations, and an even smaller percentage of cable systems. The tax certificate addresses this severe underrepresentation by giving sellers an economic incentive to seek out minority buyers. Since the policy was adopted in 1978, we have issued 183 tax certificates (178 for broadcast stations and five for cable systems) and the number of minority-owned stations has gradually increased.

I originally voted to issue a tax certificate to SLCC because I thought extending the policy to "tradeups" would further promote minority ownership. Giving SLCC a tax certificate upon the sale of its St. Louis system would have placed more money in SLCC's hands, and would have permitted a minority-owned company to upgrade its holdings more quickly. It would serve the public interest if more minority-owned companies acquired major-market TV stations and cable systems, instead of being largely relegated to marginal AM stations.

Nevertheless, I have decided to vote against this request. Extending our tax certificate policy as SLCC proposes might help a few minority-owned companies but, on balance, it would not contribute to the goals of the Commission's minority ownership policy. I have reached this conclusion for four reasons. First, granting SLCC a tax certificate does not further the primary objective of the tax certificate policy: to increase diversity by encouraging sales to minority buyers. If SLCC could obtain a tax certificate whether or not it sells to a minority-owned company, SLCC would have no incentive to seek out minority buyers. In fact, a grant would create a perverse incentive for minority owners to trade in stations simply to secure the benefit of the tax certificate. Extending our seller tax certificate policy to include non-minority buyers is a step in the wrong direction.

Second, I think the primary goal of our minority ownership policy has been and should continue to be to promote new entry. The biggest hurdle to minority ownership is securing the financing to buy a first property. Once a minority-owned company has operated a station and developed a track record, it will face fewer problems in raising money to buy a second or third station. Of course, the seller tax certificate is not purely a "new entry" policy. We currently grant tax certificates whenever a minority-owned company acquires a broadcast system or cable system, regardless of the number of stations or systems the company already owns. Nevertheless, I do not believe the seller tax certificate policy should be so supple as to cover the sale of a minority-owned facility to a non-minority.

Third, even absent a grant, SLCC and others similarly situated still benefit from our tax certificate policy. SLCC told the Commission that it plans to use the proceeds from the St. Louis sale to buy another media property. That acquisition will qualify for a tax certificate, which will assist SLCC in finding a property and negotiating a favorable price. (The tax certificate, of course, will be

awarded to the seller, but as a practical matter, the buyer and the seller share the benefit of a tax certificate. The premise of our tax certificate policy is that giving a tax certificate to sellers will materially assist minority buyers.)

Finally, as a legal matter this decision follows established Commission policy. Although the 1982 policy statement is not a model of clarity, it appears that the "investor" tax certificate policy SLCC cites was designed to apply only if the station or cable system would continue under minority ownership following the investor's withdrawal. *Policy Statement and Notice of Proposed Rulemaking in Gen. Docket No. 82-797*, 92 FCC 2d 849, 857-58 (1982). For example, if a controlling minority stockholder buys back shares from a MESBIC or another original investor, that transaction would be covered by the investor tax certificate.

Under SLCC's interpretation, we would be obliged to grant a tax certificate whenever a minority-controlled company sells a station, as long as the company is controlled by its original investors at the time of sale. The *Policy Statement*, however, appears to preclude grant of an investor tax certificate to a company such as SLCC:

Generally, to be eligible for a tax certificate such transactions must not reduce minority ownership of and control in the entity below 51 percent.

Policy Statement at 857 [footnote omitted]. See also *Policy Statement* at 858, n. 40. In this case, the "transaction" is sale of the cable company from SLCC to TCI; the "entity" is the cable company which will no longer be owned and controlled by minorities. Therefore, it appears that SLCC is not entitled to receive a tax certificate.

The case law interpreting the investor tax certificate is meager. The decision cites the three relevant cases—*Kevin F. Reed*, Mass. Med. Bur., released January 13, 1988; *Ben C. Fisher*, Mass. Med. Bur., released January 30, 1987; and *Connection Communications Corporation*, CSR-3037, Mass Media Bur., released April 23, 1987. The first two cases flatly denied requests for tax certificates in circumstances similar to SLCC's. In *Kevin F. Reed*, for example, the minority owner "wished to upgrade his broadcast holdings by selling his station to a nonminority person and investing the proceeds in a station that has a potentially larger audience." Nevertheless, the Bureau found "no basis for treating minority- and non-minority-controlled licenses differently for tax purposes when they sell to nonminorities."

In *Connection*, the Bureau granted an investor tax certificate to shareholders of Connection Communications Corporation, a black-owned cable company, when the shareholders sold their stock back to the company. The Bureau noted that the shareholders had provided start-up financing to Connection. In that case, the "transaction" covered by the tax certificate was not sale of assets to a non-minority company, but sale of stock back to the minority-owned corporation. To be analogous to case, Connection would have had to be selling to a non-minority and itself seeking a tax certificate. These were not the facts in *Connection*.

All three "cases" were actually unpublished letters issued by the Mass Media Bureau. None of these decisions is necessarily binding on the Commission. Under the circumstances in this case we should pursue the primary

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

LETTER
October 11, 1990

Released: October 11, 1990

Martin J. Gaynes, Esq. 8940-AG
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Gaynes:

This is in reference to your request of August 31, 1989, filed on behalf of the general partners of Queen City III Limited Partnership (Queen City III), licensee of station WKBW-TV, Buffalo, New York, for the issuance of a tax certificate, pursuant to Section 1071 of the Internal Revenue Code of 1986 and *Minority Ownership in Broadcasting*, 92 FCC2d 849, 857 (1982).

As background, you note that the general partners for whom a tax certificate is sought were the initial stockholders of Queen City Broadcasting, Inc. (Queen City), a minority-controlled corporation formed in 1985 for the purpose of acquiring WKBW-TV. No minority individual owns as much as 50% of the corporation. On January 2, 1986, Capital Cities Communications, Inc. sold WKBW-TV to Queen City Broadcasting of New York, Inc., a wholly owned subsidiary of Queen City. On June 29, 1989, virtually all of the Queen City shareholders (98%) became general partners in Queen City III by trading their respective shares for cash and general partnership units. Further, as a result of bringing in a new limited partner, who purchased 45% of the equity interest in Queen City III, the equity interests of those stockholders who became general partners were diluted by 45%. Thus, you contend that those stockholders/general partners, including minorities, who provided start-up capital to Queen City should receive a tax certificate for the partial divestiture of their respective interests resulting from this dilution.

In *Minority Ownership in Broadcasting*, above, the Commission stated that "the use of tax certificates as creative financing tools" will provide minorities with significant access to financing, thus promoting the important policy of minority ownership. *Id.* at 857. Accordingly, the Commission extended the availability of tax certificates to initial investors providing start-up capital to minority-owned entities and to investors purchasing interests within the first year of licensing. To be eligible, however, the Commission provided that sale of equity interests must not reduce minority ownership and control in the entity below 51 percent. *Id.* The requirement that at least 51% minority control remain after the transaction prompting the certificates was not meant to preclude "consideration of cases whereby minority involvement would have been significant enough to justify the issuance of a tax certificate in the first instance." *Id.* at n. 39. This latter provision was generally intended to recognize the eligibility of entities in which the minority party was the general partner and a substantial (at least 20%) but not controlling equity investor.

In *R. Clark Wadlow, Esq.*, 4 FCC Rcd 5262 (1989), the minority-controlled entity was controlled by a single person, who owned 80 percent of the voting stock of the entity. We denied his request for a tax certificate based on his providing start-up financing to the entity by his purchase of stock in the entity. We stated that, under the circumstances, no tax certificate should be issued to the controlling minority owner, since after selling his entire interest the entity would no longer be minority controlled and the objectives of the minority ownership policy would be frustrated.

Here, we find the situation and circumstances different. In particular, each investor equally paid full value for the initial interest and no single individual has as much as a controlling interest. More importantly, even though minority ownership has been diluted by 45 percent, the licensee remains under the control of minorities, who hold, in the aggregate, a 55 percent interest. The objective of the Commission's tax certificate policy is to increase the number of minority-owned stations; that is, stations in which the majority of the ownership interest is held by a minority or a group of minorities. Encouraging initial investments by minorities, as well as by others, in entities that are being formed to acquire broadcast media interests as minority-controlled applicants clearly furthers this objective. To hold otherwise would create a disincentive for minorities to come together and invest in an entity that they collectively will control. Accordingly, under the circumstances in this case, we believe that our policy set forth in *Minority Ownership in Broadcasting*, above, should be read to permit the issuance of tax certificates to the initial investors in Queen City.

In view of the foregoing, we find that the Commission's policy of fostering minority ownership will be served and that, therefore, a tax certificate should be issued. The enclosed tax certificate certifies that those identified investors, who acquired stock interests no later than the end of the first year after WKBW-TV's license was issued to Queen City Broadcasting of New York, Inc. are entitled to a tax certificate. This letter was adopted by the Commission on September 21, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

CERTIFICATE ISSUED BY THE FEDERAL
COMMUNICATIONS COMMISSION PURSUANT TO
SECTION 1071
OF THE 1986 INTERNAL REVENUE CODE
(26 U.S.C. SECTION 1071)

On January 2, 1986, Capital Cities Communications, Inc. sold WKBW-TV, Buffalo, New York, to Queen City Broadcasting of New York, Inc., a wholly owned subsidiary of Queen City Broadcasting, Inc., an entity controlled by a group of minorities, none of whom held as much as a controlling interest. On June 29, 1989, virtually all of the shareholders (98%) in Queen City Broadcasting, Inc. became general partners in Queen City III Limited Partnership by trading their respective shares for cash and general partnership units. The limited partnership would

FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 5 2 22 PM '90
JAN 24 1990

IN REPLY REFER TO:

8920-MW

Eugene T. Smith, Esquire
715 G Street, S.E.
Washington, D.C. 20003

In re: KOKL(FM), Okmulgee, OK
BALH-890615H1
Application for Tax Certificate

Dear Counsel:

This letter refers to: your request of July 10, 1989 for a tax certificate pursuant to Section 1071 of the Internal Revenue Code of 1986; (ii) a supplement to the request, filed on August 4, 1989; (iii) the Commission's letter of October 11, 1989, requesting additional support for the request; and (iv) your October 30, 1989 response. The original tax certificate was requested as a result of the August 2, 1989 grant of the above captioned application to assign the license of KOKL(FM) from Brewer Communications, Inc. (Brewer) to Integrated Broadcasting Company, Inc. (Integrated).

In the contract of sale for the subject assignment application, it was specified that Brewer, the assignor in this case, is party to an agreement along with Reprise Radio, Inc. (Reprise) and Stillwater Publishing Co. (Stillwater), dated September 25, 1987, under which Reprise agreed to purchase from Brewer the assets of Station KOKL(FM). In order to sell the assets of Station KOKL(FM) to Integrated (the assignee here), Brewer had to secure the consent of Reprise and Stillwater to terminate their 1987 agreement and to fulfill or approve other covenants and conditions of that agreement. Reprise and Stillwater agreed to give consent on the terms set forth in the present agreement. The present agreement also set forth the consideration involved with regard to Reprise and Stillwater¹ as a result of the termination of the 1987 agreement.

In the request for tax certificate which you filed on July 10, 1989, you failed, inter alia, to list the buyer's ownership structure to permit the Commission to determine whether or not the buyer qualified as a minority enterprise. The staff then requested that the request for tax certificate be amended for inclusion of these omitted facts.

¹ Brewer paid \$400,000 to Reprise and \$500,000 to Stillwater to terminate their agreement and relinquish their rights to purchase KOKL(FM).

is proposed to parties with a significant minority interest to determine whether there is substantial likelihood that diversity of programming will be increased. In such circumstances, we will make use of our authority to grant tax certificates to the assignors or transferors where we find it appropriate to advance our policy of increasing minority ownership (emphasis added).

Id., at 982-3 (footnotes omitted). In 1982, the Commission reaffirmed its commitment to increasing minority ownership of broadcast facilities, expanding the tax certificates policies to include limited partnership (where the minority general partner holds at least a 20% equity interest) and to investors who provide "start-up" capital to enable a minority controlled entity to construct or purchase a broadcast station. In so doing, the Commission noted:

Tax certificates are authorized, under 26 U.S.C. § 1071, in sales or exchanges of broadcasting properties where the Commission determines that such sales or exchanges are "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by the Commission with respect to the ownership and control of radio broadcasting stations....." A tax certificate enables the seller of a broadcast station to defer the gain realized upon a sale, either by: (1) treating it as an involuntary conversion, under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property under 26 U.S.C. § 1071, or both.... Thus, extension of the tax certificate and distress sale policies fosters minority ownership by providing broadcast licensees with an incentive to transfer their interests to minority-owned or controlled entities.

Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849, 850-51 (1982).

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 11 1990

IN REPLY REFER TO:
4410-AG

Donna C. Gregg, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N. W.
Washington, DC 20037

Steven J. Horvitz, Esq.
Hogan & Hartson
555 13th Street, N. W.
Washington, DC 20004

In re: Jack Kent Cooke Incorporated
CSR-3318

Dear Ms. Gregg and Mr. Horvitz:

On December 1, 1989, you filed on behalf of your clients Jack Kent Cooke Incorporated; Cooke Media Group, Inc; and certain direct and indirect subsidiaries of either of them (herein collectively "Cooke"), and Falcon Community Ventures I Limited Partnership (herein "FCVILP"), the referenced petition for special relief. By this petition, Cooke and FCVILP seek issuance of a tax certificate to Cooke, pursuant to §1071 of the Internal Revenue Code of 1986, for Cooke's sale of certain of its cable television systems to FCVILP.¹ The petition is unopposed.

Petitioners state that Cooke has entered into an agreement with Falcon Holding Group, Inc. (herein "Falcon") to sell to Falcon or to its assignee substantially all the assets of certain cable systems serving specified communities in Oregon, in Washington, and in Georgia. Subsequently, Falcon assigned its right to purchase these systems to FCVILP, a limited partnership whose sole general partner and 20.1% equity owner is Falcon Community Enterprises, Inc. (herein "Community Enterprises"). Community Enterprises is a corporation wholly owned and controlled by the following six members of minority groups, each of whom owns 1/6 of the stock of the company: Tim Wallis, an Alaskan native, who is Chairman of the Board of Directors; Barry Lawson Williams, a Black American, who is President and a

¹ These systems serve the following communities: Astoria, Clatsop County, Gearhart, Hammond, Seaside, Warrenton, Roseburg, The Dalles, Wasco County, and Douglas County, Oregon; Ilwaco, Long Beach, Dallesport, Murdock, Nahcotta, Ocean Park, Seaview, Pacific County (Long Beach), Cathlamet, and Pacific County (Naselle) Washington; and Aragon, Polk County, Van Wert, and the City of Rockmart, Georgia.

Commission, adopted in 1982. The submitted documentation demonstrates that Community Enterprises exercises control over FCVILP, and has an attributable interest in excess of 20% in the partnership. We therefore find that issuance of the requested tax certificate is warranted, contingent upon consummation of the proposed sale.

In view of the foregoing, we find that grant of the instant petition is in the public interest. Accordingly, the Commission, by its Mass Media Bureau, hereby grants the instant petition for special relief, pursuant of §0.283 of the Commission's Rules.

Sincerely,

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

Cases:

Cloutier v. United States, 709 F.2d 480 (C.A. 7th Cir., 1983) (IRS guidelines for section 1071 elections)

Jefferson Standard Broadcasting Company v. FCC, 305 F. Supp. 744 (D.C. N.C., 1969) (construing "necessary or appropriate" and "involuntary conversion")

Jones v. Alfred H. Mayer Co., 88 S.Ct. 2186 (1968) (prohibition against racially restrictive covenants)

Kansas State Network, Inc. v. FCC, 720 F.2d 185 (D.C. Cir. 1983) (citing "practical economic necessity" doctrine as "rational" construction of section 1071)

Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990) (upholding Congressional authorization of minority enhancement credits and distress sales)

Mission Trace Investments, Ltd. v. Small Business Administration, 622 F. Supp. 687 (D.C. Colo. 1985) (SBA Opinion Molder Rule) (comparing scarcity of capital with scarcity of spectrum)

Administrative Decisions:

Cable Television System Definition (Report and Order), FCC 90-340 (released: December 21, 1990)

Coast TV, FCC 90-120 (released: April 27, 1990) (undue influence of limited partner)

Continental Telephone Corp., 43 FCC 2d 837, recon. granted, 51 FCC 2d 284 (1975) (tax certificate decision) ("practical economic necessity" doctrine)

Cosmos Cablevision, 33 FCC 2d 293 (1972) (tax certificate) ("single operational entity" test)

Long Pride Broadcasting, Inc., 48 RR 2d 1243 (1980) (denial of certificate for sale to voting trust beneficiary)

Miracle Strip Communications, 5 FCC Rcd 581, 583, n. 7 (1990) (interpretation of legislative prohibition against modification of minority and female ownership policy allows reliance on "precedent in effect when Congress enacted the appropriations legislation")

TABLE OF AUTHORITIES CONTINUED

Miscellaneous

- Barrett, Andrew, FCC Commissioner, "Ownership in the Communications Industry: Opportunities for Minorities and Females in the 1990's," Communications Lawyer, (Spring 1990)
- Blake and McKenna, "Section 1071: Deferral of Tax on FCC Sanctioned Dispositions of Communications Properties," 36 Tax L.Rev. 101 (Fall 1980)
- FCC Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, Strategies for Advancing Minority Ownership Opportunities in Telecommunications (1982)
- FCC Minority Ownership Task Force, Minority Ownership in Broadcasting (1978)
- Hammond, "Now You See It, Now You Don't: Minority Ownership in an Unregulated Marketplace," 32 Cath. L. Rev. 633 (1983)
- Krasnow and Kennard, "Tax Certificates: A Way of Encouraging Minority Ownership of Broadcast Stations and Cable Systmes," Broadcast Financial Journal, November/December 1988.
- Sikes, Alfred C., FCC Chairman, Remarks before the 1989 National Black Media Coalition Annual Conference, (October 13, 1989)
- Washington, Frank, "The Making of the Minority Tax Certificate: One Person's Perspective," Annual Seminar of the National Association of Minorities in Cable (1989) (unpublished)