

response to a petition filed by Great Alaska Electric Radio Company, Inc. ("petitioner"). Only the petitioner filed comments in the proceeding, in which it restated its desire to apply for the channel, if assigned.

2. In view of the fact that the proposed assignment could provide a fourth FM station at Fairbanks, Alaska, the Commission believes that the public interest would be served by assigning Channel 240A to that community. The channel can be assigned in compliance with the minimum distance separation requirements.

3. Canadian concurrence has been obtained in the assignment of Channel 240A at Fairbanks, Alaska.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, that effective March 22, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Fairbanks, Alaska	240A, 266, 273, and 284.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission,

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-3443 Filed 2-8-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-699; RM-4170]

FM Broadcast Station in Port Huron, Michigan; Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns a second commercial FM channel to Port Huron, Michigan, in response to a petition filed by Midwest Radio Consultants, Inc.

EFFECTIVE DATE: March 30, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: January 17, 1983.

Released: January 27, 1983.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 FR 45059, published October 13, 1982, proposing the assignment of Channel 272A to Port Huron, Michigan, as that community's second FM assignment, in response to a petition filed by Midwest Radio Consultants, Inc. ("petitioner"). Supporting comments were filed by petitioner reiterating its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. The Commission has determined that the public interest would be served by assigning Channel 272A to Port Huron, Michigan, since it could provide a second local FM service.

3. As explained in the *Notice*, the instant proposal requires a site restriction of 2.7 miles north of Port Huron to avoid short-spacing to Station WLBS (Channel 274), Mt. Clemens, Michigan. Additionally, the proposed allocation requires the substitution of Channel 288A for Channel 272A at Chatham, Ontario, for which the Canadian Government has given its concurrence.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 30, 1983, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows with respect to the listed community:

City	Channel No.
Port Huron, Michigan	272A, 296A.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-3444 Filed 2-8-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-351; RM-4104]

TV Broadcast Stations in La Salle and Pontiac, Illinois; Amendment of Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF-TV Channel 53 to Pontiac, Illinois, in response to a petition filed by Livingston County Broadcasters. The original proposal to reassign UHF-TV Channel 35 from La Salle to Pontiac, Illinois, was denied.

EFFECTIVE DATE: April 1, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Adopted: January 17, 1983.

Released: January 31, 1983.

1. On July 1, 1982, the Commission issued a *Notice of Proposed Rule Making*, 47 FR 29854, published July 9, 1982, in the above-entitled proceeding in response to a petition filed by Livingston County Broadcasters ("petitioner"), proposing the deletion of UHF-TV Channel 35 from La Salle, Illinois, and its reassignment to Pontiac, Illinois. Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned.¹ Comments in opposition were filed by Thomas J. Mikos ("Mikos") and WORD TV, Inc. ("WORD"), to which the petitioner responded.

2. In his comments, Mikos advises that he has filed an application for Channel 35 at La Salle. Therefore, Mikos asks that we disregard petitioner's previous statement that there is no interest in that channel. In view of the pending application, Mikos asserts that petitioner's proposal is inconsistent with

¹ Petitioner subsequently submitted late-filed comments in which it proposed alternatively to apply for any available channel at Pontiac should the Commission decide to retain Channel 35 at La Salle.

prior Commission precedent. Generally, the policy is to retain an existing assignment for which there is interest in applying unless there is a clear preference for the new community. *Eugene and Salem, Oregon*, 15 R.R. 2d 1571 (1969).

3. WORD opposes the petition because it also wishes to apply for Channel 35 at La Salle. As for the comparative factors, WORD notes that neither Pontiac nor La Salle have other existing local television services. Each is served by co-owned AM and FM stations (WLPO and WAJK(FM), La Salle; WPOK and WPOK-FM, Pontiac). Further, WORD remarks that Pontiac will ultimately receive service from TV Station WBLN in nearby Bloomington, Illinois, for which a construction permit is outstanding, while La Salle is over 50 miles from the closest existing UHF television stations in Joliet and Peoria, Illinois. Under the circumstances, WORD claims that Pontiac cannot be awarded a clear preference to justify the proposed reassignment, citing *Martin and Salyersville, Kentucky*, 50 R.R. 2d 502 (1981).

4. WORD remarks that pursuant to established Commission precedent, the burden of justifying reassignment of a channel for which a party stands ready to apply falls on the petitioning party, citing *Martin and Salyersville, Kentucky, supra*. Under the circumstances recited, WORD claims that petitioner has not met its required burden, and therefore, Section 307(b) of the Communications Act dictates that the television channel allocation be maintained at La Salle in order to provide a fair, efficient and equitable distribution of frequencies.

5. In response to Mikos' opposition, petitioner alleges that when an allocation remains unused for a prolonged period of time, public interest factors require comparing community needs on an equal basis to determine where that allocation could be utilized more effectively. Thus, petitioner argues, the mere filing of an application by Mikos does not address which community is more deserving of the allocation.

6. In response to WORD's opposition, petitioner, in essence, asserts that Pontiac is more deserving of a channel than is La Salle, based upon the larger size of its community and the fact that neither Pontiac nor Livingston County presently has local television service. Petitioner also remarks that La Salle is located 44 miles from a UHF-TV station at De Kalb, for which a construction permit has been issued, and 20 miles from an educational UHF allocation at Streator, Illinois. Given these facts,

petitioner maintains that since Pontiac is not served primarily or secondarily by Bloomington or Peoria stations, the Streator allocation must weigh heavily on the application of Section 307(b). If Channel 35 is retained in La Salle, petitioner maintains that La Salle County would be the beneficiary of two Grade A service contours while Pontiac would still have no primary television service.

7. In an attempt to provide each community with a UHF channel, petitioner proposes as an alternative that if Channel 35 is reassigned to Pontiac, either Channels 37, 53 or *64+ (if deleted at Streator), could be assigned to La Salle in conformity with the minimum distance separation requirements.

8. Petitioner initially stated that it preferred Channel 35 in lieu of a higher channel since local viewing is presently tuned to lower channels on the dial. Thus, it maintains that assignment of a higher channel would result in a marketplace disadvantage.

9. Petitioner appended to its comments letters from solicited Pontiac citizenry and organizations advocating support of the reassignment of UHF-TV Channel 35 to Pontiac, Illinois.

10. Petitioner's preference for Channel 35 is based on its concern that a higher channel would create a marketplace disadvantage. Such a concern has not been a basis for allocations decisions. Even though local viewing may be currently tuned to lower channels on the dial, the Commission does not recognize differences between lower and higher UHF channels. *Cleveland and Lorain, Ohio*, 9 R.R. 2d 1507 (1967); *Houston, Texas*, 50 R.R. 2d 1420 (1982). As a general rule, we will not assign channels solely because an interested party desires lower placement on the UHF band. See, *New Smyrna Beach, Florida*, 50 R.R. 2d 1714 (1982).

11. Petitioner has argued that the test should be based on which community has a greater need for the channel. However, petitioner does not cite any cases in support of this position. Our policy has been to retain an existing assignment for which there is an interest absent a clear preference for reassigning the channel elsewhere. See, *Martin and Salyersville, Kentucky, supra*. As we view the comparative factors, the assignment would provide a first local television service at either community. The other "catch-all" factors—size of communities, reception services, location—are not significant enough to constitute a clear preference meeting the test for reassignment in this type of case.

12. In making the above determination, we are not unmindful of the fact that the channel has remained vacant at La Salle for many years and that the pending applications were filed after the petition for rule making. However, as a matter of administrative finality, we believe it appropriate to afford due consideration to retention of an existing assignment when to do otherwise would add an element of instability to our assignment proceedings. See, *West Liberty and Flemingsburg, Kentucky*, BC Docket No. 81-616, Mimeo No. 31079; *Martin and Salyersville, Kentucky, supra*; and *Lumberton and Long Beach, Mississippi*, Mimeo No. 1557, released January 13, 1982. We must view the pending applications as valid attempts to provide a first local service to La Salle rather than efforts to defeat a Pontiac assignment as petitioner would have us believe.

13. Moreover, our decision to retain Channel 35 at La Salle is reinforced by the fact that Channels 37 and *64 are unavailable for reassignment to that community. Since 1963, UHF-TV Channel 37 (608-614 MHz) has been reserved for the exclusive use of the radio astronomy service throughout the United States.² Channel *64 is reserved for noncommercial educational use at Streator, Illinois. According to Commission precedent, in such instances, we have steadfastly denied dereservation where, as here, it is apparent that an alternate channel exists which could be assigned to accommodate a commercial interest. See, *Vancouver, Washington*, 44 R.R. 2d 1498 (1980).

14. We view the resolution of this proceeding as turning on the availability of another channel at Pontiac. Petitioner's late-filed expression of interest in any such channel is a viable solution that would serve the public interest by providing Pontiac with its first local television service. Accordingly, we have chosen Channel 53 as the next lowest channel available for assignment to Pontiac.

15. In order to accommodate the assignment of Channel 53 to Pontiac, the transmitter site must be located approximately 12.2 miles southwest of the community to avoid short-spacing to Channel 54 (unused) in Kankakee, Illinois, and to Channel 58 (unused) at Danville, Illinois.

16. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as

² See 1 R.R. 2d 1501 (1963).

amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered that effective April 1, 1983, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, it amended as follows:

City	Channel No.
Pontiac, Illinois	53

17. It is further ordered, that the petition of Livingston County to reassign UHF-TV Channel 35 from La Salle to Pontiac, Illinois, is denied.

18. It is further ordered, that this proceeding is terminated.

19. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082, 47 U.S.C. 154, 303)

Federal Communications Commission,

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-3442 Filed 2-8-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[FCC 82-523]

Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Policy Statement.

SUMMARY: The Commission's Policy Statement provides that: (1) Tax certificates and distress sales will be available to limited partnerships where the minority general partner owns at least twenty percent of the broadcast entity; (2) tax certificates will extend to shareholders that divest their interest in a minority-owned or controlled entity, when divestiture furthers minority ownership; and (3) distress sale petitions will be processed and granted by the Mass Media Bureau under delegated authority. This action is taken in the interest of facilitating minority ownership.

DATE: Policy Statement effective December 13, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ava H. Berland, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 2, 1982.

Released: December 13, 1982.

By the Commission: Chairman Fowler issuing a separate statement.

In the Matter of Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, FCC 82-523, Policy 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 diversity in the control of the media and thus diversity in the selection of available programming, benefitting the public and serving the principle of the First Amendment.² This *Policy Statement* will deal with our continuing concern with enhancing minority ownership of broadcast properties.

Background

2. To ensure the programming reflects and is responsive to minorities' tastes and viewpoints, the Commission has promulgated equal employment opportunity regulations requiring licensees to institute affirmative action programs,³ and ascertainment procedures requiring licensees to conduct discussions with significant groups, including minority leaders, in the community.⁴ However, it became

¹For 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).

²The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." * * * *Associated Press v. United States*, 326 U.S. 1, 20 (1943).

³See 47 CFR 73.125, 73.301, 73.599, 73.660, and 73.793; see also *Nondiscrimination in Employment Practices of Broadcast Licensees*, 13 FCC 2d 706, 774 (1968). It should be noted that the Commission recently extended its equal employment opportunity regulations to two newly authorized services, low power television, *Low Power Television*, 47 FR 21468 (May 18, 1982), and direct broadcast satellite systems, *Report and Order*, 47 FR 31553 (July 21, 1982). See also *Nondiscrimination Employment Practices of Broadcast Licensees*, 54 FCC 2d 354, 356 (1975).

⁴*Ascertainment of Community Problems by Broadcast Applicants*, 57 FCC 2d 418, 419 (1976). We should point out that while we eliminated formal ascertainment requirements for commercial radio stations in our radio deregulation proceeding (BC Docket No. 79-219), we nevertheless indicated that broadcasters could not engage in intentional discrimination against minority groups in their selection of issues to be addressed with programming. *Deregulation of Radio*, 84 FCC 2d 968, 978 (1981). We cautioned that such discrimination would be viewed with "utmost gravity." *Id.* at 1089.

apparent that in order to broaden minority voices and spheres of influence over the airwaves, additional measures were necessary. In our *Statement of Policy on Minority Ownership of Broadcasting Facilities* (hereinafter cited as the *1978 Policy Statement*),⁵ we noted that:

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 minorities continue to be inadequately represented in the broadcast media. * * * Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the nonminority audience.

3. Thus, in 1978, we articulated the important policy goal of encouraging minority ownership of broadcast facilities, and implemented that policy by announcing the availability of tax certificates and distress sales to minority-owned or controlled enterprises.⁶ 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 a broadcasting station." * * * 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,

⁵68 FCC 2d 979, 980-981 (1978).

⁶For a more detailed discussion of tax certificates, see paragraph 13, *infra*, and of distress sales, see paragraph 19, *infra*.

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

extension of the tax certificate and distress sale policies foster 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.

5. Since 1978, we have approved 27 distress sales and 55 tax certificates, which have contributed significantly to increased minority ownership in broadcasting. However, we consider the ever-present "death of minority ownership" in the telecommunications industry to be a serious concern, and we are committed to further encouraging minority entry into the industry. We therefore created the Advisory

Committee on Alternative Financing for Minority Opportunities in Telecommunications (Advisory Committee) for the purpose of exploring means to facilitate minority ownership of telecommunications properties.¹⁵

6. This *Policy Statement* emanates from recommendations pertaining to the acquisition of broadcasting facilities that were proposed by the Advisory Committee. The Advisory Committee's recommendations were primarily directed toward ameliorating existing Commission policies which tend to inhibit minority entrance into the broadcasting market. Specifically, the Committee recommended that the Commission:

(1) Clarify the 1978 *Policy Statement* to indicate that (minority) general partners, holding more than a twenty percent interest in limited partnerships, exercise sufficient control and satisfy the test for tax certificates and distress sales;

(2) Adopt a "capitalizing feature" for tax certificates to enable shareholders with less than a controlling interest in a minority-controlled broadcasting entity to sell their interest and become eligible for a tax certificate;

(3) Expedite the handling of distress sale petitions by delegating authority to the Mass Media Bureau to process and grant those petitions that meet Commission standards and are consistent with Commission policies;

(4) Expand the rights of seller-creditors, including the right of reversionary interests in broadcast licenses, in seller financed transactions;

(5) Amend the multiple ownership rules to permit increased equity participation by venture capital companies in the acquisition of telecommunications properties by minority entrepreneurs;¹⁶ and

(6) Amend the multiple ownership rules to permit established broadcasting entrepreneurs to acquire equity interests in minority-controlled entities.¹⁷

¹⁵ The Advisory Committee was created in September of 1981, and was comprised of leaders in the financial, telecommunications, private and public sectors. For a list of Advisory Committee members, see Appendix A.

¹⁶ Specifically, the Advisory Committee recommended that the multiple ownership rules (see note 11, *supra*) be amended to either exempt or raise the "reportable interest" level of venture capital companies (including private venture capital investment companies and small business investment companies).

¹⁷ As an alternative, the Advisory Committee recommended that "the established multiple owner [be allowed] to acquire the additional prohibited property, provided he assisted a minority in the financing of another comparable venture." Such "joint venturing" was deemed desirable, in that experienced broadcasters afford managerial and technical expertise, and may provide additional

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. Additionally, we will not address seller-creditors' rights in this *Policy Statement*; that matter is subject to a separate *Notice of Proposed Rule Making* which we adopted today.

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,

financing to minority entrepreneurs just entering the complex field of telecommunications.

¹⁸ 1978 *Policy Statement*, *supra*, at 963 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 vote 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.

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 FCC 2d 431 n. 6 (1980).

⁹ *TV 8, Inc. v. FCC*, 495 F. 2d 929, 937-38 (D.C. Cir. 1973) *cert. den.*, 418 U.S. 980 (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 CFR 73.35, 73.240 and 73.636.

¹¹ 47 CFR 73.3597.

¹² *Minority Ownership of Broadcasting Facilities*, 69 FCC 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 FCC 2d 955, 997 (1967), the allocation requirements were waived and a Black-owned daytime broadcast station was permitted to operate at night.

¹⁴ *E.g.*, in *Rosemar Broadcasting Co., Inc.*, 54 FCC 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.

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 which held a 25 percent limited partnership interest in the entity. By so issuing the tax certificate, we recognized that where the general partner is a minority individual with a substantial, but not controlling, equity interest in the entity, sufficient minority involvement has been demonstrated to justify issuance of a tax certificate. We cautioned, however, that "serious concern would arise where tax certificates are sought for sales to limited partnerships in which minorities exercise control but have no substantial ownership interests."

8. The Advisory Committee recommended that the Commission explicitly recognize the unique nature of limited partnerships. The Advisory Committee requested the Commission to indicate that in cases where the general partner is a minority individual and owns more than 20 percent interest in the broadcasting entity, there exists sufficient minority involvement to justify favorable application of the Commission's tax certificate and distress sale policies.

9. Limited partnerships are creatures of statute. While the laws vary from jurisdiction to jurisdiction, the general scheme—in terms of constitution, purpose and effect—remains the same.²¹ Essentially, a limited partnership is a business enterprise composed of: (1) One or more general partners who exercise complete managerial control over the business' affairs and who are personally liable for the partnership debts; and (2) one or more limited partners who invest capital and share in the profits, but do not exercise any managerial control and do not incur any personal debts beyond their initial capital contribution.²² Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest with parties who are willing to expend their energies and efforts actively running a business.²³ Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has

limited liability and lacks a voice in the operation of the enterprise.²⁴

10. In *Anax Broadcasting, Inc.*,²⁵ we determined that the failure to adequately identify the limited partners in a construction permit application was insignificant and did not require dismissal of the application because, under the limited partnership agreement, the limited partners had only a passive interest in the enterprise (*i.e.*, they would not participate in the station's daily operations).²⁶ We also stated that the transfer of additional shares to the general partner (which increased his ownership 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 partnerships where the general partner, or partners, owns more than 20 percent of the broadcasting entity and is a member, or are 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 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.

13. In essence, the Advisory Committee recommended that the Commission adopt a policy whereby shareholders in a minority-controlled broadcasting entity would be eligible for a tax certificate upon the sale of their shares, provided their interest was acquired to assist in the financing of the acquisition of a broadcast facility. According to the Advisory Committee:

This expansion of the tax certificate would enable minority entrepreneurs to attract investors before the transaction is completed, when securing financing is critical, by promising them significant capital gains deferral on the sale of their interest to the controlling shareholders.

[Additionally], this "capitalizing feature" of the tax certificate would enable investors to sell their interest at any time and apply for a tax certificate. Therefore, the capitalizing feature would also serve as a major incentive for investment in minority businesses after the entity has acquired a broadcast property, thereby stabilizing the capital base of existing minority-owned or controlled businesses.³²

By so broadening the tax certificate policy, the pressing dilemma minority entrepreneurs face—the lack of available financing to capitalize their telecommunications ventures—is met and a creative tool of financing is

²¹ *Hirsch v. DuPont*, 396 F. Supp. 1214 (S.D. Calif. 1975), affirmed, 553 F. 2d 750 (1975); *Lichtyger v. Franchard Corp.*, 223 N.E. 2d 669, 673 (1966). In fact, any active participation in the enterprise's affairs would remove the limited partner's shelter and subject him to personal liability as a general partner. *Lichtyger v. Franchard Corp.*, supra, at 673; *Toor v. Westover*, 200 F. 2d 713, 715 (9th Cir. 1953), cert. den. 345 U.S. 975 (1953).

²² 49 RR 2d 1589 (1981).

²³ *Id.* at 1593-1594.

²⁴ *Id.* at 1593.

²⁵ 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.

²⁶ 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 FCC 2d 713, 715 (1981).

²⁷ *The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications*, pp. 6-9 (May 1982) (hereinafter cited as Final Report).

²⁸ See paragraph 5, supra.

²⁹ Final Report, supra at 8.

³⁰ 68 Corpus Juris Secundum, Partnership, § 449-450.

³¹ *Evans v. Galardi*, 546 F. 2d 313, 317 (1976).

³² *Id.* at 318.

created. Additionally, the Advisory Committee states that this would allow "minority entrepreneurs to share more meaningfully in the benefits of section 1071."³³

14. Section 1071 of the Internal Revenue Code confers broad jurisdictional powers upon the Commission, normally reserved to the Treasury, to issue tax certificates.³⁴ The Commission's grant of a tax certificate is solely dependent upon its finding that a sale or exchange of property is "necessary or appropriate" to effectuate the adoption of a new policy or a change in an existing policy relating to the ownership and control of broadcasting properties. The Commission establishes policies in the first instance and makes the determination as to whether a particular transaction furthers a specific policy. In the past, the Commission's strict construction of the statutory term "necessary or appropriate" led it to require a showing of the "causal relationship" between the divestiture,³⁵ and the specific Commission policy, as a condition for the issuance of a 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" requirement.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 of the marketplace which all licensees must face. 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 broadcasting stations.⁴⁰

17. Generally, tax certificates have been issued only upon completion of sales transactions. However, upon request we have issued advisory opinions on whether a tax certificate would be forthcoming once the sale or exchange occurred.⁴¹ Given the inherent uncertainties attendant on negotiations and various potential factual circumstances, we still would be reluctant to issue tax certificates *prior* to the actual sale or exchange. Thus, we are adopting the Committee's proposal but limiting it to indicate that tax certificates will be available upon the actual divestiture of shares by investors who initially purchase shares in the broadcasting entity or purchase shares within one year after the issuance of a broadcast license, and who show that their capitalization either enabled a minority owned or controlled entity to acquire a broadcast property or provided necessary start-up financing. If parties have uncertainties regarding the tax consequences of prospective transactions, they may request a declaratory ruling from the Commission. Such requests will be handled as expeditiously as possible.

Expedited Processing of Distress Sales

18. The Committee recommended that the Commission delegate authority to the Mass Media Bureau to process and grant distress sale petitions that are consistent with established Commission policy. As we previously noted, our distress sale policy marks a departure from our long established practice of prohibiting a licensee in a renewal or revocation hearing from disposing of its interest prior to the resolution of issues in its favor.⁴² In 1978, we stated that "applications by parties seeking relief under our * * * distress sale policies can be expected to receive expeditious processing." However, to safeguard against possible abuse and to ensure that our policy objectives were being

³³ *Id.* at 9.

³⁴ Blake and McKenna, *Section 1071: Deferral of Tax on FCC Sanctioned Dispositions of Communications Properties*, 36 Tax L. Rev. 101, 103 (Fall 1980).

³⁵ See *Public Notice*, No. 36410, FCC 56-919 (September 27, 1956). But see *Jefferson Standard Broadcasting Co. v. FCC*, 305 F. Supp. 744, 748-749 (W.D.N.C. 1969), where the Court determined that Congress did not intend to restrict Section 1071 to involuntary divestitures and ordered the Commission to issue a tax certificate. The Court stated that "[e]ntitlement to the tax deferral certificate contemplated in Section 1071 is not dependent on whether the sale was 'involuntary' or was directly ordered by court or by the Commission." *Id.* at 749.

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 2d 1831, 1832 (1970).

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

³⁸ Prior to 1978, the tax certificate policy only applied to divestitures 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 CFR 76.501 *et seq.* We do not anticipate that this revised policy will affect the conferring of tax certificates as a creative financing mechanism 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*.)

⁴⁰ For example, assume shareholder A, a Black person, owns 70 percent of Corporation X, while stockholders B and C each own 15 percent. If B and C purchased their shares before or within one year after acquisition of a license, they can later sell their interest and be eligible to receive a tax certificate. Whether B and C and/or subsequent buyers are racial or ethnic minorities would be inconsequential—what is relevant is that B and C provided necessary financing enabling a minority-owned or controlled entity to acquire and start a broadcasting station, thereby increasing minority ownership in the market. So long as the entity is minority controlled, it is immaterial whether minority members own 51 percent or 91 percent.

⁴¹ *William S. Green*, 59 FCC 2d 78, 79 (1979);

J.A.W. Iglehart, 38 FCC 2d 541, 542, (1972).

⁴² 1978 Policy Statement, *supra* at 963.

met, the Commission stated that it (rather than the staff) would administer the 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.

Conclusion

20. Except as modified herein, the Commission reaffirms its 1978 Policy Statement and its ongoing efforts to increase minority 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 separate rule making proceeding, subject to public notice and comment, with a view toward expanding seller-creditors' rights and protections.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications
FCC Commissioner Henry M. Riveria,
Chairman

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 FCC 2d 156, 163-164 (1980); *Northland Television, Inc.*, 72 FCC 2d 51, 54-56 (1979).

Edmund H. Cardona, Special Assistant

Executive Committee

Anne P. Jones, FCC Commissioner

Joel L. Allbritton, Allbritton
Communications, Inc.

Virginia A. Dwyer, American Telephone
& Telegraph Co.

Coy Eklund, The Equitable Life
Assurance Society of the United
States

Joseph Laitin, Private Consultant

Charles W. Walker

Broadcasters, Charles W. Walker
Associates, Inc.

Financia Panel

Tenney I. Deane, First Energy
Associates

Chris Flor, Heller-Oak Communications
Corp.

Lee M. Hague, Hague and Company,

Ragan A. Henry, Broadcast Enterprises
National, Inc.

Eugene D. Jackson, National Black
Network

Joseph La Bonte, Twentieth Century Fox
Corp.

Thomas Marinkovich, Daniels and
Associates

Raul Masvidal, Biscayne Bank

C. Douglas Mercer II, First National
Bank of Boston

Fernando Oxaca, Coronado
Communications Corp.

Marianne Camille Spraggins, Salomon
Brothers, Inc.

Howard Stason, Blackburn & Associates

Donald A. Thurston, Berkshire
Broadcasting Company

Zelbie Trogden, Security Pacific
National Bank

Herbert P. Wilkens, Syndicated
Communications, Inc.

Herbert P. Wilkens, Syndicated
Communications, Inc.

Policy Panel

Michael R. Gardner, Bracewell &
Patterson

Pluria Marshall, National Black Media
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N.A.

Margita White, Taft Broadcast Co.

William A. Russell, Jr., FCC Public
Affairs Office

Erwin Krasnow, National Association of

Robert L. Johnson, Black Entertainment
Television

Management and Technical Assistant

Victor M. Riveria, Department of
Commerce

Brazil O'Hagan, The WNDU Stations

Fernando Oxaca, Coronado
Communications Corp.

Alex P. Mercure, Mercure
Telecommunications, Inc.

Associate Members

Eddie Pena, National Cable Television
John Oxendine, Broadcast Capital Fund,
Inc.

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.

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47 CFR Part 73

[BC Docket No. 82-541; RM-4158]

TV Broadcast Stations in Hampton-Norfolk-Portsmouth-Newport News, Virginia; Amendment of Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action consolidates the Hampton and Norfolk-Portsmouth-Newport News television assignments into one hyphenated television market in response to a petition filed by WVEC Television, Inc. Two counterproposals, filed by Television Corporation of Virginia and by Paul, Hastings, Janofsky & Walker to include Virginia Beach, Virginia, into the hyphenated market have been denied.

EFFECTIVE DATE: April 1, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-8530.