

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

MM Docket No. 85-299

In the Matter of

Distress Sale Policy of Broadcast  
Licensees

ORDER

Adopted: December 27, 1989; Released: January 11, 1990

By the Commission:

1. On October 8, 1985, the Commission adopted a *Notice of Inquiry* in the above entitled matter, 50 Fed. Reg. 42047 (1985), to explore the desirability of expanding the availability of the distress sale option which was intended to promote minority ownership in broadcasting. The proposed change would have permitted distress sales after the commencement of a revocation hearing.

2. On March 31, 1989, the U.S. Court of Appeals for the D.C. Circuit held that the Commission's distress sale policy was unconstitutional in *Shurberg Broadcasting of Hartford, Inc. v. FCC*, 876 F.2d 902, *reh'g denied*, 876 F.2d 953 (D.C. Cir. 1989), *petition for cert. filed sub nom. Astroline Communications Co. v. Shurberg Broadcasting of Hartford, Inc.*, No. 89-700 (Oct. 30, 1989). If the Supreme Court denies certiorari, the D.C. Circuit's determination that the distress sale policy is unconstitutional will be final, and the present *Notice* seeking to expand the distress sale policy will be moot. In any event, in view of the time that has elapsed since the initiation of this proceeding and intervening events relating to the constitutionality of the underlying policy, we believe that it would not serve the public interest to attempt to resolve it based on the existing record. We have determined, therefore, that the proceeding should be terminated without prejudice.

3. Accordingly, IT IS ORDERED that MM Docket No. 85-299 IS TERMINATED without prejudice.

4. This action is taken pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary