

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

MM Docket No. 90-271

In re Applications of

FINLEY WILLIS, JR. File No. BPH-880503MA

MTW COMMUNICATIONS File No. BPH-880504MH

ANDERSON
BROADCASTING
COMPANY LIMITED
PARTNERSHIP
File No. BPH-880504MV

For Construction Permit for a
New FM Station on Channel 271A
Lawrenceburg, Kentucky

APPEARANCES

John F. Garziglia and *Howard J. Barr* on behalf of Finley Willis, Jr.; *Stanley G. Emert, Esq.* on behalf of MTW Communications; *Leonard S. Joyce* on behalf of Anderson Broadcasting Company; and *Gary Schonman* on behalf of the Chief Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE WALTER C. MILLER**

Issued: January 27, 1992; **Released:** January 31, 1992

1. Three applicants remain in this contest for a new FM station on Channel 271A (102.1 MHz) in Lawrenceburg, Kentucky: Finley Willis, Jr. (Willis), MTW Communications (MTW), and Anderson Broadcasting Company Limited Partnership (ABC).

2. After a lengthy interlocutory pleading cycle had run its course,¹ evidence was adduced on the following issues:

"MTW-1:

To determine whether MTW Communications lacked candor when in a July 11, 1990 Statement for the Record, they represented that "publication [pursuant to 47 CFR 73.3594(g)] has been accomplished or is soon to be completed," and if so, what impact that lack of candor has on MTW's qualifications to be a Commission licensee;

"MTW-2:

To determine the facts surrounding MTW's failure to comply with para. 2 of the prehearing order (FCC 90M-1713 released June 18, 1990) and what impact those facts have on MTW's fitness to be a Commission licensee;

"MTW-3:

To determine whether MTW Communications has abused the Commission's discovery processes, and if so, whether MTW is basically qualified to be a Commission licensee;²

"ABC-1:

To determine whether Anderson Broadcasting Company Limited Partnership is financially qualified to be a Commission licensee:

"ABC-2:

To determine whether Anderson Broadcasting Company lacked candor and/or misrepresented its financial qualifications to the Commission in BPH-880504MV, and, if so, what effect that has on their basic qualifications to be a Commission licensee;³

"HDO-1:⁴

To determine which of the proposals would, on a comparative basis, best serve the public interest; and

"HDO-2:

To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any."

3. In the Hearing Designation Order the Chief, Audio Services Division also provided for comparative coverage evidence to be introduced. See 55 F.R. 24927 *supra*, at para. 4. But this proved to be of no importance. The parties identified and offered a joint exhibit that provided that:

"The area served by each applicant in this proceeding is well served by an excess of five FM services. Consequently, there is no comparative advantage to any applicant in this regard. Further, there is no material difference between any applicant in this proceeding in the number of overall persons served or in the amount of area served. Accordingly, each applicant disclaims any comparative advantage in the areas and populations covered, and in the number of services available within its one mV/m contour."

4. The burden of proceeding on Issues MTW-1 through MTW-3 *supra*, was placed on Finley Willis while the burden of proof remained on MTW. Both the burden of proceeding and the burden of proof on ABC Issues 1 and 2 were placed on ABC.

5. We held a prehearing conference on September 14, 1990; and hearing sessions on October 9, 10, 11, 1990, December 11, 1990, and on May 15, 1991. We closed the evidentiary record on May 15, 1991 (Tr. 1192).

6. All three applicants filed Proposed Findings of Fact and Conclusions of Law on the standard comparative-issue (Phase I) on December 10, 1990 and Reply Findings on December 21, 1990. Willis and ABC, but not MTW,⁵ filed Phase II and Phase III Proposed Findings of Fact and Conclusions of Law on July 12, 1991 and Phase II and III Reply Findings on July 22, 1991.

Findings of Fact
MTW Issues 1-3

7. MTW has manifested procedural recalcitrance from the outset. The case was designated for hearing on June 11, 1990. *See* 55 F.R. 24927 published June 19, 1990. On July 20, 1990, Willis moved to enlarge the issues against MTW. He asked for a lack-of-candor issue on MTW's hearing publication or the lack thereof, and a related inquiry into MTW's failure to comply with 47 CFR § 73.3594(g)'s publication requirements.

8. MTW never bothered to respond to Willis' request. So, and although publication problems are rarely decisionally significant, the Trial Judge (faced with MTW's silence) added the two issues Willis had requested. *See* FCC 90M-2633 released August 22, 1990. Willis was assigned the burden of proceeding on MTW-1 and MTW-2; the ultimate burden of proof remained on MTW.

9. A short time later, on September 7, 1990, Willis again moved to enlarge the issues against MTW. This time he asked for an abuse of process issue. He claimed: (1) that MTW had improperly circumvented the Commission's *in camera* inspection procedures; (2) that MTW had refused to turn over properly requested documents; and (3) that MTW had improperly redacted information from certain documents in violation of the Prehearing Order discovery instructions (FCC 90M-1713, released June 18, 1990 at para. 11).

10. This time MTW opposed Willis' motion. But the Trial Judge ruled that Willis had pleaded with the required specificity and sufficiency to warrant adding an abuse-of-process (MTW-3). *See* FCC 90M-3270 released October 17, 1990. A hearing on Issues MTW-1 through MTW-3 was scheduled for December 11, 1990. It aborted. *See* FCC 91M-1427 released April 24, 1990, paras. 8-11. So, on March 8, 1991, Willis filed a Motion For Summary Decision on MTW-1 through MTW-3. The Trial Judge granted that motion. *See* FCC 91M-1427 *supra*. Thus, the following intermediate findings are in order.

11. MTW's principals violated 47 CFR § 73.3549(g)'s publication requirements by wholly abdicating the responsibility for publishing the notice of hearing. When that abdication surfaced they then filed a false statement regarding their publication, a statement that they knew was false. Even after the falsity of statement was called to their attention, MTW made no attempt to correct that falsity, and continued to lack candor.

12. So Issues MTW-1 and MTW-2 are resolved adversely to MTW. Moreover, their misconduct, their misrepresentations and their lack-of-candor warrant the ultimate finding that MTW Communications is not of fit character to be a Commission licensee.

13. Under MTW-3 (abuse of process) it developed that MTW had failed to produce numerous pertinent documents that they had previously agreed should be produced. In fact, it further developed that MTW's principals didn't produce the documents because they didn't even know what documents their counsel had agreed to produce.

14. Moreover, when Finley Willis' counsel tried to obtain pertinent and relevant documents during the August 1990 depositions, MTW's counsel belatedly, inappropriately, and improperly asserted an attorney-client privilege. So, even assuming that MTW were basically qualified under MTW-1 and MTW-2, they will be independently disqualified under MTW-3.

ABC-1 and ABC-2

15. Under ABC-1 we must determine whether Anderson Broadcasting Company was and is financially qualified to be a Commission licensee; and under ABC-2, we must find out whether Anderson Broadcasting Company lacked candor with or misrepresented to the Commission when they certified their financial qualifications in BPH-880504MV.

16. ABC is a limited partnership with one general partner and eight limited partners. The following chart gives the names of the partner, his or her equity interest, and the total committed investment at the time of certification:

CHART

Name	Type of Partner	Equity %	Committed Investment
Cheri Murphy	General Partner	21%	\$52,000
James D. Morgan	Limited Partner	15.8%	\$39,500
Robert E. Cox	Limited Partner	15.8%	\$39,500
William D. Disponnet	Limited Partner	15.8%	\$39,500
James M. Stevens	Limited Partner	15.8%	\$39,500
John V. Boardman	Limited Partner	3.95%	\$ 9,875
Sam T. Adams	Limited Partner	3.95%	\$ 9,875
Ellis L. Hefner	Limited Partner	3.95%	\$ 9,875
Thomas W. Miller	Limited Partner	3.95%	\$ 9,875

17. When ABC filed their application on May 4, 1988, Cheri Murphy ABC's General Partner, certified that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue." At that time ABC was relying on the personal resources of its general and limited partners (Tr. 964-965, 1181).

18. Ms. Murphy so certified after she met with ABC's communications counsel to discuss the application, and they'd gone over each question in the application (Willis/ABC Joint Stipulation No. 1; Tr. 1147-1148). However, she isn't certain if she saw the instructions to the Commission's Form 301 at that time; and she has never heard the term "sufficient net liquid assets on hand" or the term "committed sources of funds." (Tr. 1149-1150).

19. Cheri Murphy didn't have \$52,000 in cash or net liquid assets (Finding 16 *supra*) on the day she certified. She says she had \$5,000 in cash at that time (Tr. 1109, 1150-1151, ABC Ex. 7, p. 2). She maintains a personal checking account at Anderson National Bank (*infra*).

That account has been overdrawn several times over the years. For example, on May 20, 1988 (16 days after she affirmatively certified), Ms. Murphy's personal account showed a negative balance of \$74.72 (Tr. 1172; Willis Ex. 23); as of October 20, 1988, she had a negative balance of \$10.63; and as of April 21, 1989, she had a negative balance of \$18.87.

20. Ms. Murphy says she knew from the outset that she would need financial assistance to participate in the ABC venture. Yet, prior to certification she never approached a bank about a loan or a potential loan. However, she did contact her grandfather, John Disponnet to see if he might provide her with some assistance. She first contacted him on April 30, 1988 (4 days before ABC filed its application). At that time she didn't know the extent of her obligation. She contacted him again 2 days later, May 2, 1988, after she had learned that her obligation would be about \$50,000.

21. The first time Cheri Murphy contacted her grandfather (April 30, 1988) she asked him if she ". . . could rely on his financial assistance," and "[h]e told me he would back me in the venture." On the second occasion her grandfather told her he "would commit to [\$50,000] and more, if needed." Ms. Murphy says she was "confident that he would have no difficulty in providing me the necessary funds." So at the time she certified, Murphy says ". . . I knew that I could meet my total committed investment (with my grandfather's assistance)."

22. However, it developed during the hearing that John Disponnet never intended to lend or give Ms. Murphy the money (Tr. 1109, 1163). She has no agreement with her grandfather to lend or give her any money. They only discussed whether he would co-sign or guarantee a loan (Tr. 1109, 1162). Additionally, Ms. Murphy never had an arrangement with either the limited partnership or any of the eight limited partners to lend her the money she would need (Tr. 1151).

23. It wasn't until after ABC had filed its application and she had certified ABC's financial qualifications that Cheri Murphy first contacted a bank about a loan to meet her \$52,000 personal commitment. On May 5, 1988, she approached the Harrodsburg First Federal Savings and Loan, and obtained a small loan against an inheritance (Tr. 1164, 1166; Willis Ex. 20). She did so so she could have the funds for her initial capital contribution. The inheritance is insufficient to cover Ms. Murphy's full obligation.

24. In June, 1990, with another capital call imminent, Ms. Murphy approached the Anderson National bank about a loan (Tr. 1166-1167). With James Stevens, an ABC limited partner, acting as the loan officer (*See Finding 16 supra.*), she obtained a \$6,300 loan based on John Disponnet's guarantee (Tr. 1130; 1166-1167; Willis Ex. 21).

25. On October 20, 1990, and to meet a third capital call, Ms. Murphy obtained a third loan, again from the Anderson National Bank. James Stevens again acted as loan officer, and her grandfather, John Disponnet again guaranteed the loan (Tr. 1130, 1169, 1171; Willis Ex. 22).

26. At the time the initial hearing was held (on October 9-11, 1990), Ms. Murphy had no agreement with, or indication from the Anderson National Bank that they would continue to lend her funds for this venture (Tr. 1001). She said that she didn't doubt that such a future loan would be forthcoming, but she knows the difference

between having no doubt about a future loan and a bank commitment for such a loan (Tr. 1168-1169). On October 9-11, 1990, Ms. Murphy had no other loan source, and hadn't thought about, or looked into the possibility of obtaining such loans.

27. The first indication that Anderson Bank would lend Ms. Murphy the funds she needed appeared in a November 16, 1990 declaration that James Stevens has submitted. There Stevens indicates that the Anderson National Bank will lend Cheri Murphy ". . . at least \$50,000 in addition to her present loan, provided of course that such would be guaranteed by John H. Disponnet."

28. Turning to the committed personal resources of ABC's eight limited partners (see Findings 16-17 *supra.*)⁶ and at the time she certified, Cheri Murphy had never seen any of the limited partners' balance sheets or financial statements; she hadn't discussed with any of the eight the manner in which they intended to meet their respective financial commitments; and she had never even asked to see the financial statements of her limited partners. She says she didn't ask for any financial statements because she didn't doubt their financial ability, and so there was no reasons to ask for them.

29. As it turned out, James Stevens (Findings 24-25 *supra.*) did not have \$39,500 in net liquid assets on the day Ms. Murphy certified. Moreover, John V. Boardman, another ABC limited partner, knew of Stevens' deficiency. Yet, at an organization meeting held on May 3, 1988, he never told Ms. Murphy about the deficiency and she never asked. To the contrary, at the meeting John Boardman purportedly assured Ms. Murphy that all of the limited partners (including Stevens) had the financial wherewithal to meet their respective financial obligations to ABC.

30. Based on the foregoing basic findings (Findings 15-29 *supra.*), certain intermediate observations are appropriate. When ABC filed their application on May 4, 1988, Cheri Murphy swore that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue."

31. But she had absolutely no factual basis for so representing. She knew that she and her eight limited partners were each relying on their own personal resources to meet their financial commitment. She also knew that she didn't have the funds to meet her \$52,000 commitment, and she knew (on May 4, 1988) that she had made no tangible effort to reasonably assure even herself (let alone the Commission) that she could obtain such funds.

32. At the time she certified the most she could say was that having talked to her grandfather, John Disponnet, she was "confident that he would have no difficulty in providing me the necessary funds." However, John Disponnet never intended to lend or give Ms. Murphy the money. He only agreed to guarantee a loan that she obtained.

33. When, on May 4, 1988, Cheri Murphy certified that each of ABC's eight limited partners had the personal resources to meet their investment commitment, she did so without any tangible factual support whatsoever. She had never seen any of the limited partner's balance sheets or financial statements. She'd never even asked to see them. She hadn't even discussed with *any* of the eight limited partners just how they intended to meet their financial commitments.

34. In fact when ABC limited partner, Thomas Miller, a Lexington attorney called her and told her that he was drawing up a limited partnership agreement it was the first time she spoke to him. She did not know Miller when he called her (Tr. 920, 923).

35. Similarly, when limited partner John Boardman called Cheri Murphy on the night of May 2, 1988, it was the first time she had ever spoken to him. She then met Boardman in Miller's office on Tuesday, May 3, 1988 - the day before the application was filed.

36. Limited Partner, James Stevens' first contact with Cheri Murphy was as a result of her being an Anderson National Bank customer. As late as May 1988, that's all he knew about her. Limited Partner Sam Adams never met Ms. Murphy or spoke to her on the telephone until the time depositions were taken in this case. Robert Cox didn't know Ms. Murphy when she was brought into the partnership. Ellis Hefner (para. 16 *supra*) never met her until a year after the parties had entered into the partnership agreement (Tr. 787, 789, 804, 897, 927, 934).

37. William D. Disponnet (para. 16 *supra*) is Ms. Murphy's great uncle. But she has had no business dealings with him before this application. James D. Morgan is Ms. Murphy's cousin. But she didn't discuss this venture with Mr. Morgan until after she filed ABC's application (Tr. 937, 946-947).

38. When Cheri Murphy's lack of familiarity with her eight limited partners is combined with her not seeing their balance sheets or financial statements the preliminary conclusion is inescapable: Cheri Murphy couldn't have and shouldn't have certified that "sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue." She simply didn't have the basic facts that would permit her to so certify, and she was well aware she didn't have such facts.

39. All in all, the preliminary conclusion under Issue ABC-1 is that Anderson Broadcasting Company has not shown that on May 4, 1988, sufficient funds were available from committed sources to construct and operate the requested facilities for three months without revenue. Nor were they able to show that there were sufficient net liquid assets on hand. ABC was therefore not financially qualified on May 4, 1988 when they filed BPH-880504MV.⁷

40. Moreover, under Issue ABC-2, Cheri Murphy misrepresented and lacked candor when she represented that sufficient funds were available from committed sources. She knew full well she didn't have the funds to meet her \$52,000 commitment, and she had no first hand knowledge that any of her eight limited partners could meet their commitment. In fact, she didn't even know most of them. So Issue ABC-2 must also be decided adversely to Anderson Broadcasting Company.

The Standard Comparative Issue: HDO-1 Description of the Applicants

41. *Finley Willis Jr.*, an individual applicant, is the sole proprietor of BPH-880503MA.

42. *MTW Communications (MTW)*, a general partnership, has three partners: David Melloan, Roy Toney, and Carol Workman. Each has a 33 1/3% ownership in the

partnership. They entered into their general partnership on April 30, 1988, and filed their application (BPH-880504MH) four days later.

43. *Anderson Broadcasting Company (ABC)* is a limited partnership made up of one general partner, Cheri Murphy, and eight limited partners. The partnership structure is delineated at Finding 16 *supra*. and need not be repeated here.

44. As previously noted (Fn. 6 *supra*), all of the limited partners, except for James D. Morgan, are associated with each other through the Anderson National Bank in Lawrenceburg, Kentucky. John V. Boardman is a member of the board and officer of Progressive BancShares. Progressive BancShares owns the Anderson National Bank. Boardman is also an officer and member of Anderson's Board.

45. Robert Cox and William Disponnet are both members of Anderson's Board. James M. Stevens is President of the Anderson Bank and a board member. Sam Adams, an officer at another subsidiary bank, is a member of Progressive's Board. Ellis Hefner is on the boards of both Anderson and Progressive, and Thomas Miller is a Progressive Board member (Tr. 637-639).

Diversification of Mass Media

46. Other than FM application for Lawrenceburg, *Finley Willis* has no ownership interest or positional interest in any medium of mass communication, including any broadcast radio, or television station, cable television system or newspaper. Neither MTW nor any of its principals has any media interests. Neither ABC, or Ms. Murphy or any ABC limited partner has or has had any ownership interest in any broadcast station or broadcast application, or any other media of mass communications.

Best Practicable Service

47. *Comparative Coverage*. No comparative coverage advantage accrues to any of the three applicants. Each disclaims any comparative advantage in the areas and populations covered, and in the number of services available within its one mV/m contour. See Finding 3 *supra*.

48. *Integration of Ownership With Management: An Overview*. All three applicants seek 100% quantitative integration. Willis' claim is based on his sole proprietorship. MTW contends that all three of its general partners will be integrated (see Finding 42 *supra*). Mrs. Workman intends to be the full-time Station Manager; Mr. Melloan proposes to be the station's full-time Business Manager; and Mr. Toney would be the station's full-time Technical Director/Sales Manager. ABC proposes to integrate their sole general partner, Cheri Murphy as the full-time General Manager.

49. *Finley Willis*. As sole proprietor of his proposed station Finley Willis intends to be its full-time General Manager. In that capacity, he will personally oversee all areas of the station's operation, including business, programming, news, and public affairs.

50. Finley Willis was born on September 1, 1944. He currently resides at 1324 Drydock Road, Lawrenceburg, Kentucky. He has resided there since January, 1988. Prior to that time, except for a stint in the United States Army he lived in Frankfort, Kentucky from 1967 until January

1988. Not only Lawrenceburg, but the entire community of Frankfort is within the 60 dBu contour of Mr. Willis' proposed station.

51. Finley Willis has a degree in Mass Media/English from Western Kentucky, Bowling Green, Kentucky. He obtained that degree in 1967. While studying at Western Kentucky, Willis was employed by the local newspaper for 1 1/2 years. Additionally, from 1965-1967, Willis worked for WKCT(AM), Bowling Green. He was responsible for night news coverage.

52. From January 1967 to October 1968, Willis worked as a Senior Publicity Specialist for the Kentucky Department of Fish and Wildlife, Frankfort, Kentucky. During his Army stint, he was the Public Information Officer at Letterman General Hospital, San Francisco, California. After he was discharged he returned to his duties as Senior Publicity Specialist at the Kentucky Department of Fish and Wildlife. He held that position until December, 1972. For the past 2 1/2 years Willis has been an associate member of the Kentucky Broadcasters Associations.

53. In 1972 Willis became majority owner and general manager of Capital Camera, Inc. (CCI). CCI is a travel and photographic store with retail outlets in Frankfort and Lexington, Kentucky. However, he has committed himself to reducing or eliminating his current travel and photographic duties if his application is granted. Willis is pledged to devote his full-time and attention to the operation of the proposed station. So he will either turn over his retail responsibilities to other corporate officers or managers, or if that doesn't work out he will sell the businesses.

54. Finley Willis has been civically active within the service areas of the proposed station. Since 1975 he has been a member of the Frankfort-Franklin County Chamber of Commerce. He belonged to the Frankfort Rotary Club from 1986 until January, 1988, and to the Frankfort Jaycees from 1973-1978. Willis is a member of the Lawrenceburg Rotary Club, and since 1990, has been on the Board of Directors.

55. Finley Willis is a white, non-Hispanic male. So he is not entitled to any minority or female enhancements.

56. *MTW Communications.* Before examining each of MTW's three quantitative integration claims, it must be found that the *bona fides* of MTW's ownership structure is highly suspect. MTW's opponents have demonstrated that MTW general partner, Carol Workman (a female, and 33 1/3% general partner) is merely a front for her husband, Max Workman, who ostensibly is not involved in MTW.

57. David Melloan (see Finding 42 *supra*) was the first MTW partner to learn about the Lawrenceburg allotment. He read about its availability from a newspaper article he read in late April, 1988. Initially Melloan went to Max Workman to talk about possibly applying for the Lawrenceburg FM station. He went to Max Workman because they had previously discussed entering into business ventures together (Tr. 282-283, 294).

58. Later David Melloan and Max Workman called the Washington Office of Congressman Larry Hopkins. They asked if someone there would contact the FCC and have an application forwarded to them. In due course they drove to Lexington to pick up the application. They reviewed the application form, realized that they didn't have the expertise, and would need assistance (Tr. 297-298).

59. Next, Messrs. Melloan and Workman placed phone calls to a Steve Wilburn. Wilburn, who had once applied for his own station, directed them to the individual who had prepared his application, Mr. Ken Russell at Media Properties. Having made these phone calls David Melloan decided he wanted to proceed with an application, but he knew he couldn't carry the financial burden alone. So he and Max Workman discussed joining together (Tr. 283, 285, 287).

60. It was at that point that Max Workman told Melloan about the FCC's policy of giving credit to minorities. They discussed how to "set up" applications. Workman told Melloan that he'd discovered this information by reading an article in the Wall Street Journal. They discussed how they could put together an application that would ". . . satisfy some of those credits," an application that would ". . . put our best foot forward . . ." (Tr. 286, 292, 311).

61. Shortly thereafter Max Workman talked to Roy Toney (Finding 42 *supra*) about becoming involved in the station. Toney is an African American. Subsequently, in late April 1988, both Workman and Melloan met with Mr. Toney, and pointed out to him that if he (Toney) would join the application, the FCC would give the application credit because he is an African American (Tr. 292-293, 295-296). At that point in time, it was clear that the decision makers were Max Workman and David Melloan.

62. Just before the application was filed, Messrs. Melloan and Workman reached a second decision. They decided that Max Workman would not become a partner because from an FCC stand point it would be better for his wife, Carol Workman (para. 42 *supra*) and Mr. Toney to be part of the application. However, Max Workman continued to attend most of the meetings the partners held before the application was filed (Tr. 292, 294, 307-308).

63. Max Workman assumed responsibility for the partnership's budget and equipment list. He called a friend, Ron Gentry who owned a radio station in Mayfield, Kentucky and ask him about a budget and equipment list for the proposed station. Gentry prepared and sent Mr. Workman a substantially complete budget and equipment list. These were the documents that MTW used to fill out its application. Carol Workman didn't find out until after depositions were taken that MTW proposed auxiliary generators.

64. It was Max Workman, Roy Toney, and David Melloan who searched for MTW's transmitter site. Mr. Workman contacted the realtor about obtaining a site, and went with Melloan to talk to John Littlenhouse (the transmitter site owner) about the transmitter site.

65. MTW obtained a loan commitment letter from the Lawrenceburg National Bank. In connection with that letter David Melloan submitted to the bank the budget and equipment list that Max Workman had obtained. Carol Workman wasn't even aware that this additional information had been submitted to the bank until after the depositions in this case had been taken.

66. Mrs. Workman also appears either uninformed or confused about other partnership plans. For example, MTW represents that it will have five full-time and two part-time employees. David Melloan says that three of the

five full time employees will be the MTW general partners. Mrs. Workman says that MTW's representation does not include the partners (Tr. 234, 243).

67. MTW claims 100% quantitative integration. They say they will integrate all three of their 33 1/3% general partners into the proposed stations day-to-day management. First, they intend to integrate Carol Workman (33 1/3% general partner) on a full-time basis (not less than 40 hours a week) as station manager. In that capacity she will be in charge of programming, and employee relations.

68. Mrs. Workman was born in 1961. She lives at 1035 Woodspoint Road, Lawrenceburg, Kentucky. Her residence is within MTW's proposed contour, about a mile and a half outside Lawrenceburg's city limits. She plans to maintain this residence. She has resided in Lawrenceburg for three years.

69. Mrs. Workman has Bachelor of Science and a Masters of Arts degree from Murray State University in Murray, Kentucky. She has also completed the educational experience required by the Murray Calloway Hospital for the American Dietetic Association in Murray, Kentucky.

70. She has previously been employed as School Food Service Director of the Mayfield, Kentucky schools. Later she became a partner in Richwork Associates, a food service/nutrition consulting business located in Lawrenceburg. She is currently the Consumer Representative for the Kentucky Beef Cattle Association in Lexington, Kentucky. She will terminate this employment before MTW's station goes on the air.

71. Although she has no broadcast experience, Mrs. Workman has been civically active. From 1988-1989 she was Chairman Elect of the Kentucky Nutrition Council and became Chairman 1989-1990. In 1988-89 she was active in the Heart at Work Program, and is presently co-chairman of the Greater Lexington Area American Heart Association Food Festival. She was a member of the Bluegrass District Dietetic Association in 1990, and Chairman of the Community Nutrition Committee, 1989-1990. As a member of the Anderson County Public Library Committee, she distributed information during National Nutritional month.

72. Mrs. Workman is a member of the Lawrenceburg/Anderson County Chapter of Beta Sigma Phi Service Fraternity, and its Service Committee co-chairman and corresponding secretary in 1989-1990.

73. Carol Workman claims the comparative enhancements due a white, non-Hispanic female.

74. MTW intends to integrate 33 1/3% general partner David Melloan into the station's day-to-day operation. Melloan will devote full-time (not less than 40 hours a week) to being the station's Business Manager. In that capacity he will be in charge of the office, the station's finances, billings and collections, and keep the partnership's books. He also proposes to participate in employee hiring and firing, policy making and implementation, and community relations.

75. David Melloan was born in 1941. He has lived at 1033 Greenbriar Road, Lawrenceburg, Kentucky for the past ten years. His residence is about 4000 feet from the Lawrenceburg city limits, within MTW's proposed contour. Before that he resided for five years within Lawrenceburg's city limits.

76. Melloan doesn't intend to supervise any employees in his position as Business Manager (Tr. 342). Instead he sees himself engaging in community relations, selling ads and performing other non-management functions not listed in his integration statement (Tr. 352-353). He believes that the three MTW partners are not co-equals at the station (Tr. 335).

77. Melloan has a B.S. degree from Campbellsville College in Campbellsville, Kentucky; he has an M.A. degree from Georgetown College in Georgetown, Kentucky; and he has completed thirty hours of post masters studies at Eastern Kentucky University in Richmond, Kentucky.

78. An educator, Melloan was (for many years) the Principal of E. F. Ward School in Lawrenceburg. He is presently the Supervisor of Instruction for the Anderson County Schools, the county where Lawrenceburg is located. He will retire from his position with the Anderson County Schools at least 30 days before MTW's station goes on the air.

79. David Melloan has no broadcast experience, but he has been civically active within MTW's proposed coverage contour. He has been a volunteer for the Anderson County Cancer Society for the last four years; a member of the United Way Allocation Committee for Anderson County for the past three years; and a member of the Board of Directors for the Anderson County Red Cross for the past nine years.

80. Melloan has also been a member of the Anderson County Chamber of Commerce for the past 12 years. Within that organization he served on the Local Government Committee from 1979-1981, the Annual Christmas Parade Committee from 1981-1987, and the Education Committee from 1985-1986.

81. As noted (Findings 76 *supra*) MTW's opponents have demonstrated that Melloan has no intention of meeting his integration commitment. According to that commitment and the MTW partnership agreement, Melloan is and will be the Business Manager of the partnership and station. But he's never acted in that capacity. Carol Workman maintains the partnership's books and records, and writes the checks drawn on the MTW account. At the time he was deposed Melloan hadn't even seen any of the checks drawn on MTW's account. Nor had he gone through any of MTW's bank statements. In fact Melloan describes his responsibilities up to the time of depositions as "leg work" (Tr. 338-341).

82. David Melloan, being a White, Non-Hispanic male, can claim no qualitative integration enhancement.

83. Finally, MTW says they will integrate 33 1/3% general partner, Roy Toney into their proposed day-to-day operation. Toney will work at least 40 hours a week as Technical Director and Sales Manager. As Technical Director he will make sure the station's equipment is working properly (Tr. 522).

84. However, Toney will not supervise any employees. He describes himself as a "salesperson/engineer." He intends to generate advertising and sell ads to various business concerns. He will be the only sales person. He knows the difference between a sales person and a sales manager, and only if the station grows in the future, will he manage anyone.

85. About his duties as Technical Director, Roy Toney has no engineering degree. He has never worked physically on a transmitter or studio equipment. In fact, he has never worked at a radio station in either a technical

or nontechnical capacity. He wasn't involved in the engineering portion of the application. He has never met or talked to Dwight Magnuson, the person who did the engineering for MTW's application.

86. Roy Toney is 46 years old. He lives, and has lived for fourteen years at 1065 Hazel Drive, Lawrenceburg, Kentucky. His residence, within MTW's proposed contour, is about 1 1/4 miles from Lawrenceburg. He intends to maintain this residence if MTW is granted.

87. Mr. Toney holds a B.S. degree from Alcorn University and an M.S. degree from Western Kentucky University. For the past 24 years (since 1966), Toney has been employed by the U.S. Department of Agriculture. He is presently, and for the last six years he has been the District Soil Conservationist. Although he is nine years away from full retirement under the federal pension system (Tr. 488), Toney believes he will be eligible for early retirement in two years (Tr. 496).

88. Exactly what Toney will do to meet his integration pledge is not at all clear. In his Integration and Diversification Statement he said he *will resign* his employment at least 30 days before the station goes on the air. At the hearing he said that under no circumstances will he resign his position as District Soil Conservationist (Tr. 496). But he has also indicated he will take early retirement from his position as District Soil Conservationist. Toney is aware that if he retires earlier than age 55,⁸ he will be penalized and his pension reduced significantly. But he hasn't determined how much his pension will be reduced.

89. Roy Toney also owns and works a 12 acre farm about one and a half miles from his residence. He himself bales hay on the farm with only his son's help. He cuts round or square bales of hay three to four times a year. He must also fertilize the property for growing hay. He must also maintain the farm. He fully intends to continue operating the farm if MTW is granted a CP and the station goes on the air.

90. Mr. Toney also owns and runs a lawn service business. He seeds lawns. He started this business just three years ago, and the only person who helps him with his business is his son. The lawn service business presently occupies about 8-10 hours per week of Mr. Toney's time (Tr. 529). The business is growing, and Toney would like to devote extra time to it. The bottom line for Toney is this: if MTW's application is granted, Toney faces an 80-hour work week commitment (Tr. 490-492).

91. Although he has no broadcast experience, Roy Toney has been civically active within MTW's proposed coverage contour. For the past ten years he has been a member of the Lawrenceburg Lions Club; He is presently their First Vice president. He has assisted the Lion's Annual Candy Day, chaired the Christmas Parade Float in 1987-1989, raised funds for the haunted house project, and was Treasurer of charity functions in 1982.

92. For the past eight years Toney has been a member of Anderson County (Lawrenceburg) Extension Council; a member of the Anderson County Red Cross Board of Directors for seven years; a member of the Anderson County Education Advisory Committee for two years; and a member of the Anderson County High School Parent Advisory Group for six years.

93. For the last thirteen years Toney has been a Deacon in the Evergreen Baptist Church in Anderson County, and he has been Sunday School Superintendent the past seven years.

94. Roy Toney claims the comparative enhancements due a Black, non-Hispanic male.

95. Based on the foregoing (Findings 56-94 *supra*.) certain intermediate findings are in order. Carol Workman's integration pledge lacks genuineness. She is a mere front for her husband, Max Workman, who ostensibly is not a part of MTW's proposal. Roy Toney has failed to demonstrate that he has either the time or the technical know-how to carry out his pledge. And David Melloan's integration pledge doesn't bear the slightest resemblance to what he has testified he intends to do. In short, MTW's integration pledge is defective.

96. *Anderson Broadcasting Company Limited.* ABC's 100% quantitative integration centers around the integration pledge of their sole general partner, and 21% equity holder, Cheri Clay Murphy (see Finding 16 *supra*). They intend to integrate Ms. Murphy full-time (at least 40 hours a week) as general manager of the station. In that capacity, she will hire and fire and supervise all station employees. She will determine the station's format, keep the books and financial records, and otherwise supervise and control the station's overall operation. Purportedly, none of the limited partners (who together hold 79% of the partnership equity, will be integrated into the station's operation.

97. However, the record evidence demonstrates that ABC's limited partners are not sufficiently insulated from partnership control, and that Cheri Murphy is a mere front for a group of bankers interested in securing an advertising outlet of their own. (See Fn. 6 *supra*, and Findings 44-45 *supra*). The limited partnership agreement was prepared by one of the limited partners, Thomas W. Miller, based on data drawn up and supplied by another one of the limited partners, John V. Boardman. The terms of that agreement permit control to flow to the 79% equity holders even though they are ostensibly non-participating limited partners.

98. As background (see Finding 16 *supra*), four of ABC's limited partners, Messrs. James Morgan, Robert E. Cox, William D. Disponnet, and James M. Stevens live in and around Lawrenceburg (the Lawrenceburg group). The other four, Messrs. John V. Boardman, Sam T. Adams, Ellis L. Hefner, and Thomas W. Miller live in and around Lexington, Kentucky (the Lexington group).

99. John Boardman is the Executive Vice President and Director of Progressive BancShares, Inc. (Progressive). Progressive owns the Anderson National Bank in Lawrenceburg, Ky., and Farmers Bank in Owingsville, Ky. The other three members of the Lexington group; i.e., Miller, Adams and Hefner are Progressive Directors.

100. ABC had its genesis when Progressive tried to buy air time in Lexington for the Anderson National Bank, and was presented with a proposal which was financially prohibitive. Progressive's ad agency, Marshall Golnick, suggested that advertising campaigns could be much more cost effective if Progressive owned their own radio station (Tr. 645-646).

101. At about that time Boardman learned of the Lawrenceburg allocation. He learned about that opportunity from a Hays McMakin. McMakin owns a radio station in Owingsville, Kentucky, where one of Progressive's banks is located. The Boardman/McMakin conversation took place about one year before ABC filed its applica-

tion. During that year Boardman recruited fellow Progressive directors, Miller, Adams, and Hefner (the Lexington group) to assist him with his plan.

102. In April 1988, Mr. Boardman met with the Lexington group. They discussed applying for the Lawrenceburg allocation. Their initial and primary concern was to find someone who could and would dedicate their full-time to operating the station (Tr. 649).

103. Initially, Boardman asked Hay McMakin (see Finding 101 *supra*.) if he was interested in actively participating in the radio station. McMakin declined, but later agreed to be a consultant for ABC. In fact, McMakin, along with limited partner, James M. Stevens, selected ABC's proposed transmitter site, delivered the site information to ABC's engineer, and later firmed up the site's availability.

104. The banking group; i.e., the limited partner next contacted Jack Petry, a Lawrenceburg resident, about a full-time job operating the station. This was in April, 1988. Petry had worked in a number of radio stations and had his own production company in Lexington. The group wanted Petry not only because he had expertise, but also because they had none. Petry also turned them down.

105. After Petry declined the group's offer, the group was aware that the May 4, 1988 filing deadline was past approaching, and they were running out of time. The entire project was in jeopardy. It was at that point that limited partner, William Disponnet raised the possibility of Cheri Murphy becoming involved in ABC's application. As previously noted (Finding 37 *supra*). William Disponnet is Ms. Murphy's great uncle.

106. On April 30, 1988, just four days before the filing deadline, Disponnet called Ms. Murphy. He asked her if she would be interested in operating a radio station. Before William Disponnet called she didn't even know that a radio station was available in Lawrenceburg.⁹ In any event she responded favorably to William Disponnet's inquiry.

107. The Lawrenceburg and Lexington groups then approved Ms. Murphy, and William Disponnet called her on May 2, 1988. He told her that they needed to make an application for the station, that she would need to go to Washington to file the application, and that Thomas Miller, a Lexington attorney would be calling her.

108. The same day limited partner Thomas Miller did call her (see Finding 34 *supra*.) He told her he was drawing up a limited partnership agreement, that she was to hold a 21% equity interest in it, and that she had to attend a meeting in his office the next day. She did not know Miller at the time he called. At the time Ms. Murphy did not know what her or anyone else's financial commitment would be.

109. On the evening of May 2, 1988, Cheri Murphy received another phone call. This one was from John Boardman. He called her to tell her what her role in the partnership would be. This was the first time she had spoken to John Boardman.

110. Ms. Murphy attended the meeting in Mr. Miller's office on May 3, 1988. Also present were Miller, Boardman, and McMakin. They discussed construction and operation costs and Murphy and Boardman signed the limited partnership agreement. Ms. Murphy gave no input into ABC's partnership documents, nor did she review the limited partnership agreement with Miller.

111. The following day, May 4, 1988, Cheri Murphy flew to Washington to meet with ABC's communications counsel, Mr. Joyce. Mr. Boardman made the arrangements for her trip. Essentially, Joyce's role was to explain a completed application to Mr. Murphy, and have her appropriately certify and sign it. All the application preparation work had been completed by the limited partners and others.

112. For example, ABC's name had already been decided on when Ms. Murphy was brought into the application. She didn't open the bank account which, pursuant to the partnership agreement must be at the Anderson National Bank (see Findings 44-45 and Footnote 6 *supra*). The first time she became aware of a bank signature card in her name was when she saw a copy of it during her deposition.

113. ABC used the engineering firm of Larken and Associates, and they had been hired before Ms. Murphy was brought into the partnership. McMakin, Stevens, and William Disponnet secured ABC's tower site before Ms. Murphy became involved in ABC. ABC's limited partnership agreement refers to a letter of credit from the Anderson National Bank. Ms. Murphy did not participate in obtaining that letter of credit. Nor did she see this letter of credit before the application was filed although the letter of credit is addressed to her. Up until the time of her deposition Ms. Murphy didn't even have a copy of the letter of credit.

114. Since ABC filed its application ABC's limited partners have been involved in partnership affairs. In July 1990, just before depositions were taken, Thomas Miller had discussions with Washington communications counsel regarding settlement. Mr. Miller has also performed legal services on the partnership's behalf since the application was filed (Tr. 981-984, and MTW Ex. 13).

115. Limited partner Ellis Hefner, an accountant, has acted as the partnership's accountant. Mr. Hefner prepared the 1988 and 1989 state and federal income taxes, and was paid by a check from ABC's account.

116. Limited partner John Boardman has drawn up cost and revenue projections. And he along with Hays McMakin have determined what Cheri Murphy's annual salary should be. In the summer of 1990 when ABC tried to obtain new financing, it was John Boardman, not Cheri Murphy, who carried the workload.

117. Based on the foregoing (Findings 97-116 *supra*) an intermediate observation is appropriate. Cheri Murphy is not a part of this application. She's a general partner in name only. The power is wielded by the eight limited partner bankers who own 79% of the partnership's equity. The only reason Cheri Murphy's name appears on the application is because ABC (at the time the application was filed) was running out of time. The experienced broadcasters they had tried to obtain had turned them down. The application filing date was imminent, and the project appeared doomed. So they recruited Cheri Murphy.

118. Cheri Murphy was born in 1963 and except for two years 1967-1969 when she lived in Lexington, Kentucky, she has been a resident of Lawrenceburg. She lives with her mother and brother at 329 Plum Street, Lawrenceburg, Kentucky.

119. Ms. Murphy graduated from Anderson County High School in Lawrenceburg in 1981, and from the University of Kentucky at Lexington in 1985.

120. Cheri Murphy has some limited broadcast experience. From April 1986 to March, 1987, she worked part-time (averaging 10 to 15 hours per week) at station WJMM, Versailles, Kentucky as a Disc Jockey.

121. After she graduated from the University of Kentucky, Ms. Murphy went to work as the assistant timekeeper for the Eastern State Hospital at Lexington, Kentucky. Then, in May 1987, she moved to the Kentucky Department of Social Insurance. She started out processing food stamp applications. Effective September 16, 1990, she was promoted to Jobs Case Manager. She has never supervised any employees.

122. Ms. Murphy has been civically active within ABC's proposed coverage contour. She's been a member of the Lawrenceburg First Baptist Church since October 1973, and has taught Sunday School there for the past three years.

123. Cheri Murphy claims the comparative enhancement due a white, non-Hispanic female.

124. *Auxiliary Power.* All three applicants propose to use auxiliary power.

Conclusions of Law

1. Three mutually-exclusive applicants seek authority to operate on FM station on Channel 271A(102.1 MHz) in Lawrenceburg, Kentucky: Finley Willis, Jr. (Willis), MTW Communications (MTW), and Anderson Broadcasting Company Limited Partnership (ABC).

2. Evidence was adduced on six factual issues. Five of the six are basic qualifying issues. Three of the five are against MTW, and the other two are against ABC. The sixth factual issue is the standard comparative issue.

3. Only basically qualified applicants are entitled to a comparative analysis. *See e.g. Louis Adelman*, 29 FCC 1223, 18 RR 1062 (1960) affirmed sub. nom. *Guinan v. Federal Communications Commission*, 297 F. 2d 782, 22 RR 2026 (1961). So before we look at the comparative issue (HDO-1), and the ultimate issue (HDO-2), we must come to grips with the five basic qualifying issues (MTW-1 through MTW-3, and ABC-1 and ABC-2).

4. *MTW-1 and 2 (Publication lack of candor).* Violation of the Commission's hearing publication rules are rarely decisionally significant. But here is one instance where they are. MTW's principals totally failed to meet 47 CFR § 73.3594(g)'s publications requirements. They made no real effort to have the notice of hearing published. They were given additional time and opportunity to so publish, but they still didn't do so. Moreover, when that failure surfaced, they attempted to cover up by filing false statements with the Commission, statements that they knew were false. And when the false statements were called to their attention, they continued to lack candor. This is not conduct befitting a Commission licensee. Such a cavalier regard for the Commission's rules leads to the unavoidable conclusion that MTW Communications lacks the character qualifications to be a Commission licensee.

5. *MTW-3 (Abuse of Process).* Assuming that MTW had complied with the Commission's publication rules in a timely fashion, and had not been less than candid with the Commission, they would still be found basically unqualified. They have overtly abused the Commission processes. During the discovery phase of the hearing they refused to produce documents that they previously agreed they would produce. Moreover, when Willis' counsel tried

to obtain pertinent and relevant documents during the August 1990 depositions, MTW's counsel, in direct contravention of the prehearing order, belatedly, inappropriately, and improperly asserted an attorney-client privilege.

6. Such trial tactics foster obscurity, promote concealment and ambush, and hinder efforts to arrive at the truth. In addition, they squander the Commission's judicial system resources and promote delay. If the Commission's trial judges are to get their end of the job done properly, and if the Commission is to foster respect for its processes, then we must clamp down on abuse of process and calloused trial tactics that hinder the smooth progression of the case and promote delay.

7. MTW can and should be held accountable for these offenses that go to the heart of the administrative hearing. They are presumed to know the consequences of their abusive trial tactics. They are unfit to be a Commission licensee.

8. *ABC-1 and ABC-2 (Financial Qualifications and False Financial Certification).* Under ABC-1, ABC must not only show that they are financially qualified now, but that they were financially qualified on May 4, 1988 when they filed BPH-880504MV. *See Aspen FM Inc.*, FCC 90R-37 released May 23, 1990 at paras. 15-17 and *Shawn Phalen*, FCC 90R-64 released July 24, 1990. ABC has proved neither.

9. ABC hasn't shown that on May 4, 1988, they had sufficient net liquid assets on hand or that there were sufficient funds available from committed sources to construct and operate the requested facilities for three months without revenue. In fact, the record shows the converse to be true. General partner, Cheri Murphy, didn't have the funds to meet her \$52,000 commitment, and limited partner James Stevens did not have his \$39,500 commitment in net liquid assets on the day Ms. Murphy certified.

10. Nor has ABC shown that they are financially qualified now. *Limited partner John V. Boardman's belated effort to obtain a \$250,000 financial commitment letter from the Farmer's Bank in Nicholasville, Kentucky in July, 1990, and the March 25, 1991 demand note from that bank cannot be credited. See Footnote 7 supra.* Thus, ABC hasn't met either prong of ABC-1, and they are not financially qualified to be a Commission licensee.

11. Even assuming that ABC had met ABC-1's two-prong test, they would still be denied under ABC-2. It is concluded that they lacked candor with and misrepresented their financial qualification to the Commission when they filed BPH-880504MV.

12. On May 4, 1988, General Partner Cheri Murphy certified that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue." Specifically, at that time ABC was relying on the personal resources of their general and limited partners.

13. When Cheri Murphy so certified she knew that she that she didn't have sufficient funds to meet her \$52,000 financial commitment. And she should have known that limited partner James Stevens didn't have the sufficient net liquid assets to meet his \$39,500 financial commitment.

14. The further truth is that when Cheri Murphy certified ABC's finances she didn't have the faintest idea of what the personal resources of her eight limited partners were. She didn't know many of them. She had never seen any of their balance sheets or financial statements. And

since she herself had just joined the partnership the day before (May 3, 1988), she hadn't discussed with any of the eight the manner in which they intended to meet their respective financial commitments. Stated another way, having been recruited as ABC's general partner at the eleventh hour, Cheri Murphy didn't have the faintest idea what was going on.

15. Since Cheri Murphy was not in a position to certify ABC's financial qualifications on May 4, 1988, since she didn't have enough information, she should never have so certified. It was improper for her to make representations to the Commission when she had no idea whether those representations were false or true. Since she certified in total ignorance, she must be charged with constructive misrepresentation and lack of candor under ABC-2.

Ultimate Conclusion

16. Since neither MTW, nor ABC are basically qualified to be a Commission licensee, no comparative conclusions are required under the comparative issue.¹⁰ Finley Willis is basically qualified to be a Commission licensee. Since he is, and MTW and ABC aren't, Willis is declared the winner. So, unless an appeal is taken from this Initial Decision or the Commission reviews it on their own motion, MTW Communications' application (BPH-880504MH), and Anderson Broadcasting Company, Limited Partnership's application (BPH-880504MV) ARE DENIED; and Finley Willis, Jr.'s application (BPH-880503MA) IS GRANTED.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTES

¹ There were numerous enlargement requests filed that covered a considerable time span. In fact the hearings had to be conducted in three phases.

² MTW-1 and MTW-2 were added in FCC 90M-2633 released August 22, 1990, and MTW-3 was added in FCC 90M-3270 released October 17, 1990.

³ Issues ABC-1 and ABC-2 were added in FCC 90M-3975 released December 17, 1990.

⁴ The standard comparative issue and the ultimate issue were contained in the original Hearing Designation Order (HDO). See 55 F.R. 24927 published June 19, 1990.

⁵ MTW apparently fell apart procedurally. See e.g. FCC 91M-1427 released April 24, 1991. But, in spite of the obvious lack of prosecution, and pursuant to 47 CFR 1.263(a), the Trial Judge directed all three parties to file Phase II Conclusions and Phase III Findings and Conclusions (Tr. 1188-89). Willis and ABC complied with that directive. MTW not only didn't comply, they've never explained why they didn't comply. MTW's counsel's silence has been both mysterious and deafening.

⁶ All of the limited partners, except for James D. Morgan, are associated with each other through the Anderson National Bank in Lawrenceburg, Kentucky.

⁷ Since ABC has failed to show that they were financially qualified on May 4, 1988 when they filed BPH-880504MV, there is no need to make findings on the \$250,000 July, 1990 financial commitment letter from the Farmers Bank in Nicholasville, Kentucky, or the March 25, 1991 demand note from that institution. Those two documents are irrelevant to this case. See *Aspen FM, Inc.*, 6 FCC Rcd 1602 (1991) at 1603; also see Tr. 1066-1067. In any event the general partner, Cheri Murphy was not instrumental in the 1990-1991 financial negotiations. The moving force behind those negotiations was Limited Partner, John V. Boardman (Tr. 631-636).

⁸ The record doesn't disclose why Toney believes he could become eligible for early retirement.

⁹ Up until that time Ms. Murphy hadn't seriously considered owning or operating a radio station. She had never taken any concrete steps toward purchasing or applying for a radio station, and she hadn't even kept in contact with the people she knew in radio (Tr. 921-922).

¹⁰ Note however that comparative findings have been made on all three applicants. See Findings 41-124 *supra*. So if an appellate body disagrees with all or part of the basic qualification analyses, all the findings needed to make the required two or three party comparison are present. No remand will be required. Stated another way, findings of fact have been made on all issues, and conclusions of law have been made on all material issues. See *WFPG, Inc.*, 33 FCC 673 (1962) at para. 13; *Alkima Broadcasting Co.*, 30 FCC 932, 21 RR 732 (1961) at Footnote 2; *Sayger Broadcasting Co.*, 32 FCC 499, 22 RR 1059 (1962) at Footnote 7; 47 CFR 1.267(b) and 5 USC 557(c)(A).

¹¹ If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, this Initial Decision will become effective 50 days after its public release. See 47 CFR 1.276(d).