

## DISSENTING STATEMENT OF COMMISSIONER ABBOTT WASHBURN

## IN WHICH COMMISSIONERS QUELLO AND JONES JOIN

Re: Assignment and Transfer Applications Involving Stations  
Held by Licensees with Other Stations in Hearing

I would have granted the assignment application of stations KLBK and KLBK-FM but not for the reasons stated in the item and not with the excess baggage of the new policy. Little, in my judgment, would be gained by deciding the transferability of stations owned by a licensee as soon as one of the licensee's other stations has been designated for hearing. Indeed, it would put the Commission in a less flexible position.

First, making the decision at the very outset would be a useless expenditure of Commission time and resources unless we had a transfer application before us--i.e., it is quite possible the owner would never apply to sell during the hearing. In this regard the Commission would be better advised to follow the practice of the courts, which would refuse to resolve an issue (e.g., transferability of the other stations) unless an application was squarely before them.

Second, issues designated originally (and relied upon by the Commission to defer or designate additional stations) might be deleted by the presiding Administrative Law Judge. Holding all of the multiple owner's licenses hostage to possible weaknesses in the Commission's case is unjust. We were assured during the discussion that language is being added to the final document which will clearly state that a decision to disallow the transfer of all stations at the time of designating one or more licenses of a multiple owner may be revisited by the Commission upon request of the licensee. Again, there might not be a need for the Commission to redecide if the Commission waited to make its initial decision until an application was actually filed by the licensee.

Third, issues designated for hearing are allegations only. We do not designate with the certainty that all will be proven; we do so only with the conviction that the untested information collected by our staff raises substantial and material questions. Witnesses may not be as cooperative in a hearing room as they were in the privacy of an interview; evidence relied on may not be admissible; mitigating and character evidence may be introduced which puts a different light on our consideration of the licensee in the circumstances of the case.

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Finally, little will be gained by deciding the transferability of stations owned by a licensee as one of its other stations is being designated even if the designated station is ultimately sold under our distress sale policy. Character issues do not arise from a vacuum but rather spring from evidence of bad conduct, i.e., actual misdeeds. If the evidence is that misdeeds are absent from all but the designated station and it is sold, we then know that the issues concerning the involved station will never be resolved. The question then becomes whether or not to litigate the character issues by designating the other stations which, as far as we know, are uninvolved in the misdeeds. Both practically and legally, a distress sale puts an entirely different light on the question. 1/

In summary, the Commission would be in a better posture by waiting to address the question if and when it actually arises in an application for transfer. The ultimate decision is a judgment call by the Commissioners. This call can be assisted only so far by facts and recommendations provided by the Broadcast Bureau. If the opinion of the Broadcast Bureau is desired at any point during the hearing process, it can be requested and the ex parte problems cured by giving opportunity to the licensee to respond. A hard and fast policy to make the judgment call at the very outset of designation is unfair, unnecessary, and leaves the Commission in a less flexible position to deal effectively with the specific situations in each case.

Accordingly, I dissent.

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1/ I agree with Commissioner Jones' observation that since part of the rationale of the distress sale policy is to save Commission resources by avoiding the expense and time of a hearing, designating the same character issues against other uninvolved stations calls into question the wisdom of granting the application for distress sale.