Federal Communications Commission
Washington, D.C. 20554

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Ms. Eleonora A. Miranda, President
Circle Broadcasting of America, Inc.
5128 N.W. 86th Way
Coral Springs, FL 33067

Mr. Norberto Sanchez, President
Norsan Consulting and Management, Inc.
4824 N. Royal Atlanta Drive
Tucker, GA 30084

In re: WEWC(AM), Callahan, FL
Circle Broadcasting of America, Inc.
Facility ID No. 11214

Assignment of License
File No. BAL-20040810ABD

Dear Ms. Miranda and Mr. Sanchez:

This letter concerns the captioned application, as amended (the "Application"), of Circle Broadcasting of America, Inc. ("Circle"), licensee of Station WEWC(AM), Callahan, Florida, for assignment of license of WEWC(AM) (the "Station") to Norsan Consulting and Management, Inc. ("Norsan"). The application is unopposed. For the reasons set forth below, we grant the Application with conditions.

Background. Until May 15, 2005, Nestor C. Miranda was President, Director, and 55 percent stockholder of Circle.[1] On November 18, 1999, Mr. Miranda was found guilty of conspiracy to commit money laundering and money laundering in 1998 and 1999 in violation of Sections 1956(a)(1)(A)(i), 1956 (a)(1)(B)(i), and 1956(b) of the United States Criminal Code, as amended.[2] On February 12, 2000, the court sentenced Mr. Miranda to 210 months imprisonment.[3] Mr. Miranda has appealed his conviction.

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[1] Edusa Holdings ("Edusa") is a 45 percent stockholder in Circle. Edusa is owned by Eduardo Saenz (20 %) and members of Mr. Saenz' family. As of May 15, 2005, Nestor Miranda resigned as Circle's President, Eleonora Miranda, wife of Nestor Miranda, resigned as Vice President and became Circle's President, and Maricio Miranda, the son of Nestor and Eleonora Miranda, became Circle's Vice President.

[2] 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), and 1956(b). *See United States of America v. Nestor Miranda et al.* Case No. 0:99CR06122-009 (S.D. Fla.).

[3] In the original Application, Circle observes that the court did not deny Mr. Miranda federal benefits under the *Anti-Drug Abuse Act of 1988*, 21 U.S.C. § 862(a), and thus Mr. Miranda is not subject to a denial of federal benefits as outlined in that statute. *See also* 47 C.F.R. §§ 1.2001 *et seq.*

On August 10, 2004, Circle filed the captioned application to assign the license and sell the assets of the Station to Norsan[4] for $650,000.[5] In the Application, Circle states that the Station is being assigned for less than its appraised market value of $1.375 million.[6] It notes that the $650,000 purchase price will be less than the "actual legitimate debts" that Circle owes to creditors other than the two Circle stockholders. Circle provides an itemization of debts owed to innocent creditors and back pay claims of two Circle employees totaling $760,263.00.[7] Thus, claims Circle, its debt exceeds the purchase price by $110,263.00.

Finally, the Application includes a declaration under penalty of perjury from Eleonora Miranda that Circle shall use the sale proceeds first to pay off Circle's debts to all other innocent creditors (in the amount of $380,063) and then to pay partially the withheld salaries of the two Circle employees.[8] The distribution of proceeds will be made through an escrow arrangement with counsel for Norsan acting as trustee. The back pay payments cover the period from 1999 to April 2006, during which time Amanda Miranda, daughter of Eleonora and Nestor Miranda, served as the WEWC(AM) General Manager and Eleonora Miranda served as Vice-President and then President of Circle. Neither Eleonora Miranda nor Amanda Miranda has been implicated in any wrongdoing. Neither will receive their entire claimed back pay. Circle's two stockholders – Nestor Miranda and Edusa – will not receive any monetary consideration from the sale of the Station.

Discussion. The Commission's *Jefferson Radio* policy precludes consideration of license assignment applications where a character issue has been resolved against the seller or is pending.[9] This is because, as the Commission explained in one case, "there is no authorization to assign" if the seller ultimately is found unqualified.[10] The policy's underlying purpose is to prevent licensees from evading responsibility

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[4] Mr. Norberto Sanchez is President, Director, and 100 percent stockholder of Norsan.

[5] The parties supplemented that application on February 23, 2006, in response to an informal staff inquiry, *see Letter to Peter H. Doyle, Chief, Audio Division, Media Bureau from Kevin M. Walsh, Esq.* (Feb. 23, 2006) ("*February 23 Response Letter*"), and amended the Application on May 19, 2006 and on July 30, 2007.

[6] *See February 23 Response Letter*, February 6, 2006, appraisal of Hadden & Associates Media Brokers. This appraisal excludes the value of the station's tower site. In the May 19, 2006, amendment to the Application, Circle explains that Nestor Miranda and Eduardo Saenz, as individuals, each own in fee simple 50 percent of the real property on which the WEWC(AM) tower is located. The real property is not part of the WEWC(AM) asset purchase agreement.

[7] *See* July 30, 2007, amendment to the Application, Exhibit 4, "CBA's Debt as of July 2007." For easier reference, "CBA's Debt as of July 2007", listed in Exhibit 4, Page 9 of the Application is reproduced as an Appendix to this decision. The two employees for whom salaries are claimed are Amanda M. Miranda (back pay claimed of $149,500), and Eleonora A. Miranda, Circle's current President (back pay claimed of $230,700). Although neither will receive their entire claimed back pay, that portion which they will receive will be paid entirely from the proceeds of the sale of the Station. Circle states that neither has been implicated or involved in the alleged wrongdoing of Nestor Miranda and, due to Circle's financial problems, neither has been paid a salary since 1999.

[8] *See* May 19, 2006, amendment to the Application, Exhibit 4, Page 10, "Declaration of Eleonora A. Miranda," and July 30, 2007 amendment, Exhibit 4, "Further Declaration of Eleonora A. Miranda."

[9] *See Jefferson Radio Corp. v. FCC,* 340 F.2d 781 (D.C. Cir. 1964).

[10] *Catherine C. Murphy,* Decision, 42 FCC 2d 346, 347 ¶ 5 (1973).

for wrongdoing.[11] The policy serves as a deterrent because of the potential for "awesome loss" that would result from revocation or non-renewal of license.[12] This deterrent effect would be undermined if a licensee could "sell out from under a potential disqualification."[13]

Under the Commission's *Character Qualifications Policy Statement,[14]* non-FCC misconduct may raise a substantial and material question of fact concerning a licensee's character. In the *1986 Character Policy Statement* the Commission stated that "there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation . . . . Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee . . . ."[15] The *1990 Character Policy Statement* substantially expanded the scope of relevant non-FCC misconduct. In that Statement, the Commission concluded that a licensee's propensity to comply with the law generally is relevant to the Commission's public interest analysis and that evidence of any felony conviction, not just those that involve fraud or untruthfulness, is pertinent to its evaluation of a licensee's character.[16] We conclude that Nestor Miranda's convictions for conspiracy to commit money laundering and for money laundering raise a substantial and material question of fact as to whether he possesses the requisite qualifications to remain a Commission licensee.

In rare circumstances, the Commission has exempted sellers from application of the *Jefferson Radio* policy based on compelling public interest considerations.[17] We find that consenting to the

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[11] *See, e.g., Harry O'Connor,* Memorandum Opinion and Order and Notice of Apparent Liability, 2 FCC 2d 45, 48 ¶ 8 (1965) ("The purpose underlying this policy is obvious: A licensee cannot act inconsistently with the Communications Act or the Commission's rules and policies, and then, when a question is raised concerning such improper activity, transfer or assign the license to another; if he could, the only result of the wrongdoing would be a forced sale.").

[12] *See Stereo Broadcasters, Inc. v. FCC,* 652 F.2d 1026, 1030 (D.C. Cir. 1981).

[13] *See Cellular System One of Tulsa, Inc.,* Memorandum Opinion and Order, 102 FCC 2d 86, at ¶ 7 (1985) ("To permit a licensee to sell out from under a potential disqualification would significantly impair the Commission's ability to police and deter licensee misconduct."), citing *Pass Word, Inc.,*Order to Revoke Licenses, to Terminate Comparative Proceedings, and to Proceed with Docket 20941, 76 FCC 2d 465, 516 (1980), *modified,* 86 FCC 2d 437 (1981), *aff'd sub nom., Pass Word, Inc. v. FCC,* 673 F.2d 1363 (D.C. Cir. 1982).

[14] *In the Matter of Policy Regarding Character Qualifications In Broadcast Licensing,* Report, Order, and Policy Statement, 102 FCC 2d 1179, *recon. granted in part,* 1 FCC Rcd 421 (1986) ("*1986 Character Policy Statement*"), *modified,* 5 FCC Rcd 3252 (1990) ("*1990 Character Policy Statement"*), *on reconsideration,* 6 FCC Rcd 3448 (1991), *modified in part,* 7 FCC Rcd 6564 (1992).

[15] *1986 Character Policy Statement*, 102 FCC 2d at 1205 n. 60.

[16] *1990 Character Policy Statement,* 5 FCC Rcd at 3252. *See, e.g., South Carolina Radio Fellowship*, Memorandum Opinion and Order, 6 FCC Rcd 4823 (1991) (felony convictions involving possession of cocaine constitute a sufficient and independent basis for disqualification).

[17] See*, e.g., Lane Broadcasting Corporation*, Letter, 20 FCC Rcd 19373, 19375 (MB 2005) (approving assignment of radio station licenses from convicted child molester under strict supervision of proceeds distribution by District Attorney to ensure that no shareholder would receive direct benefit from the sale); *Letter to Charles R. Naftalin, Esq.,* 20 FCC Rcd 19373 (2005) (approving assignment of radio station licenses from convicted pedophile where no

proposed license assignment, as conditioned herein, would advance the public interest, consistent with precedent. Most importantly, no shareholder will receive any direct benefit from the sale of the Station. Eleonora Miranda and Amanda Miranda – who were not in any way implicated in Nestor Miranda's criminal activities and are not stockholders in Circle Broadcasting[18] – will receive from the proceeds only a portion of their respective back pay claims. The parties have created an escrow account for the collection and distribution of the proceeds, and have averred that the proceeds from the sale to will be distributed to the creditors listed in Exhibit 4 of the Application[19] prior to any payment to Eleonora or Amanda Miranda.[20] We condition the grant of this application on the distribution of sale proceeds as set forth in the escrow agreement. We will also require a post-consummation demonstration from the parties that the distribution of proceeds complied with this condition. Importantly, the denial of proceeds to shareholders such as Nestor Miranda imposes an economic result similar to the "awesome loss" which results from revocation. Thus, grant of the Application will not lessen the *Jefferson Radio* policy's broad deterrent effect on wrongdoing. This contract term is substantially harsher than that approved in *Harry O'Connor,* a case involving an alleged unauthorized transfer of control and misrepresentation to the Commission.[21] In *O'Connor,* the Commission concluded that grant of the assignment application was warranted because the seller would receive substantially less than he paid for his interest in the licensee entity.[22]

Other public interest factors which the Commission has relied on previously to permit license assignments where the seller's qualifications were at issue also are present here. Grant of the applications will result in Nestor Miranda's full withdrawal from broadcasting[23] and will ensure the Station's continued and non-interrupted service as one of two local broadcast outlets for residents of Callahan, Florida.[24] The Commission also has long recognized the protection of creditors and lien holders as a

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direct or indirect payment made to any seller shareholder from sale proceeds); *Second Thursday Corp.*, Memorandum Opinion and Order 22 FCC 2d 515 (1970), *recon. granted*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970) (to harmonize policies of federal bankruptcy law with those of the Communications Act, a grant without hearing of applications by applicant with qualifications issues may be made if the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors); *Hertz Broadcasting of Birmingham, Inc.,* Memorandum Opinion and Order, 57 FCC 2d 183, 184-85 (1976) (evidentiary hearing terminated on basis of principal's disabling illness; station sale permitted for no profit); *Lois I. Pingree,* Memorandum Opinion and Order, 69 FCC 2d 2179, 2183-84 (1978) (no-profit sale permitted where disability provides mitigation for wrongdoing).

[18] The misconduct involved here in fact did not involve any other stockholders, officers, directors, or employees of Circle apart from Mr. Miranda.

[20] *Compare Lane Broadcasting Corporation*, *supra*, (District Attorney's continued oversight of the distribution of proceeds from sale of station owned by convicted child molester "will ensure strict compliance" with requirement that no shareholder will receive direct benefit from the sale.)

[21] *Harry O'Connor, supra*, n.11.

[22] *Id.* at ¶ 10.

[23] *See Radio San Juan, Inc.,* Letter, 45 FCC 2d 375, 376 (1974); *see also, Northwestern Indiana Broadcasting Corp.,* Decision, 65 FCC 2d 66, 70 (1977).

[24] *See, e.g., Lane Broadcasting Corporation, supra*, 20 FCC Rcd at 19375; *Harry O'Connor,* 2 FCC 2d at 49 ¶ 10; *see also, Spanish Int'l Communications Corp.,* Memorandum Opinion and Order, 2 FCC Rcd 3336, 3339-40 (1987),

public interest benefit.[25] The claims of Circle Broadcasting's innocent creditors and lien holders will be substantially satisfied out of the sale proceeds in this case.

In light of these considerations, we find it appropriate to exercise our discretion not to pursue further the issue of Nestor Miranda's qualifications and to approve the captioned assignment application. Accordingly, IT IS ORDERED, that the application (File No. BAL-20040810ABD) to assign the license of Station WEWC(AM), Callahan, Florida from Circle Broadcasting of America, Inc. to Norsan Consulting and Management, Inc. IS GRANTED subject to the following conditions:

(1) Nestor C. Miranda shall not, without advance notice and prior Commission consent, hold or acquire an attributable interest in any Commission authorization or application. Nestor C. Miranda, in connection with any proposal to hold or acquire such an interest, shall provide a full showing of his qualifications and include a copy of this letter decision;

(2) The proceeds from the sale of the Station shall be distributed as set forth in the Exhibit 4 of the Application, as amended on July 30, 2007, reproduced in the Appendix to this decision;

(3) The proceeds from the sale of the Station shall be used to satisfy the claims of listed creditors in full prior to any distribution to Eleonora Miranda or Amanda Miranda; and

(4) Within 30 days of consummation of the transaction approved herein, Circle Broadcasting of America, Inc. and Norsan Consulting and Management, Inc. shall jointly file with the Office of the Secretary a demonstration – including affidavits from pertinent creditors supported by cancelled checks or other extrinsic indicia – that the proceeds from the sale of Station WEWC(AM) have been disbursed in accordance with conditions (2) and (3), above.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Alan C. Campbell, Esq. (Counsel for Circle Broadcasting of America, Inc.)
John C. Trent, Esq. (Counsel for Norsan Consulting and Management)

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rev'd sub nom. Coalition for the Preservation of Hispanic Broadcasting v.. FCC, 893 F.2d 1349, 1362 (D.C. Cir 1990), *vacated and aff'd,* 931 F.2d 73 (D.C. Cir) (*en banc*), *cert. denied,* 502 U.S. 907 (1991) (permitting the sale of seven television stations for which renewal applications had been designated for evidentiary hearing would "expeditiously remove the 'cloud' that has surrounded the operation of these stations" during the pendency of this proceeding, acknowledging that "service to the public may deteriorate during an extended period of uncertainty"). Station WROO(FM), owned by Clear Channel Communications, is also licensed to serve Callahan.

[25] *See LaRose v. FCC,* 494 F.2d 1145, 1146 n.2, 1148 (D.C. Cir 1974), *Dale J. Parsons, Jr.,* Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (1995), and *Shell Broadcasting, Inc.,* Memorandum Opinion and Order, 38 FCC 2d 929, 931 (1973).

APPENDIX