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November 20, 1991

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: MM Docket No. 91-221

Dear Ms. Searcy:

Transmitted herewith, on behalf of Associated Broadcasters, Inc. and Galloway Media, Inc. are an original and five (5) copies of their "Comments" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Mania K. Baghdadi

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Counsel for
Associated Broadcasters, Inc. and
Galloway Media, Inc.

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Enclosures

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Federal Communications Commission
Office of the Secretary

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	MM Docket No. 91-221
	)	
Review of the Policy Implications of the Changing Video Marketplace	)	

To: The Commission

COMMENTS

Associated Broadcasters, Inc. and Galloway Media, Inc. (hereinafter referred to collectively as "Commenters"), by their attorneys, hereby submit their Comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding, FCC 91-215, 6 FCC Rcd 4961 (1991) ("Notice").

Introduction

Associated Broadcasters, Inc. is the licensee of Stations KWKT(TV), Channel 44, Waco, Texas (ADI Market # 97); KPEJ(TV), Channel 24, Odessa, Texas (ADI Market # 146); and KVEO(TV), Channel 23, Brownsville, Texas (ADI Market #113).1/

Galloway Media, Inc. is the permittee of operating Station WGMB(TV), Channel 44, Baton Rouge, Louisiana (ADI Market # 94).

1/ The President, Treasurer, Director, and 100% stockholder of Associated Broadcasters, Inc., Thomas R. Galloway, Sr., is the President, Treasurer, Director and sole stockholder of Communications Corporation, licensee of AM Station KPEL, Lafayette, Louisiana, and FM Stations KTDY(FM), Lafayette, Louisiana, and KEZA(FM), Fayetteville, Arkansas. The Executive Vice President and Secretary of Associated Broadcasters, Inc. is Executive Vice President of Communications Corporation. Additionally, there is currently pending before the Commission an application for consent to the transfer of control of Galloway Media, Inc. to Thomas R. Galloway, Sr.

Comments

The Commission's Notice responds to the Office of Plans and Policy Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991)("OPP Paper"), which aptly portrays the uncertain future of over-the-air television broadcasting, particularly smaller-market, independent, and UHF stations. Accordingly, in the Notice, the FCC has asked a number of questions, as to what policy and rule changes, including changes in its multiple ownership rules, are necessary to insure the future of over-the-air broadcasting, consistent with the FCC's policy to foster the provision of over-the-air service to as much of the country as possible.

Commenters are in a good position to respond to the Commission's Notice, since their stations are all UHF stations in smaller markets. Further, WGMB(TV) is a new entrant, having gone on the air pursuant to automatic program test authority in August, 1991.

Based on their experience in running smaller-market, UHF stations and their experience with the current serious financial problems and poor economic conditions afflicting the television industry, Commenters urge the Commission to eliminate artificial ownership restrictions pertaining to television stations, as discussed herein. Such a change is critical to the future of television broadcasting in the new media environment. Specifically, there should be no limit on the number of TV stations that one licensee can own; the numerical ownership limits should be deleted. Further, the FCC should repeal its one-to-a-market or radio-television cross-ownership rule.2/ Finally, the FCC should delete its "duopoly" or contour overlap rule for TV stations.3/

The Commission's current ownership restrictions severely hamper TV stations in competing with multichannel delivery systems and should be deleted as discussed herein so that broadcasters can take advantage of economies of scale and have additional resources to provide programming, which could permit them more effectively to compete with cable services and other multichannel services which, unlike television broadcasters, have dual revenue streams. Deletion of the multiple ownership restrictions discussed herein is a necessary reaction to the dismal economic setting in which TV broadcasters, particularly UHF broadcasters like Commenters, find themselves today, and would not undermine diversity or localism, given the explosion of competing media sources available in the marketplace today.

The Commission's artificial ownership restrictions are not required by law and no longer serve the purposes for which they were first established and have long been maintained--to foster

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2/ Commenters express no opinion on Section 73.3555(c), the newspaper-broadcast cross-ownership rule.

3/ The OPP Paper, 6 FCC Rcd at 4103, suggests that the FCC should consider deleting the duopoly rule for unaffiliated UHF stations or relax the duopoly rule to permit common ownership of television stations unless their Grade A contours overlap. Commenters believe that the duopoly rule should be deleted for all television stations, and no distinction should be made between independent stations and network affiliates in this regard.

competition and diversity in programming. As clearly portrayed in the OPP Paper, the current video marketplace is highly competitive and will only become more so. The number of television stations, particularly UHF stations, has grown dramatically in the last decade, from 1980 to 1990,4/ as has the number of television signals available over the air in all markets.5/ By 1990, 94% of television households were in markets with five or more television stations, not counting cable channels. Additionally, television broadcasters have also faced and will continue to face increased competition from cable, which now passes over 90% of television households,6/ as well as from other video sources, such as wireless cable, low power television, motion pictures, video cassette recordings, SMATV, and home dishes.7/

Moreover, competition to over-the-air television will continue to increase dramatically in the next decade, owing to the initiation of Direct Broadcast Satellite services, expansion of ownership of home satellite dishes, and digital video signal compression techniques, which will allow expanded channel

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4/ In 1980, there were 734 television stations; in 1990, there were 1,093. The number of commercial UHF stations grew by 150% between 1980 and 1990. OPP Paper, 6 FCC Rcd at 4011 & Table 3.

5/ The number of off-air stations available to the median household increased from six in 1975 to ten in 1990. OPP Paper, 6 FCC Rcd at 3999.

6/ OPP Paper, 6 FCC Rcd at 3999-4001, 4011-14.

7/ These competing media sources do not face ownership restrictions such as are placed on television broadcasters.

capacity and thus permit greater competition. OPP Paper, 6 FCC Rcd at 4000-01, 4042-43, 4065. Thus, artificial ownership restrictions are no longer necessary to foster competition; but, rather, marketplace conditions cannot help but insure increased competition, a necessary result of these technological and marketplace changes facing television broadcasters.

Further, the FCC's ownership restrictions are no longer necessary to afford diversity in programming services. The increase in video services will inevitably lead to increased diversity in programming. Further, increased group ownership may actually encourage diversity; for group-owned stations, managed in common, may have greater incentive to program for different niche audiences with distinct programming rather than targeting the same viewers as other separately-owned stations in a market. See Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3276 (1991).

Not only are the multiple ownership restrictions discussed herein not necessary to preserve competition and diversity, but, in fact, deletion of these ownership restrictions is critical to the survival of over-the-air television. The OPP Paper aptly portrayed the dismal economic present and future prospects of over-the-air television broadcasting given the explosion of competing media sources. The OPP Paper documented a decline in broadcast station audiences, which has led and may continue to lead to reductions in advertising revenues. Thus, the OPP Paper documented falling profits or increasing losses in the last half of the 1980's for both affiliates and independents, with heavy losses concentrated among UHF independents and small-market stations, which could continue unless the longer-term trend reverses. OPP Paper, 6 FCC Rcd at 4014, 4022-4032, 4083-84, 4097. Poor finances means that less resources are available for programming, and, ultimately, could lead to stations going dark. Indeed, the OPP Paper predicted that video advertising is likely to grow only very slowly over the next decade, with the television share of advertising falling, with the result that broadcast stations will suffer declining revenues. In smaller markets, the effects will be severe and could result in stations going dark, with a concomitant loss of service to the public.8/ OPP Paper, 6 FCC Rcd at 4001.

Changes in the ownership rules are necessary to afford television broadcasters some competitive relief. Group ownership can serve the public interest in this regard. Indeed, as the Commission has already found:

> "group ownership may lead to economies of scale, particularly given group owners' ability to consolidate management, bookkeeping, secretarial, sales and programming personnel for a number of stations, and to engage in group advertising sales and group program development and purchases."

8/ While the FCC is not and should not be concerned with the profitability of broadcasters, if service is lost thereby, the public interest will clearly be disserved.

Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3276 (1991).9/ Further, the FCC found that group ownership may foster news gathering, editorializing and public affairs programming, and may lead to the development of independent programming networks, and that the economies of scale could lead to increased resources being available to improve the responsiveness, diversity, and quality of programming. Id. Further, in relaxing its one-to-a-market rule in 1989, the Commission noted that permitting radio-television combinations in the same market could promote benefits in terms of increased efficiency and cost benefits and improved programming, including more news, public affairs and other non-entertainment programs, and could enable marginal stations to stay on the air, allow activation of unused channels and permit improvement of the facilities of existing stations. Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd 1741, 1746-50 (1989), on recon., 4 FCC Rcd 6489 (1989).

Thus, Commenters strongly agree with the OPP Paper that the Commission should eliminate its broadcast multiple ownership rule. The FCC should also delete its duopoly rule and its radio-television cross-ownership rule. As the OPP Paper noted: "Rules imposed to curb network or station market power or concentration of control over programming when television broadcasters were the video marketplace may be counterproductive

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9/ The OPP Paper agreed that revision of the ownership restrictions could permit economies of scale and reduced costs or improved service. OPP Paper, 6 FCC Rcd at 4103.

in today's competitive market." OPP Paper, 6 FCC Rcd at 4102. Removal of artificial ownership restrictions would allow broadcasters to compete on a more level playing field since they must compete with multichannel operators that are not subject to ownership restrictions. Given the level of competition and diversity that exists today and the foreseeable trends for increased competition in the future, it would be virtually impossible for any entity to gain a monopoly on ownership or viewpoints if the Commission eliminated the ownership restrictions as discussed herein. Indeed, Commenters cannot conceive of any possible adverse consequence of removing these ownership restrictions or any reasonable justification for their continued existence.

Accordingly, for the reasons stated herein and in recognition of the sorry economic state of over-the-air television broadcasting and the ever-increasing competition and diversity in media sources, the Commission should eliminate the ownership restrictions applying to television broadcasters, as discussed herein. The Commission should let the marketplace determine station ownership and programming. Any other course, such as maintaining the current restrictions, may only further hamper television broadcasters, particularly UHF broadcasters, in their efforts to compete with cable and other video sources and to continue to provide responsive, high-quality programming. Commenters urge the Commission expeditiously to adopt a notice of proposed rule making to delete its multiple ownership rules as discussed herein.

Respectfully submitted,

ASSOCIATED BROADCASTERS, INC. and
GALLOWAY MEDIA, INC.

By: Mania K. Baghdadi
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November 20, 1991

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