that the Commission has lost sight of the public interest in diversity of voices, but the Commission has recognized that some of the "voices" of the next century will come to us in other forms of communication.[55] A continued commitment to diversity of viewpoint in broadcasting can be seen in the Commission's rules regarding minority ownership.[56] They reflect the Commission's view that it does not matter if the public can get information from many different places if those places are all owned and controlled by members of one group.

Minority communications companies bring important views to all Americans. There is no longer any doubt that their service to all communities is in the public interest. But getting *in* to the business does not guaranty success or growth. Tragically, minority ownership of broadcast properties is actually declining.[57] In order to survive and flourish, the quality of these services must remain competitive with all other services. In many cases this will require access to affordable financing.

Other federal agencies have demanded that America's banks increase their activities in minority and low-income communities and

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[55] MM Docket No. 91-140; ECC 91-156.

[56] *Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979 (1978).

[57] NTIA figures show the ownership dropped from 2.9% in 1990 to 2.7% in 1991. *BROADCASTING*, December 16, 1991 47.

businesses.[58] They have been ordered to implement low interest mortgage programs to first-time buyers and work with small and emerging businesses. At the same time, they are increasingly limited in the risks they can take in making loans.[59]

A bank's commitment to local minority broadcasters could be greatly enhanced if they could respond to *both* of these demands. They could loan more money if the full value of the broadcast business could be used as collateral. If these loans are protected by a security interest, they may also satisfy the Comptroller of the Currency, the FDIC and the Federal Reserve.

Of course, many of these same considerations would apply to loans to all broadcasters. Access to capital will also be critical to the survival of many small and independent stations, but they will find few local banks (many of which are themselves on shaky ground) willing to risk the wrath of banking regulators by granting essentially unsecured loans, *i.e.*, loans in excess of the plant and equipment.

There is probably no action the Commission can take short of direct subsidies that can save many of the current marginal operators, especially those that are already carrying heavy debt. Many of them will be unable to sell or get loans (even if they *could* grant a security interest)

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[58] The Community Reinvestment Act, 12 U.S.C. § 2901 *et seq.*

[59] See Section IV(C), *infra.*

and will simply go dark, sending their license back to the F.C.C.[60] They will lose, their creditors will lose, but more importantly, their communities will lose.

The best that can be hoped for is that the broadcasters which are still credit-worthy can get the financing they will need for adjusting their operations to solve problems and take advantage of opportunities.

The credit source most likely to understand these problems and opportunities as well as the management skill of the broadcaster is a local bank or savings and loan. Its understanding of local market conditions allows it to make a more informed risk assessment, and it is more likely to be in a position to help the broadcaster work with other local creditors. Clearly the transaction costs of dealing with a local lender will be far less than those associated with lenders in distant cities. These costs typically include travel, due diligence investigations, and specialized legal advice. In small communities a bank may also be more willing to work with broadcasters that fall on hard times because it would not like to see this important part of the community's identity go dark or be sold to owners thousands of miles away. There is little doubt that locally owned and operated stations often provide superior service because they know their communities. The Commission recognized this

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[60] Opp. Paper No. 26 2.

when it concluded that wide-scale divestitures that result in less local ownership would not be in the public interest.[61]

As discussed in previous sections, banks and savings and loans will be able to make these loans at interest rates far lower than those now available to broadcasters *if* they can get the same kind of security they get from other local businesses.

Granting this petition may be the most effective action the Commission can take to further the public interest in local, independent and multicultural broadcasting.

B. QUALITY PROGRAMMING.

The quality of programming provided by broadcasters has always been an important criteria in determining the public interest. This was most recently seen in the Commission's rules implementing the Children's Television Act of 1990. Each station is now mandated to provide for the informational needs of children in its audience. The Commission has encouraged stations to ascertain these needs in their particular communities.[62]

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[61] *F.C.C. v. National Citizens Committee for Broadcasting*, 98 S. Ct. 2096 (1978).

[62] *In the Matter of Policies and Rules Concerning Children's Television Programming*, MM Docket Nos. 90-570 and 83-670, Adopted April 9, 1991.

In order for stations to make a meaningful commitment to these and other local needs, many will need access to capital. It may be impossible to make these expenditures from operating revenues during the next several years as ad revenues continue to decline or level off. But failure to do so will not only imperil the renewal of their license but may put them at a competitive disadvantage with other information and entertainment services available in their community. As discussed in Section I, they will have options and opportunities but they will all cost money.

The quality of local programming will almost certainly suffer if the broadcaster's only option for remaining solvent is to cut costs by broadcasting "canned" services produced for many stations or leasing part (or all) of their air time to others.

The Commission has determined that a licensee's access to sufficient working capital is an important criteria in determining the public interest because it is important for maintaining the quality of local programming. However, the Commission appears to have changed its view of the impact that debt will have on this programming. In 1978, the Supreme Court approved a Commission determination that a station burdened with heavy debt may not be able to meet its programming

obligations.[63] However, as recently as 1989, it found no evidence that the amount of a station's debt affected its programming. [64]

C. PUBLIC INTEREST IN FINANCIAL INSTITUTIONS.

Few would have predicted that in 1991 the Commission would have before it a petition that springs, in large part, from the fact that two of the mightiest industries in America are fighting for their financial lives: broadcasters and banks.

The situation for broadcasters is outlined in the several Commission studies and rulemakings discussed in Section I of these comments. The situation for banks has only recently become apparent, and legislation designed to protect the public from widespread bank failures was passed by Congress in late November of 1991.[65] Among the bitter pills prescribed for the ailing banking industry are underwriting standards even more stringent than the ones that were already causing banks serious concerns about their current and future loans to broadcasters.

The new legislation comes on the heels of regulations promulgated by the Bank for International Settlements that will take

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[63] *Id.*

[64] Amendment of Section 73.3597, 4 F.C.C. Rcd 1710 (1989).

[65] S.F. 543, signed by the President in December 1991.

effect in January 1993.[66] These regulations set international standards for measuring the adequacy of a bank's capitalization and sets up rules for booking assets on a "risk weighted" basis. The value of a loan that has any level of risk associated with it must be reduced on the bank's books to reflect the risk. The regulations will also raise the minimum capital/asset ratio to 8%. Any losses or assets booked as risk weighted will cause higher capitalization requirements. This will make banks covered by these rules even *less* interested in making unsecured loans to broadcasters.

In order to meet the underwriting standards in the new legislation and the BIS regulations, banks will have to show regulators more evidence that current loans are secure enough to be counted as assets. Loans in default or on the bank's "watch list" will be closely examined by these regulators, and any that are thought to be too risky will not be included in the bank's assets for purposes of calculating its capitalization. For example, a banking regulator might determine that a loan is too risky if its debtor's cash flow is not sufficient to pay the loan or if the loan is not protected by a security interest in an asset belonging to the debtor that is at least as valuable as the amount of the debt. A bank might be forced to "write off" all or part of a loan on a commercial

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[66] 12 CFR Part 3, App A, Section 4(b), and Table 1, Summary of Risk Weights and Risk Catagories.

real estate project if the value (market price) of the collateral (the real estate and building) is now worth less than the unpaid part of the loan. This could also happen if the bank's claim to proceeds from the sale of the collateral would be "behind" that of other creditors so the amount it is likely to recover is even less than the market price.

For banks and other lenders now carrying loans for broadcast properties the situation could become very bleak indeed. Not only are the market values of broadcast properties declining, but the recent bankruptcy cases cited above may have cast a shadow on the assets that are acting as security for the loans. To make matters worse, if the security interest granted by the broadcaster in the loan agreements is not recognizable by the courts, the banks will be thrown in with the unsecured creditors, and the amount they are likely to recover (even if the station is sold for its market value) will be drastically reduced.

Why should the F.C.C. worry about the health of the nation's banks? Why shouldn't it, like other government agencies, take a "Not My Problem" attitude?

These commentors respectfully submit that the problems facing banks are part and parcel of those facing broadcasting. Many of the same economic trends are at the root of the problems in both industries. A "fix" that does not consider both will not achieve the desired results. Moveover, finding the appropriate regulation for both is

critical because the failure of either to provide the needed level of services to their communities would be a disaster of major proportions in many small and mid-sized communities.

If banks are forced to write off all their loans to broadcasters, they will be that much closer to insolvency. While these loans probably do not make up a large share of any single bank's loan portfolio, they are one category of loan that would, if treated like all other business loans, remain recognizable assets. In other words, the problem for many of these loans is fixable. They can remain assets *if* they are supported by collateral value that unquestionably *exists* in the right to operate the broadcast business. This value is represented by a license from the people of the United States, the owners of the airwaves. Through their government, these owners retain the right to cancel, not renew, and approve any transfer of the license to another party.

There is no public interest in an F.C.C. rule that asks the banking industry (and perhaps the taxpayers) to pay for writing off these loans based on the fear of previous Commissioners (in other economic times) that a security interest would deliver ownership of the airwaves to broadcasters and/or control of broadcasters to banks. These fears have never materialized and there is no evidence that they ever will. Broadcasters routinely *sell* the value represented by their license but have never claimed to own the airwaves. They have negotiated loans (both

secured and unsecured) with a variety of lenders without any evidence that lenders have tried to control the stations.

The Commission has long recognized that the interests of those lenders should be placed in the balance as it weighs all the things that make up the public interest.[67] They will be as important to the quality of broadcasting as programming and equipment suppliers, and their retreat from this field will be just as disastrous in both the short and long term.

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[67] *In re Application of Second Thursday Corp.*, 22 F.C.C.2d 515 (1970).

CONCLUSION

In light of the value that the financial industry could bring to the broadcasting industry by providing local, cost effective access to capital, and in light of the lack of evidence that this will endanger the autonomy of the station or the authority of the Commission, we respectfully submit that the premises that informed the Commission's "rule" in regard to security interests are no longer supportable.

By allowing broadcast financing to be governed by the same state and federal rules that govern the financing of competing communication services, the Commission can help broadcasters remain important sources of information in the next century.

Respectfully submitted,

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions for Declaratory	)	MMB File No. 910221A
Ruling Regarding Reversionary	)	MMB File No. 870921A
and Security Interests	)	
	)	

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