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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
)
Review of the Commission's) MM Docket No. 91-221
Regulations Governing)
Television Broadcasting)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

JOINT REPLY COMMENTS

WKRG-TV, Inc. ("WKRG") and WEVV, Inc. ("WEVV"), by their attorneys, hereby reply to comments filed in the above-captioned rulemaking proceeding. Among other things, the Notice of Proposed Rule Making, released June 12, 1992, sought comment on the elimination or modification of the Commission's "one-to-a-market" limitation, 47 C.F.R. § 73.3555(b), and its television duopoly prohibition, 47 C.F.R. § 73.3555(a).

This proceeding has produced overwhelming support for complete repeal of the "one-to-a-market" rule, which currently prohibits a single person or entity from owning both a television station and a radio station in the same market. See, e.g., Comments of the National Telecommunications and Information Administration at 24-26 ("NTIA Comments"); Comments of Associated Broadcasters, Inc. and Galloway Media, Inc. at 7-15 ("Associated Comments"); Comments of the Association of Independent Television Stations, Inc. at 25-27 ("INTV Comments"); Comments of CBS, Inc. at 29-33 ("CBS Comments"); Comments of the JET Broadcasting Co., Inc. at 1-10; Comments of

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Morgan Murphy Stations at 2-6; and Comments of Westinghouse Broadcasting Company, Inc. at 12-17 ("Westinghouse Comments"). These commenters and others have emphasized that prohibiting cross-ownership in the wake of the liberalization of the radio rules excludes television licensees, among them some of the most committed broadcasters, from enhancing their service to the public, and thereby undermines one of the significant purposes of the radio rules. Commenters have also demonstrated that the modest step of repealing the "one-to-a-market" rule will have no negative impact on diversity in an environment where the number of media outlets has increased dramatically, and stations cater increasingly to specialized audiences.

A few commenters have suggested a more cautious approach -- extending some form of the current waiver policy, premised on the existence of 30 independent broadcast voices in the affected market, to markets beyond the top 25. WKRG and WEVV believe that this is a needlessly complicated and arbitrary approach that is out of step with the current realities of an increasingly diverse and fragmented radio and television marketplace.

It is, in fact, no longer necessary to retain a restriction on local radio-television cross-ownership. Given the large number of non-broadcast voices available via both cable television and other media, it is difficult to justify any particular number of broadcast stations as a benchmark for diversity, particularly when both the radio and television services remain subject to separate local ownership restrictions. As commenters have pointed out, the interests of diversity and competition will remain well protected by the ownership restrictions applicable to the individual services, and continuing agency oversight of station transfers. See WKRG/WEVV Joint Comments at 13-14. See also NTIA Comments at 26; INTV Comments at 26-27.

Moreover, it would be ironic indeed if television broadcasters were denied the opportunity to benefit from the Commission's relaxation of restrictions on the ownership of broadcast radio facilities, when the Commission has specifically emphasized the substantial operating efficiencies enjoyed by existing radio/television combinations as a justification for adopting the recent revisions to the radio ownership rules. See Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2775-76 (1992). As the report by the Commission's Office of Plans and Policy makes clear, television stations have been among the hardest hit by the growing competition among proliferating media outlets, and the outlook for the future is clouded, at best. See Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996 (1991). See also NAB Survey Results Called Worst In Years: 50% of Independent Stations and 25% of Affiliates Posted Big 1991 Losses, Communications Daily, August 7, 1992, at 1. Thus, television licensees are particularly in need of regulatory relief in this area.

Similar considerations suggest that a substantial relaxation of the television duopoly rule is warranted. Among those commenters addressing the rule prohibiting Grade B contour overlap, support for relaxation of the restriction was nearly unanimous. See, e.g., Comments of Act III Broadcasting, Inc. at 8-22; Associated Comments at 15-16; CBS Comments at 28; INTV Comments at 19-21; Comments of LIN Broadcasting Corp., et al. at 8-10 ("LIN Comments"); Comments of the National Association of Broadcasters at 16-19; and Comments of NBC, Inc. at 26-27. Some commenters also support permitting television duopolies within the Grade A contour, restricted only by the requirement that one of the stations involved be a UHF facility. See, e.g., INTV Comments at 17-18; LIN Comments at 11-13; and Westinghouse Comments at 3-5.

WKRG and WEVV believe that allowing a single owner to retain an attributable interest in two television stations in the same market, provided one is a UHF facility, is the most workable and easily applied approach. Although some commenters advocate requiring a showing that a particular number of independent voices will remain in a market following a combination, such limitations are as arbitrary and meaningless for television duopolies as they are in the "one-to-a-market" context. The principal effect of such a restriction is simply to place a premium on being the first to propose a merger, particularly in markets where only one such combination would be permitted. Instead, the Commission should allow the market to determine which combinations are economical, or likely to result in programming benefits to the community.

Finally, if such an "independent voices" approach is imposed, it should at least be crafted to account for the full range of diversity available to television viewers in a particular market. For example, should the Commission adopt a requirement that six television voices remain in a market following a combination, the voices counted should include all video services that provide local viewpoints, including both commercial and noncommercial full-power stations, low power facilities, television translators, and locally-programmed cable channels.

Conclusion

For the reasons set forth above and in their initial comments, WKRG and WEVV recommend that the Commission take the following actions: (1) eliminate the one-to-a-market rule; and (2) amend the television "duopoly" rule to define prohibited overlap using Grade A contours, and to permit television combinations consisting of UHF and UHF stations or UHF and VHF stations with overlapping Grade A contours.

Respectfully submitted,

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