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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 28, 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

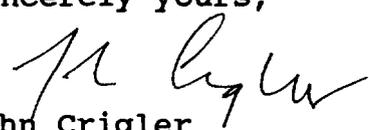
Re: MM Docket No. 91-221  
Television Ownership Rules

Dear Ms. Searcy:

Transmitted herewith, on behalf of KMTR, Inc., are the original and four copies of Comments which it submits in the above-captioned rulemaking.

Please direct any questions concerning this matter directly to this office.

Sincerely yours,

  
John Crigler

JPC/an

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Eugene ADI/DMA area. Because of its UHF frequency and lack of cable carriage, KMTR fails to reach approximately one-third of the ADI/DMA area.

KMTR sought to remedy this deficiency by applying for and constructing two, full-power, UHF satellite stations in areas of the ADI/DMA not currently served. (One of KMTR's competitors had operated similar VHF satellite stations in the same communities for over thirty years.)

The application process for these two satellite stations was begun in 1987 but was complicated and delayed by ownership restrictions embodied in Section 73.3555 and the additional showing regarding satellite stations contained in Note 5. A construction permit for the first of these facilities (Channel 23, Coos Bay, Oregon) was granted in late 1990, and Station KMTZ went on the air in April 1991. The construction permit for Station KMTX was granted in January 1992, and the station became operational in April, 1992.

Establishment of the two satellite stations was necessary in order for KMTR to achieve coverage parity with its VHF competitors across the entire ADI/DMA area. Since cable penetration is quite high (82.1% in the county served by the Coos Bay satellite station, for example) it was also important for the stations to achieve cable carriage. It is quite apparent that a new, local station, seeking to serve a very small community, would have a very difficult time if it were to be excluded from access to over 80% of its potential audience.

After its long and expensive attempts to achieve over-the-air parity with its VHF competitors, KMTR launched an equally arduous campaign to obtain carriage of its new satellite stations in local cable systems. KMTR's difficult, and only partially successful efforts, were summarized in Comments which it submitted in

Docket Nos 90-4/84-1296 (regarding Re-examination of the Effective Standard for the Regulation of Cable Television Basic Service Rates). These comments were cited by Congress, see House Report accompanying the Cable Television Consumer Protection and Competition Act of 1992, H.R. 4850 at 52-53, as an example of the way in which cable systems use “their gateway status either to prevent competing television stations from getting access to viewers or to extract unwarranted concessions from broadcasters to obtain carriage.”

Abuses of market power by cable systems were, however, only part of the problem. KMTR found that the Commission’s own regulations, and particularly its rules protecting “significantly viewed” stations and TV translators in adjacent markets, see Sections 76.92 and 76.54, prevented KMTR from obtaining network nonduplication protection and hindered its efforts to obtain carriage on local cable systems. As a result, KMTX is still not carried on the cable system which serves its community of license.

KMTR’s experience over the past ten years illustrates two key points relevant to the proposed changes in the television multiple ownership rules. First, is that new UHF stations continue to labor under significant regulatory burdens which prevent them from achieving parity with their long-established VHF competitors. The second is that small television markets are desperately in need of relief from the strictures currently imposed by the multiple ownership rules.

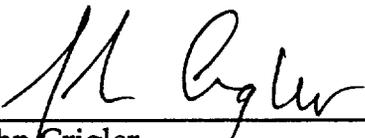
To provide the relief needed to UHF licensees, and to assure that television service to smaller markets survives, KMTR recommends that the Commission relax its multiple ownership rules in two stages, so as first to allow UHF licensees which have been artificially constrained by historical, regulatory, and technical

disadvantages an opportunity to achieve full parity with their VHF competitors, and only then to relax the multiple ownership rules further to provide needed relief to the television industry generally.

Specifically, KMTR proposes that the Commission relax Section 73.3555(a)(3) of its Rules, to permit the overlap of the Grade A contours of any two television stations in any market, provided that one or both of those stations is a UHF facility.<sup>1</sup> Only after a reasonable period of time in which UHF-UHF and UHF-VHF combinations can be formed, should the Commission revisit its ownership rules and permit Grade A overlap between VHF stations.

Respectfully submitted,

KMTR, INC.

By:   
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Dated: September 28, 1992

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<sup>1</sup> Although the Commission speculates that Advanced Television (ATV) may one day moot the distinction between VHF and UHF stations, see Notice of Proposed Rule Making, FCC 92-209, note 37, that day is no where in sight, and may never come. As Commissioner Duggan has recently noted, it remains unclear whether there will be sufficient market demand for ATV.