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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

COMMENTS OF FISHER BROADCASTING INC.

Fisher Broadcasting Inc. ("Fisher") respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above referenced proceeding.

1. Fisher is licensee of KOMO(AM) and KOMO-TV, Seattle, Washington, and KATU (TV), Portland, Oregon. Fisher, whose ownership and management is closely tied to the Seattle and Portland communities, has long been an advocate of strengthened reliance on the role of locally owned, operated, and oriented stations to meet the public's informational needs. Changes in the Commission's regulatory scheme should be made carefully, and with a conscious regard for whether the changes will have an adverse effect on local broadcast ownership and involvement.

2. Some relaxation of the Commission's regulations relating to television ownership rules appears to be appropriate at this time. However, some of the changes proposed by the Commission may prove detrimental to the fulfillment of a television licensee's fundamental public service responsibilities. For this reason, Fisher encourages the Commission to take measured steps in liberalizing the rules here at issue.

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List A B C D E

I. THE NATIONAL CAP ON TELEVISION STATION OWNERSHIP SHOULD REMAIN UNCHANGED

3. The NPRM proposes that the rule restricting the number of television stations that may be commonly owned be changed. The rule currently permits a single entity to have an attributable interest in as many as fourteen stations, so long as at least two are minority controlled, and so long as the total audience reach of the commonly owned stations does not exceed twenty-five percent of total national television households. Fisher opposes any changes in the current national ownership caps.

4. Economies of scale offer no justification for changing the national television ownership limitations. The economic benefit of common ownership on a national scale is quite limited. The only savings that can be accomplished are basically "headquarters" costs, where the costs of a central business and programming management are shared among several stations. However, broadcast groups can already consist of twelve wholly owned television stations. There would be little if any added savings from sharing headquarters costs among fifteen or even twenty stations, rather than twelve.

5. Multiple-station groups are, by definition, less likely to be locally owned. Moreover, large group owners are more likely to lack the local knowledge needed to best fulfill the public service responsibilities that are the sine qua non of broadcasting in the public interest. Almost unavoidably, the larger an entity gets, the less able it is to quickly respond to the needs and interests of the viewing public. Increasing the number of television stations an entity may own therefore promises less, rather than more, public service programming for local communities. This would be contrary to the public interest.

6. The public is also detrimentally affected to the extent that owners of significant numbers of television stations can use their multi-market clout to obtain an unfair competitive advantage over owners of smaller station groups or single stations in program acquisition. This is a reality of the programming marketplace. If smaller stations and owners are unable to acquire high quality programming, or must spend much more to maintain the same level of quality, they will come under increased financial pressure. Under such financial circumstances, the public will suffer not only a loss of diversity, but also the potential loss of the local programming for which single station and small group owners are known. In sum, increases in the allowable number of commonly owned television stations will provide little in the way of further economies of scale. Increasing the number of stations a single owner can operate will put further pressure on locally owned and operated stations, and will augment the opportunities for anti-competitive conduct significantly. The national ownership limitations should therefore remain unchanged.

II. THE TELEVISION DUOPOLY RULE SHOULD BE RETAINED WITH SENSIBLE LIBERALIZATION

7. The NPRM seeks comments on proposed changes in the television duopoly rule. Under the present rule, a single entity is prohibited from acquiring an attributable interest in more than one television station whose Grade B contour overlaps the Grade B contour of another television station. The NPRM contemplates a wide range of possible changes in the rule, from a change in the contour used to define a prohibited overlap, to permitting the ownership of more than one television station in the same market. While Fisher supports a change in the benchmark used to determine prohibited overlap from

the Grade B contour to the Grade A contour, it strongly opposes any further relaxation of the duopoly rule at this time.

8. The television industry is undergoing enormous change at this time. The Commission has just released its proposed allocation scheme for ATV operations. The new allocation table would ultimately relocate all broadcasters to the UHF band, and lead to the elimination of the VHF television band. As a result, there would be no technical distinction among broadcast facilities. Moreover, developments in video compression are proceeding at a fast pace. Broadcasters may have the opportunity in the near future to offer multiple program services over a single broadcast signal. These developments need to stabilize before the Commission makes any fundamental change in the ownership structure within a locality.

9. Moreover, Fisher believes that permitting common ownership of television stations serving the same community would be financially destabilizing. Many stations do not have the resources to purchase and program additional stations, particularly given the impending conversion to HDTV. Relaxing the duopoly rule would not increase the pool of stations, or of programming alternatives for the public. To the contrary, such a rules change would further concentrate ownership in the local marketplace, to the detriment of the public and competing stations. The alleged public service benefits of economies of scale cease to be attractive when they are derived from an increasingly lopsided competition that will bring the demise of weaker stations. Although future developments might reduce the need for the duopoly rule, present circumstances continue to warrant its retention.

10. While Fisher does not believe there is any public interest justification for permitting one entity to own more than one television station in a single community, a

change in the benchmark for determining prohibited overlaps would be appropriate. There have been significant demographic changes since the Grade B contour was chosen as the defining parameter. The size of metropolitan areas has grown, with "strip cities" developing in a number of areas. The signal of two stations may be necessary to provide high quality service to an entire metropolitan area; yet prohibiting Grade B overlaps may result in portions of a large metropolitan area receiving service below the desired level of quality.

11. Moreover, there appears to be no good reason for prohibiting a single licensee from owning stations in adjoining television markets. Indeed, the development of regional broadcast groups should be encouraged, as such licensees are more likely to have detailed knowledge of the needs and interests of their area, and to provide programming responsive to those needs and interests. Yet use of Grade B contours as the duopoly benchmark often precludes broadcasters from owning stations in adjoining, but distinct, markets.

12. For these reasons, Fisher believes that it would be appropriate to change the prohibited contour overlap standard in the duopoly rule from a Grade B to a Grade A contour. This will allow the development of strong local and regional broadcast groups who can compete on equal terms with the national chains.

III. THE USE OF TIME BROKERAGE AGREEMENTS SHOULD BE RESTRICTED

13. While time brokerage agreements are quite common in radio, the Commission noted in its NPRM that they appear to be utilized much less frequently

among television broadcasters.[1/] Regardless of the frequency of such agreements, Fisher believes the Commission should place restrictions on television time brokerage agreements identical to those in place for radio; namely, that brokering more than 15% of a station's broadcast time will result in the station being treated as an attributable ownership interest for purposes of determining compliance with the multiple ownership rules.

14. Absent such a restriction, time brokerage agreements could be used to eviscerate the Commission's multiple ownership limitations. As Fisher has shown, supra, there are strong public interest reasons for continuing the duopoly prohibition against ownership of more than one television station serving a community. If time brokerage is freely allowed, an intolerable double standard is created under which entities that cannot legally obtain de jure control can nonetheless freely exercise day-to-day control over a television station's programming, advertising sales, and other activities. A prohibition on time brokerage is needed to insure the vitality of the duopoly rules.

15. Some commenters will argue that time brokerage is needed to save failing UHF stations. It is a mistake to intercede in the marketplace. If a broadcast property is not economical to operate over a period of time, and there are no other potential purchasers of the station, the Commission must accept that as the workings of the market. Such a business failure is a perfect indication that too many stations have been allocated to the market.

16. The Commission should let the marketplace do its work. By attributing ownership where such agreements involve unusually large amounts of program time, the

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1/ NPRM at 12.

Commission can ensure that the agreements are legitimate programming arrangements and not merely an effort to circumvent the Commission's multiple ownership rules.

IV. THE RADIO-TV CROSS-OWNERSHIP RULE SHOULD BE SUBSTANTIALLY RELAXED OR ELIMINATED

17. The Commission has also requested comments as to whether the "one-to-a-market" rule should be eliminated. That rule prohibits television stations from acquiring either an AM or an FM station where the television station would provide primary service to the city of license of the radio station, or vice versa. The Commission has adopted criteria governing waiver of the one-to-a-market rule that make it relatively easy to obtain a waiver of the rule in the twenty-five largest markets, such as Seattle, but more difficult in markets below the top-25, such as Portland.

18. The number of radio stations in even small markets has grown to the point that it is unlikely that one broadcaster could ever come to dominate the distribution of information in a community. Moreover, local television broadcasters are often the best possible operators of local radio stations. Through their local involvement, they have a depth of knowledge as to the needs and interests of their communities.

19. The benefits of local common ownership of radio and television facilities go beyond a mere reduction in costs from common operation costs. By allowing AM/FM/TV combinations, the Commission will allow stand-alone stations in a number of markets to overcome the long standing competitive disadvantage they face in competing against existing grandfathered AM/FM/TV combinations. It will also allow them to better compete with cable television systems, which are increasingly delivering audio programming as well as video programming.

20. Because individual market conditions can greatly affect what type of stations are most in need of the benefits of cross-ownership, Fisher believes that the revised cross-ownership rules should not take into account whether a television station is UHF or VHF, or whether it is an AM station involved as opposed to an FM station. Licensees should be allowed to own one television station in a market in addition to any radio stations which they are permitted to own under the Commission's recently revised radio ownership rules.

21. In order, however, to avoid domination of a very small market by a single broadcaster, Fisher believes that the Commission should require that a minimum number of independent local broadcast voices exist in the market after a radio-TV merger in order for the merger to be permissible. While the Commission has in the past used thirty voices as the number supporting waiver of the cross-ownership rule, Fisher believes that thirty voices may be on the high side given the fact that it is often the stations in small markets which most need the efficiencies of joint operation in order to survive. Fisher therefore leaves to the Commission the decision as to the precise number of voices that should be deemed necessary before allowing a radio-TV merger. However, Fisher emphasizes that smaller market stations should not be excluded from the benefits of relaxation of the one-to-a-market rule.

V. THE DUAL NETWORK AND MULTIPLE NETWORK AFFILIATION PROHIBITIONS SHOULD BE RETAINED

22. Fisher supports retention of the Commission's long-standing prohibition on television networks providing a second network service. Because networks play a far more central role economically in television broadcasting than in radio, television

networks merit different treatment than radio networks and should not be allowed to offer additional network programming services. Such additional networks would destabilize an already volatile television industry and endanger the fragile architecture of local public service by broadcasters in many communities.

23. The need to continue this prohibition is now intensified given the Commission's recent approval of network involvement in cable television systems. If the networks are allowed to proliferate new programming services and to use their influence and finances to ensure their programming reaches the public, the development of competitive sources of programming will be retarded.

24. Similarly, the Commission should retain its rule prohibiting a network affiliate from affiliating with a second network in markets where there are one or more independent stations. Requiring affiliation with typically weaker independent stations promotes a competitive balance in those markets and ensures that the programming of the previously unaffiliated network will be available to the public on a timely basis through the facilities of independent stations that often need the programming to survive. Without the rule, such independent stations would be placed at an extreme competitive disadvantage, and the twice-affiliated station could cherry-pick its preferred network programming, thereby preventing the public from watching the network programming the affiliated station chose not to air. Like the dual network rule, the twin affiliation prohibition is necessary to ensure the stable growth of local broadcast service.

CONCLUSION

While the growth in the number of radio stations has greatly decreased the need for stringent ownership restrictions for radio, the much smaller number of television

stations require continued vigilance on the part of the Commission to ensure that broadcast television diversity is not undermined. Fisher therefore believes that the national ownership limit on television station ownership should be retained, as should the duopoly prohibition (with appropriate modification), but that television stations should be allowed to achieve local economies of scale through common ownership of local radio stations. These actions, along with limitations on time brokerage agreements that circumvent the Commission's multiple ownership rule, will provide for the continued growth of local television broadcasting while preserving television diversity. Such a result is clearly in accord with the ever-increasing need of local communities for diverse, issue-responsive programming.

FISHER BROADCASTING INC.

By _____
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Chairman of the Board

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