BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 24 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

91-221

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 THE TRINITY BROADCASTING NETWORK

The Trinity Broadcasting Network ("Trinity") submits these comments in response to the Commission's Notice of Proposed Rule Making, FCC 92-209 (released June 12, 1992) ("NPR"), in the captioned matter.

I. Introduction

1. Trinity and its associated organizations is one of the largest independent group owners of free over-the-air television stations in the country.[1]/ Trinity applauds the Commission in

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[1]/Trinity, which is incorporated under the name of Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network, and its associated companies are the licensees of the following facilities:

(1) KTBN-TV, Channel 40, Santa Ana, California (Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network)

(2) WDLI-TV, Channel 17, Canton, Ohio (Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network)

(3) WHSG-TV, Channel 63, Monroe, Georgia (Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network)

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initiating the rule changes proposed in its NPR, as far as it goes. The NPR will begin the required leveling of the playing field which has tilted virtually and exclusively in favor of nonbroadcast, pay program pipelines, such as cable television. It is beyond peradventure that broadcast television, and the free service it provides all American's, rich or poor, has faced a growing competitive environment inundated with new technologies which are subject to little or no regulation, and which have even been subsidized, as is the case with the compulsory copyright for cable television.

2. As noted in the Commission's Office of Plans and Policy Working Paper #26, Broadcast Television and the Multi-channel Marketplace, 6 FCC Rcd. 3996 (1991) (hereinafter "OPP Paper"),

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[1]/(...continued)

(4) KPAZ-TV, Channel 21, Phoenix, Arizona (Trinity Broadcasting of Arizona, Inc.)

(5) WHFT-TV, Channel 45, Miami, Florida (Trinity Broadcasting of Florida, Inc.)

(6) KTBO-TV, Channel 14, Oklahoma City, Oklahoma, (Trinity Broadcasting of Oklahoma City, Oklahoma)

(7) WCLJ-TV, Channel 42, Bloomington, Indiana (Trinity Broadcasting of Indiana, Inc.)

(8) WKOI-TV, Channel 43, Richmond, Indiana (Trinity Broadcasting of Indiana, Inc.)

(9) WTBY-TV, Channel 54, Poughkeepsie, New York (Trinity Broadcasting of New York, Inc.)

(10) KTBW-TV, Channel 22, Tacoma, Washington (Trinity Broadcasting of Washington)

(11) KDTX-TV, Channel 58, Dallas, Texas (Trinity Broadcasting of Texas, Inc.)

"[t]he broadcast television industry has suffered an irreversible long term decline in audience and revenue shares, which will continue throughout the current decade." (Id. at 4097.) The OPP Paper went on to conclude that the "power of the [television] networks that the Commission has historically sought to curb has succumbed to technology and competition." (Id. at 4102.) The time is here to not only relax the multiple-ownership rules, but to establish a sunset on the rules altogether.

II. The Commission's National Ownership Limitations Handicap Free Television and Enshrine Advantages Enjoyed by Their Multi-Channel Competitors

3. Free television, whether operated by networks, group owners, or "Mom and Pop" constitute just one type among many competing sources of nationally distributed video programming. With the advent over the last twenty years of satellite programming delivery, multi-channel distribution technologies, and the rapid expansion of cable program networks, any distinction between free television operators and networks and other competing national program packagers have vanished. However, free television alone remains hobbled by the Commission's artificial multiple-ownership limits.

4. As the Commission stated in its Notice of Inquiry, 6 FCC Rcd. 4961, released August 7, 1991 (hereinafter "NOI"), the "regulatory policies ... adopted to respond to problems caused by limitations on entry and concentration of control ... should reflect the amount of diversity and competition that exists." (Id. at 4961.) Trinity agrees that regulatory policy must change to

reflect the reality of today's video marketplace where the limitations on program delivery and the number of outlets making such programming available to the public no longer exists. Without such limitations, there is no basis for continued regulation. Indeed, the continuation of the Commission's multiple-ownership policies since 1984, when they were last evaluated, has seen an accelerated decline of free television's power and place in the marketplace. (NPR at 3-5).[2]

5. Trinity supports complete removal of any numerical limits on the number of free television outlets any one owner, or group owners, can own. Such a position honestly recognizes that the primary competitors of free television--cable television systems and program networks--have no corresponding limitation. Moreover, the virtual reality of compression technology assures that this imbalance will remain, and will be further exaggerated.[3] Further, the proposed inauguration of direct broadcasting by satellite service (DBS) will likewise be unregulated and have no numerical (number of channels) caps hobbling its ability to compete with

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[2]/The 1984 multiple ownership evaluation was undertaken in General Docket 83-1009, Multiple-Ownership Report and Order, 100 F.C.C.2d 17, 56 R.R.2d 859, recon, 100 F.C.C.2d 74, 57 R.R.2d 966 (1985).

[3]/Congress has recognized in both S.12, the Cable Television Consumer Protection Act of 1992, and H.R. 4850, the Cable Television Consumer Protection and Competition Act of 1992, that cable is so formidable a competitor that must-carry should be reinstated. These bills, which passed with veto-proof majorities on January 31, 1992 and July 23, 1992, respectively, also recognized that there were no restrictions on the number of cable systems any one owner could have and this unfairly burdened free over-the-air television.

cable television.[4] The imbalance favoring these competitors over broadcasters will become more manifest as video dial tone makes its debut. This is especially so for program networks which already enjoy wide national followings.

6. In order to insure no "undue" concentration of control occurs upon deletion (or relaxation) of the numerical station ownership cap, Trinity supports maintenance of the twenty-five percent (25%) national audience reach limitation currently found in rule 73.3555(e)(2)(ii).[5] Again, while free television's competitors have no such limitation, this limitation is prudent and will allow the industry to adjust in a controlled manner. Eventually, however, unless similar limits are placed on all competitors in the video marketplace even this artificial limit should be removed.[6]

7. As observed by Commissioner Ervin S. Duggan in his separate statement accompanying the NOI:

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[4] Alternatively, since Trinity is aware of the apparent Congressional opposition to relaxing the multiple-ownership rules for radio, permitting one entity or group to own up to 18 television stations seems a minimal step in the direction of leveling the playing field. However, a complete sunset on the national numerical cap should be implemented, as was originally proposed in 1984 when the cap went from 7 to 12 stations. Multiple-Ownership Report and Order, 100 F.C.C.2d 17.

[5] For minority-owned organizations the national audience reach limit is thirty percent (30%). Rule 73.355(e)(2)(i).

[6] The process of determining the national audience reach specified in Rule 73.3555(e)(2)(i)--UHF television stations are attributed with 50 percent of the television households in their ADI--should also be maintained.

> I have been troubled by the asymmetry between our regulation of broadcasting and multi-channel and video industries. We expect broadcasters to continue serving the public interest while competing for ever more scarce advertising revenues. Broadcaster's competitors, on the other hand, are not so constrained when it comes to regulation, to revenue streams, or to channel capacity. Id. at 4966.

In Commissioner Duggan's separate statement to the NPR he clarified that allowing greater television station ownership in order to rectify the asymmetry he acknowledges is "an open question." However, Trinity respectfully submits that removal of the artificial ownership limits imposed only on free television is mandatory to creating a more equitable marketplace. The only other alternative appears to be a relaxation of the public service requirements placed upon free television operators in order to justify renewal every five years. However, such a step would appear imprudent at this time, and would not redress the real and significant market disadvantages which face free television operators and networks.

8. As noted above, cable television owners and program networks have been permitted to emerge and grow totally free of Commission restrictions on their business and programming practices. The growth of cable television has been subsidized in large measure by a regulatory policy expressly intended to handicap free television operators and networks, purportedly in the interest of competition and diversity. The reality of the current competitive environment, however, turns this policy on its head. The Commission's rules actually threaten the viability of free

television operators and networks while encouraging new entrants towards nonbroadcast--pay--distribution alternatives. Continued failure to redress the growing competitive disadvantages visited upon free television owners and networks is a death blow to the two most important enabling principles of the Commission--localism and diversity.

9. As amply documented in the NPR (¶¶ 3-7) free television is on the decline. With fewer resources, it cannot be realistically expected that free television will be able to continue to afford the level of service the public takes for granted. Removal of the numerical cap is important in stemming this slip and in preserving the viability of one of the nation's greatest information delivery systems, and something important to our democracy.

10. Trinity believes there can be no question that the multiple ownership rules economically disadvantage free television. While removal of the numerical ownership cap and national audience limitations will not, unfortunately, turn free television broadcasters into competitive multi-channel providers in local markets, it will provide them with a fairer opportunity to compete on a more equal footing. They should be given that chance.

III. The Commission Should Relax its Contour Overlap (Duopoly) Rule

11. As noted in the OPP Paper:

> In today's market ... common ownership of larger numbers of broadcast stations nationwide, or of more than one station in a market, may permit exploration of economies of scale and reduce costs or permit improved

> service. Joint news gathering operations, for instance, might permit improvements in the quality of local news coverage. For these reasons, the Commission should eliminate its broadcast multiple ownership rules, relax the duopoly rules to permit common ownership of television stations unless their grade A contours overlap, and consider eliminating the duopoly rules for unaffiliated UHF stations. (Id. at 170).

In the context of the NPR, Trinity supports the Office of Plans and Policies' recommendation that the Commission not only repeal the national ownership limits, but relax its duopoly rules to permit common ownership of television stations unless their grade A contours overlap, and eliminate the duopoly rules for unaffiliated UHF stations. For purposes of identifying "unaffiliated UHF stations" the definition of a television network set out in section 73.662(i) of the Commission's rules should be applied.

12. The availability of these economies of scale will allow free television broadcasters to improve the quantity and quality of local programming and other public interest programming through costs savings.

13. As noted in Home Box Office, Inc. v. FCC, 567 F.2d 9, 40-42, cert. denied, 434 U.S. 829 (1977), responsible regulation must be based on a rational prediction that they remedy an identified harm. The Commission "should not continue to regulate unless it can clearly identify the harm it seeks to remedy" NAACP v. FCC, 682 F.2d 993, 1000-01 (D. C. Cir. 1982). "[I]t is settled law that an agency may be forced to re-examine its approach 'if significant factual predicate of a prior decision ... has been removed.'" Bechtel v. FCC, 957 F.2d 873, 70 R.R.2d 397, 402 (D.C. Cir., 1992),

quoting WWHT, Inc. v. FCC, 656 F.2d 807, 819 (D.C. Cir. 1981). The OPP Paper amply demonstrates the changes warranting removal of the antiquated multiple-ownership and network rules, and the removal of the primary predicates warranting these rules altogether--a concentration of market power and a lack of diversity. Neither of these predicates are true today and the Commission is obligated to remove these rules as no longer justified or serving any public interest.

14. An arbitrary numerical limit on free television station ownership is unjustified from a competitive and economic standpoint. There is, in fact, no objective basis whatsoever for the Commission to maintain its regulatory death grip on free television through its multiple-ownership rules. Cable multiple system operators, as just one example, are permitted to own or have significant interests in an unlimited number of local systems. Moreover, each cable system is given a government sanctioned monopoly. These imbalances must be remedied, and deletion and modification of the multiple ownership rules as stated herein is the first (but essential) step in restoring equity.

IV. Conclusions

15. Technology and competition have eroded both the marketplace and public policy justifications for maintaining the television multiple-ownership rules in their current form. Ownership concentration on the national level by free television broadcasters poses no threat to competition or public service. Multi-channel operators, and cable television systems particularly,

control dozens of channels in individual markets, and have no Commission regulations limiting the number of systems they may own, the number of channels they may operate, the number of national television households they may reach, nor the number of program services they may provide, distribute and/or own. Repealing the numerical ownership cap, and relaxing the duopoly rules will begin to rebalance the regulatory landscape of the video marketplace. These changes will promote a stronger free television industry, foster greater service of local needs and interests, place free broadcasters on a firmer footing which will hopefully stop the erosion of their financial base, and increase competition.

16. Accordingly, Trinity urges the Commission to repeal the numerical ownership limits contained in its multiple ownership rule, and to relax its duopoly rules.

Respectfully submitted,

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August 24, 1992