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August 21, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

RE: Review of the Commission's Regulations Concerning Television Broadcasting
MM Docket No. 91-221

Dear Ms. Searcy:

On behalf of Malrite Communications Group, Inc., we are filing herewith an original and four copies of its "Comments" with respect to the above-captioned docket.

Also enclosed are five copies of its "Comments", individually addressed for the Chairman and the Commissioners.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

John M. Schohl
Secretary and General Counsel

JMS:cab
Enclosures

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AUG 24 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF MALRITE COMMUNICATIONS GROUP, INC.

I. Introduction

Malrite Communications Group, Inc. ("Malrite") hereby files the following Comments on the Commission's "Notice of Proposed Rule Making" (the "Notice") in the above-captioned proceeding.

Malrite owns and operates four television stations and ten radio stations. Three of its four television stations are charter affiliates of the Fox Broadcasting Network. Prior to becoming affiliated with Fox, Malrite's stations were independent stations.

The Commission, in its Notice, instituted the Rule Making to invite comment on its proposals to modify certain regulations governing television broadcasting.

These Comments will address certain of the regulations that the Commission has proposed to modify, namely, (i) the national television ownership limitations, (ii) the contour overlap ("duopoly") rule, and (iii) the dual network rule. It is Malrite's position that, although some changes are warranted in the current FCC regulations as they apply to television, the changes should not be as extensive as have been recently adopted in radio.

II. The National Ownership Limits Should Be Raised.

The Commission's national ownership rules for television were first adopted almost 40 years ago, then limiting to seven the number of television stations that one entity may own. At that time, there were approximately 570 television stations authorized, of which only 356 were on the air. Today there are nearly 1500 stations on the air. Ownership rules for television and radio were last modified in 1985 to allow an entity to own up to 12 television stations and 12 FM and 12 AM radio stations. Recently, the Commission approved a change in the number of radio stations that an entity can own, raising the limit to 18 FM and 18 AM stations, with an additional three stations in each band permitted if the stations are controlled by minorities or small business entities. In addition, after two years, the limit is expanded to 20 FM and 20 AM stations.

Malrite proposes that the national ownership rules for television be increased to the same extent as in radio. At the same time, however, in order to prevent an undue concentration of ownership in terms of total television households, Malrite proposes that the current rule prohibiting a group owner from owning television stations which reach more than 25% of the national audience not be altered.

Permitting the creation of larger television groups will strengthen the operations of local stations. The economies of scale that will result from increased group ownership would enable operators to devote more resources to local programming, such as news. All broadcasters recognize that the principal method by which it can survive in the face of increased competition from cable and other video program sources is to enhance its local presence in their community. Unfortunately, many stations lack the funds to be able to do this due to the costs of administering a television station and the high cost of syndicated programming. A larger television group can reduce the costs of operating a television station by centralizing many of the administrative functions, reducing costs for items such as insurance and health benefits, and most importantly, decreasing the costs of syndicated programming through large group purchases. Given the reliance on syndicated programming by most television stations, particularly independents, a tremendous savings could be achieved as a direct result of the leverage that a large group owner could assert in purchasing programming. For this reason, it is not surprising that the Motion Picture Association of America in the past has opposed any relaxation of the national ownership cap.

The relatively modest increase in the national ownership limits proposed herein would cause no harm to diversity on a national basis. Diversity is principally an issue of the number of opinions and viewpoints that are seen and heard in an individual community. It is the sum total of all these various viewpoints that make up diversity on a national level. An increase in the number of television stations that a broadcaster can own on a national basis will have no effect on the number of diverse viewpoints that are aired in a given community. As long as no changes are made on a local level that have the effect of materially reducing diversity, no harm will result. The real threat to diversity are regulations that make it difficult to compete against others who are not subject to the same rules. The large cable MSOs own the equivalent of hundreds of "stations" yet there is no hue and cry that they are threatening diversity.

To the extent that there is a concern that a relaxation of the national ownership limits would merely permit the rich to get richer, we propose that the Commission retain the 25% reach limit. This would prohibit, for example, a group broadcaster from acquiring 18 television stations in the 18 largest markets, thereby extending its reach to a substantial portion of the national audience. At the same time, however, a group owner could invest in smaller market stations or in UHF stations, which stations only count for half the reach of a VHF station in a given market.

By adopting a national ownership limit for television which is identical to radio, groups controlled by minorities will be able to own an additional three television stations. However, because of the greater costs of acquiring and owning a television station relative to a radio station, this increase for minorities will not likely result in any benefits. Malrite urges the Commission to adopt a separate rule making seeking comments on other incentives which can be put in place to encourage the development of minority owned television groups.

III. <u>**The Duopoly Rule Should Be Retained**</u>

Although it is true that economies of scale can be obtained in local markets by permitting common ownership of television stations, the limited number of local television stations make any concentration of ownership potentially harmful. Although the dramatic changes in the video marketplace have created many new video outlets for the public, most of the growth has taken place on a national level through the advent of large national cable programmers or in large markets, where UHF stations have signed on.

The Commission has sought comment on whether combinations of any two television stations in a market should be permitted where one station is a UHF station. Although such a combination would help that entity compete, particularly against cable, it would put other local over-the-air broadcasters at a competitive disadvantage. Because most markets do not have at least three VHF stations and three UHF stations, it would be impossible for all stations to "pair up". This would leave those stations without a partner in a situation where they are not only competing against powerful national cable companies with multiple cable "stations" but local stations which are commonly owned.

In markets where there are at least three VHF and three UHF stations, a relaxed duopoly rule could reduce the diversity of local broadcast outlets in half. As stated earlier, diversity is largely a result of the number of local individual outlets for the expression of divergent viewpoints and opinions. Permitting a significant number of combinations in a market, although offering the promise of greater economies of scale, would have a significant adverse impact on the level of diversity in the local video marketplace.

The Commission has sought comment on whether it should permit the combination of any two stations where one of the stations is a UHF facility and where a minimum number of separately owned television stations would remain after the proposed combination. The Commission provided as an example a requirement that a minimum of six independently owned stations remain after a proposed combination. Although this would have the effect of preventing a significant reduction in local diversity, it still would create a competitive disadvantage for those stations who were not fortunate enough to be the first stations to propose a combination. For example, in a market where there are seven independently owned stations, only one combination would be permitted under the example used by the Commission. In this example, the rule would be beneficial to the owner of the combination, but would have no benefit to, and could be potentially detrimental to, the remaining stations.

Malrite encourages any attempt by the Commission to modify its regulations to restore a competitive balance to the video marketplace. However, when the "cure" carries with it side effects that are potentially more hazardous than the problem it was designed to obviate, no change is the preferable course.

There is no doubt that many local stations are facing financial pressures, particularly VHF network affiliated stations which were purchased at a time when it was expected that an affiliation with one of the big three networks would continue to bring steady and growing profits. Unfortunately for many such stations, the decline of network viewing has resulted in declining advertising revenues for broadcast television stations and networks. The decline is, of course, attributable to the increase in cable penetration and cable viewing. To compound the problem, cable has a tremendous advantage over broadcast television stations in that they not only receive advertising revenues but also substantial cable subscription revenues as well. The dual revenue stream that is enjoyed by cable and not by over-the-air television is the primary reason for the competitive imbalance. Rather than seek regulatory change which would significantly reduce diversity on a local level, the preferable route is to urge Congress to implement retransmission consent. This would permit broadcasters to share in the cable subscription revenues -- after all, it is still broadcast stations that most cable viewers tune to -- without any further concentration of ownership on a local level in the television industry.

IV. **The Dual Network Rule Should Be Retained**.

The Commission has requested comment on whether the "dual network" rule should be retained. The rule provides that a television station cannot affiliate with a network that operates more than one network if the networks operate simultaneously and serve substantially overlapping geographic areas. As noted by the Commission in its Notice, the Commission repealed the rule for radio due to the tremendous increase over the years in the number of radio stations and the reduced dependence on networks.

Although there have been significant changes in the television industry, network programming is still very important to many local over-the-air television stations. For these stations, the dual network ban insures that the affiliate is the exclusive over-the-air broadcaster in its market for their network programming. Additionally, it has been a long standing goal of the Commission to encourage the development of new independent programming sources. The most recent example of such a new source is the Fox

Broadcasting Network, with which three of Malrite's television stations are affiliated. A lifting of the dual network ban would inhibit the entry of new independent programming sources on over-the-air television stations by limiting the available outlets in any market, particularly smaller markets.

V. **Conclusion**.

Without question, action should be taken to revise the Commission's rules whenever changing conditions make the rules counter-productive. In this instance, however, the Commission should move cautiously. In attempting to help free, over-the-air television broadcasters compete against the multichannel video operators, the Commission could create an environment in which diversity is stifled and many local broadcasters are further disadvantaged.

Respectfully submitted,

MALRITE COMMUNICATIONS GROUP, INC.

By: ______________________________
John M. Schohl
Secretary and General Counsel