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

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 MORGAN MURPHY STATIONS

Morgan Murphy Stations ("Morgan Murphy"), by its attorneys, hereby files its comments in response to the Notice of Proposed Rulemaking ("NPRM"), FCC 92-209, released in the above-captioned docket on June 12, 1992. In support whereof, Morgan Murphy shows as follows:

Morgan Murphy Stations is comprised of the following broadcasters: Spokane Radio, Inc. (KXLY(AM) and KXLY-FM, Spokane, Washington); Spokane Television, Inc. (KTHI-TV, Fargo, ND; KXLY-TV, Spokane, WA); Television Wisconsin, Inc. (WISC-TV, Madison, WI); and Apple Valley Broadcasting, Inc. (KAPP-TV, Yakima, WA; KVEW-TV, Kennewick, WA). As a group owner operating in small and medium size markets, Morgan Murphy has first hand knowledge of the difficulties broadcasters now face in competing with an ever growing array of multichannel video service providers. FCC policies over the past decade have resulted in an exponential increase in the number of multichannel video outlets and programming choices available to viewers. Faced with an almost unlimited number of viewing choices, viewers have begun to migrate from traditional broadcast services to other program sources, such as cable television. As the percentage of total viewing captured by television broadcasters has fallen, so has their advertising revenues and profits (if any). For television broadcasters to remain a viable competitive force in the video distribution marketplace, it is imperative that the FCC remove antiquated regulatory restraints which only serve to restrain their competitive potential.

Morgan Murphy supports the FCC's proposals to remove or at least relax many of the structural safeguards which have placed television broadcasters at a distinct disadvantage when competing against multichannel video service providers such as cable television, wireless cable, satellite delivery systems and the like, none of which are subject to the ownership restraints currently imposed on broadcasters. In particular, Morgan Murphy supports elimination of the radio-television cross-ownership ("one-to-a-market") rule and relaxation of the contour overlap ("duopoly") rule.

One-To-A-Market-Rule

The one-to-a-market rule prohibits a party from holding cognizable ownership interests in a radio station and television station located in the same market. See 47 C.F.R. §73.3555(b). Like many of the FCC's ownership limitations, the rule was enacted based on the belief that diversity of viewpoint would best be achieved by diversifying broadcast station ownership. First Report and Order, Docket 18110, 22 FCC 2d 306, 310 (1970), on recon. 29 FCC 2d 662 (1971). However, from the outset the Commission has recognized that diversity of ownership per se is not an end in itself, and that viewpoint diversity is not the only consideration in licensing broadcast stations. For example, in an effort to foster the development of UHF television, the Commission in 1986 amended the rule to allow for the consideration of radio/UHF television station combinations on a case-by-case basis. See 47 C.F.R. 73.3555, Note 4 (1986). As a result, such combinations have been allowed where the revenues from a commonly-owned AM or FM station are necessary to support a UHF station or the cost savings from joint radio/UHF television operations would help a UHF station survive. See WOIO-TV, 61 RR 2d 469 (1986); Wilton E. Hall, 43 RR 2d 91 (1978); American Public Life Broadcasting Co., 36 RR 2d 1181 (1976); Central Broadcasting Co., Inc., 21 RR 2d 482 (1971). Radio/UHF television combinations have also been allowed when joint ownership would result in the activation of an unused television allocation. John H. Garbedian, 47 RR 2d 1444 (1980).

In 1989, the FCC further liberalized the one-to-a-market rule by adopting a policy regarding waivers of the rule on a case-by-case basis where certain specified factors are met. Second Report and Order, MM Docket 87-7, 65 RR 2d 1589 (1989), on recon., 66 RR 2d 1115 (1989). In taking this action, the Commission noted that relaxation of the rule was appropriate in light of the explosive growth in media outlets in markets of all sizes and the efficiencies of scale inherent in joint ownership of stations.[1] The

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[1] The FCC recognized that significant efficiencies can be achieved through joint ownership. For example, common ownership allows for the collocation of studio and office facilities, and the sharing of a common tower site and transmitter building. Common ownership also enables stations to share administrative and technical staffs, thereby consolidating payroll, billing and accounting operations. Professional services such as attorneys,

Commission also left open the possibility that future changes in the competitive environment might someday warrant further relaxation or repeal of the rule. There can be little question that the time for repeal has arrived.

The proliferation of programming choices and video outlets and the robust competition that now characterizes the video marketplace renders the one-to-a-market rule unnecessary. Indeed, significant growth has occurred both in the traditional broadcast services and in alternative media delivery systems since the one-to-a-market rule was adopted, and even since the rule was relaxed in 1989. The FCC's own data reflects that even small markets have a considerable number of television and radio stations and other sources of programming.[2] Moreover, competition to traditional over-the-air television and viewing choices will continue to increase with the introduction of new technologies such as Direct Broadcast Satellites and HDTV and the use of digital video signal compression techniques, which will allow for greatly expanded channel capacity.

In view of the foregoing, it is no longer true that the

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technical consultants, accountants, financial institutions and insurance carriers may also be shared, and greater efficiencies can be realized by combining or sharing advertising, news gathering and sales activities. These economies of scale result in cost savings, which in turn can translate into more and improved programming and other service benefits. See 65 RR 2d at 1598-99. As the operator of an AM/FM/TV combination in Spokane, WA, Morgan Murphy can attest to the efficiencies inherent in joint ownership.

[2] The Commission indicates there are, on average, six over-the-air television signals and 18 radio signals in markets ranked between 126 and 150. NPRM at 14. Approximately 90 percent of all television households are passed by cable, and cable subscription has reached 60 percent. NPRM at 3. With cable channels included, more than half of all households now receive at least 30 channels of programming. Id.

economies of scale and other operational benefits that flow from combined station operations must be sacrificed if traditional diversity and competition goals are to be met. To the contrary, as a result of the phenomenal growth of cable television, the emergence of alternative multichannel video providers such as home satellite dish systems and wireless cable, and the proliferation of new programming and programming networks, diversity of viewpoint is now assured as a result of marketplace forces. In this context, the one-to-a-market rule actually undermines the Commission's twin goals of competition and diversity by denying television broadcasters operating efficiencies which would help them remain a viable force in the video marketplace. Such a result serves neither the broadcast industry nor the viewing public.

Television broadcasters must vie for advertising dollars with multichannel video outlets which are not limited by FCC ownership restrictions, and which have the ability to offer 30 or more channels of programming to the viewing public. If broadcasters are to effectively compete with such entities, it is absolutely essential that they be freed from the shackles of outdated ownership limits and allowed to consolidate their operations with radio stations within their Areas of Dominant Influence ("ADI"), subject only to the national and local ownership limits on radio stations.[3] For this reason, Morgan Murphy strongly urges the

[3] The FCC's new radio ownership rules allow a single licensee to own up to 18 AM and 18 FM stations nationwide (with an increase to 20 AM and 20 FM stations in two years), and permit attributable but non-controlling interests in an additional three stations controlled by minority group members or small businesses. At the local level, a single licensee is allowed to own up to two AM and two FM stations in markets with 15 or more stations. However, if

Commission to repeal the one-to-a-market rule.

Duopoly Rule

For similar reasons, the FCC should also relax the duopoly rule, which prohibits the same party from holding cognizable interests in television stations with overlapping Grade B contours. See 47 C.F.R. §73.3555(a)(3). Like the one-to-a-market rule, the duopoly rule was designed to promote competition and thereby ensure diversity. At the time the rule was adopted, the video marketplace consisted solely of 649 television stations and a small number of cable systems whose primary purpose was to retransmit over-the-air broadcast signals. NPRM at 9. As noted above, the marketplace has changed considerably. The proliferation of media outlets and programming choices and the competitive nature of the present video marketplace have greatly diminished the importance of the duopoly rule as a tool for ensuring diversity. By contrast, as with the common ownership of radio and television stations in the same market, allowing ownership of more than one television station in a market would permit the merger of production, administrative and news gathering functions. Sharing common costs and offering a wider audience to advertisers would allow these stations to compete more effectively with multichannel video service providers within their ADI's, and could very well enable financially troubled

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the combined audience share of the stations exceeds 25%, then a special showing is required demonstrating that the combination will not result in excessive concentration in the local market. In markets with 14 or fewer stations, a licensee is allowed to own up to three stations (one would have to be an AM) provided that the licensee owns fewer than 50% of the stations in the market. See Report and Order, MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), on recon. Memorandum Opinion and Order, FCC 92-361, ___ FCC Rcd _____ (1992). (Revision of Radio Rules and Policies).

stations to improve their service and remain on air, consistent with the FCC's goal of promoting diversity.

Given the widespread benefits that would result from consolidated operations, with little risk to diversity, Morgan Murphy supports the FCC's proposal to significantly relax the duopoly rule. Specifically, Morgan Murphy urges the Commission to change the signal contour used to determine whether prohibited overlap occurs from Grade B to Grade A. As noted by the Commission, the Grade A contour more accurately reflects a station's core market, and would permit common ownership of stations in neighboring communities, thereby facilitating increased operating efficiencies. NPRM at 10. Morgan Murphy also supports the Commission's proposal to adopt a numerical cap similar to that implemented in connection with the recent revision of the radio rules. Revision of Radio Rules and Policies, supra. Under this approach, the number of television stations in a market that one entity is allowed to own would be staggered according to the total number of stations in the market. This approach allows the Commission to guard against undue concentration of ownership at the local level, while at the same time enabling television broadcasters to avail themselves of the economies of scale and other operational benefits inherent in consolidated operations.

In its 1991 report on broadcast television and the rapidly evolving market for video programming, the FCC's Office of Plans and Policy recognized that rules imposed to curb station market power or concentration of control over programming when television broadcasters were the video marketplace may be counterproductive in today's competitive market. F. Setzer and J. Levy, Broadcast

Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd. 3996, 4102 (1991). This certainly is true of the Commission's current ownership restrictions. It is indeed a strange regulatory anomaly which allows the same party to control all of the dozens of cable channels in a market, limits television broadcasters to but one, yet expects broadcasters to be effective competitors in the marketplace. In order to level the playing field and give television broadcasters a fighting chance, Morgan Murphy urges the FCC to repeal the one-to-a-market rule, relax the duopoly rule in the manner set forth above, and otherwise free broadcasters of the burdens of antiquated ownership limitations which serve no useful function in the context of today's thriving marketplace.

Respectfully submitted,

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