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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 4, 1993

HAND DELIVER

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: MM Docket No. 92-259

Dear Ms. Searcy:

Transmitted herewith is an original and five copies of Comments filed in connection with the above referenced Notice of Proposed Rulemaking.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: Joseph E. Dunne III

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	**MM Docket No. 92-259**
	)	
	)	
Broadcast Signal Carriage Issues	)	

To: The Commission

COMMENTS

Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity), National Minority TV, Inc. (NMTV), Tri-State Christian TV, Inc. (Tri-State), All-American TV, Inc. (AATV), Community Educational Television, Inc. (CET), and Jacksonville Educators Broadcasting, Inc. (JEB) (hereinafter jointly referred to as "Commenters"), by their undersigned attorney and pursuant to section 1.419 of the Commission's Rules and Regulations, hereby submit these "Comments" in response the Commission's Notice of Proposed Rule Making in the above-captioned matter.

I. The Commenters

1. The Commenters herein are both commercial and noncommercial licensees of television broadcast stations in communities ranging from the second largest television market (Los Angeles) to the one hundred and ninth largest television market

(Peoria-Bloomington). Specifically Trinity, through corporations which it controls, is the commercial licensee of: KTBN-TV, Santa Ana, California; WKOI-TV, Richmond, Indiana; WCLJ-TV, Bloomington, Indiana; WHFT-TV, Miami, Florida; KPAZ-TV, Phoenix, Arizona; KTBO-TV, Oklahoma City, Oklahoma; WHSG-TV, Monroe, Georgia; KTBW-TV, Seattle, Washington; KTDX-TV, Dallas, Texas; WTBY-TV, Poughkeepsie, New York; and, WDLI-TV, Canton, Ohio. NMTV is the licensee of a commercial television station KNMT-TV, Portland Oregon. AATV is the licensee of the following commercial television stations: WWTO-TV, LaSalle, Illinois; KNAT-TV, Albuquerque, New Mexico; KDOR-TV, Bartlesville, Oklahoma; KTAJ-TV, St. Joseph, Missouri; and, WTJP-TV, Gadsden, Alabama. Tri-State is the commercial licensee of: WNYB-TV, Buffalo, New York; WINM-TV, Angola, Indiana; WTLJ-TV, Muskegon, Michigan; and, WTCT-TV, Marion, Illinois. CET is the licensee of noncommercial educational TV stations in Harlingen (KLUJ-TV), Houston (KETH-TV), and Beaumont (KITU-TV), Texas. JEB operates noncommercial television stations in Jacksonville, Florida (WJEB-TV) and Fort Pierce, Florida (WTCE-TV). All Commercial commenters are independent stations broadcasting primarily religious and inspirational programming. All Commenters broadcast in markets where the cable penetration rate is equals or exceeds 50 percent, and all, since the invalidation of the Commission's must carry rules, have been refused carriage on cable systems which would have been required to carry the stations under the Commission's previously enforced must-carry rules. In some instances, the refusal of cable operators to carry Commenters'

station has resulted in the licensee not being viewed by significant numbers of residents in the station's community of license--the community which the station is licensed and required to serve.

II. The Definition of Television Market/Must Carry Limitation

2. At the outset the Commenters note that the Commission requests comments on whether the rules it adopts to implement the "Cable Television Consumer Protection and Competition Act of 1992" (hereinafter "the Cable Act of 1992" or "the 1992 Act") should be more specific, or adopt additional criteria, to define the "pool" of eligible must-carry stations within a particular television market. Congress has, however, already specifically defined the "pool" of must carry stations through the very specific definitions provided in the statute, particularly section 614 (h)(1)(C) (defining "market" by reference to Commission rules referring to ADI television markets) and section 614 (h)(1)(A) which defines a "local television station" as a station which does not increase the cable system's copyright liabilities and which delivers a -49 dBm signal over the cable system's principal headend. The "pool" of must carry stations is, therefore, simply defined by reference to the criteria set by statute. Regardless of whether the Commission has the authority to vary the strict definitions outlined in the 1992 Act, these definitions at least are strong evidence that Congress intended the "pool" of commercial "must-carry" stations was to be one dependent more on an economic model of the market set

by Arbitron than that model to emerge from the regulatory process. The Commission tinkers with this clear expression of Congressional intent at its peril.

3. Congress clearly crafted the legislation to define what stations it meant to be within the pool of eligible must carry stations. Congress presumptively was (and is) aware of the previous must carry rules which defined the station's market based on mileage distances from the community of license, in fact, it chose to use a familiar 50 mile standard in defining noncommercial stations eligible for must carry status. See Section 615(1)(2) of the 1992 Act. Likewise, Congress was also aware of viewability standards previously used to define must-carry status, because Congress chose a noncommercial station's grade B contour to define eligible noncommercial stations in Section 615(1)(2). The Commission's work in this regard must be guided by the fact that Congress very carefully crafted the scheme which the Commission seeks to enforce.

4. The Commenters also believe that administrative convenience for the Commission and some measure of market stability for the broadcaster requires that the list of ADI markets kept by the Commission be adjusted not more often than every three (3) years. Using a three year cycle to adjust definitions of markets gives both the cable operators and television broadcasters some measure of stability--neither need fear the turmoil that a yearly adjustment of the ADI market list may entail. Three years is a reasonable compromise between the industry's need for stability,

and the industries need to negotiate program, carriage and other contracts based on the most current economic facts. Using a three year cycle is also convenient because it may be made to coincide with the adjustment of ADI market definitions required every three years by section 73.658(k) of the Rules.

5. The Commenters also support the Commission's tentative conclusion that either the cable system or the broadcast station may submit a request to add a community to a specified television market, and strongly urges the Commission to amend section 76.7 of its Rules to make such a request akin to a request for special relief under existing rules. Treating such a request as a rule making petition is both unnecessary and adds delay where none is in the public interest. The determination of whether a station is in a particular market, impacting it does on whether a station is accorded must carry status, has obvious and substantial economic impact on the broadcast station, and, to a lesser extent, on a cable system. To a new UHF independent, the must-carry determination may literally be a life or death decision in television market with a high cable penetration. Such a station may not survive the substantial delays which a rulemaking proceeding inevitably entails. Existing procedures provide sufficient protection for both parties, allow both parties an opportunity to present their case to the Commission and argue the relative merits of their position, and, through publication of the notice of the petition in the Commission releases, gives other interested parties, such as other television stations or cable

systems, an opportunity to monitor the proceeding and intervene if their interests are adversely impacted. The Commission regularly uses similar procedures which have a similar impact on a particular television or radio market, for example, in the form of cut-off lists for new stations, because the procedures give truly interested parties adequate notice and an opportunity to comment or intervene, without sacrificing too much time on the altar of administrative nicety.

6. In adopting a mandated 120 days for the Commission's action with respect to denials for requests for carriage, and in specifying specific time deadlines for cable systems to respond to requests for carriage, Congress recognized that administrative speed was an important value in regulating industries as time sensitive as television. The procedures used to implement the Act of 1992 should be equally sensitive to the need for expedition in regulating the industry.

7. Finally, in its discussion of possible criteria to use in determining whether to add a particular community to a television market, the Commission suggested criteria such as whether the station "provides coverage or other local service to the community," or "provides coverage of news or programming of local emphasis." The criteria suggested are much too narrow and ignore or conflict with the Commission's policies and precedents with respect to the evaluation of a broadcast station's performance in responding to the needs of a local community. The Commenters suggest that it is more in accord with Commission precedent, and

just as easy to administer, if the Commission focuses its inquiry not on the provision of "local service"--used as a synonym for "local programming"--but on an inquiry concerning whether the station's programming is responsive to the problems and needs of the community. The Commission in recent years has emphasized in a number of contexts any evaluation of the local service of a broadcast station begins with an inquiry into the job the station is doing responding to local needs, not the point of origination of the programming responding to those needs. See, Video 44, 3 FCC Rcd 3587, 64 Rad. Reg. 2d (P&F) 1517 (Rev. Bd. 1988). It is axiomatic, now, that nonlocal programming can respond to local needs. Malrite of New York, Inc. 71 F.C.C.2d 241, 45 Rad. Reg. 2d (P&F) 487 (1979).

8. An emphasis only on "local service" being synonymous with local programming also ignores the fact that many stations may have significant involvements in local the community which has little or nothing to do with programming, but certainly may have a great deal to do with serving the public interest. For example, all Trinity stations are enthusiastic supporters of "His Hand Extended," a charitable program under which the station collects money, food stuffs, clothing and other necessaries and distributes them to the needy. Three of the stations operated by Commenters in Florida, WHFT-TV, Miami, Florida, owned by Trinity, and WJEB-TV, Jacksonville, Florida, and WTCE-TV, Fort Pierce, Florida owned by JEB, cooperated in the aftermath of Hurricane Andrew to collect throughout Florida and distribute throughout the Miami area over

20,000 pounds of food, clothing and miscellaneous necessities for the victims of the Hurricane. Many of the stations represented by the Commenters, as a regular adjunct to their public affairs or other programming, provide a number of volunteer telephone counselors who may be consulted by viewers seeking help for a number of personal and spiritual problems. Many of these callers are referred to social service agencies or to local churches close to that person's home which may provide assistance. In many instances these volunteers are provided by local churches or other local groups which benefit from the station's financial support. The Commission's proposed criteria would ignore these and other station involvements in the community which certainly have an impact on the public interest and are probative and relevant in determining the quality of the station's "local service." This is neither a new concept to the Commission or one which is difficult to administer. The Commenters note that Congress, in passing the Children's Television Act of 1990, specifically authorized the Commission to consider the station's nonbroadcast efforts in determining whether a station had met the educational and informational needs of children. See section 103 (b) of the Children's Television Act of 1990. A similar broad inquiry is necessary here to determine if the station is meeting its local service obligations.

9. The Commenters, accordingly, respectfully urge the Commission to add to the criteria used in determining whether a station should be added to a particular television market a

consideration of whether the station's programming is responsive to the needs of the community and, whether the station's nonbroadcast activities in the community show a commitment to local service.

III. Duplicative Programming

10. The Commenters, particularly CET and JEB, urge that the Commission adopt a definition of "substantially duplicated" which provides that a station "substantially duplicates" the programming of another station if 50 percent of its prime time programming or 50 percent of its entire daily program schedule duplicates the programming of another station. The definition suggested herein is a fair compromise for ETV licensees seeking access to their communities and cable operators (and their viewers) who don't wish to use valuable channels for essentially duplicitous programming. Using this formulation an ETV station that essentially runs very little programming other that the program feed provided by PBS, but runs the programming at slightly different times or in largely non prime time hours than other ETV stations, or an ETV station which runs very little but instructional programming during the day, which is of little interest to the general viewing audience, but which runs a schedule of PBS programming which duplicates the programming broadcast on other PBS stations during prime time hours, would both be a discretionary signal for the local cable operator.

IV. Information Requirements

11. The Commenters believe that it is of minimal additional administrative burden to cable operators to require them to inform new cable subscribers, in writing, of the TV broadcast signals which the systems is required to carry and which stations which are eligible for carriage which the cable operator has chosen not to carry. All cable subscribers should receive an updated list every six months. This minimal informational requirement, which essentially asks cable operators to do no more than stuff another mailer in their already overstuffed monthly bills, serves several purposes. In many communities local zoning prohibits outdoor antennas, and cable operators almost always dismantle or disable outdoor antennas when the cable is installed at a subscriber's home. For many subscriber's the only way they will know that a station,which they may wish to watch, exists is through such a notice provided by the cable company. The provision of this sort of consumer information gives the subscriber the option to install an AB switch or seek other technical means if the subscriber wishes to receive a broadcast station which the cable system chooses not to carry.

12. Secondly, providing cable subscriber's with that sort of information allows them to be more educated cable consumers and, if they wish, gives them an opportunity to influence the cable operator's selection of a discretionary signal. Once again, the burden on the cable operator is minimal, and may provide the operator with valuable audience feedback concerning the relative

desirability of the signals which the operator has the discretion of carrying.

Respectfully Submitted,

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