

concerns. We also afforded petitioner the opportunity to respond.

On May 15, 1991, the applicants amended the application. First, the debenture was amended to provide that any conversion by CRI into the assignee's equity "shall be into nonvoting common shares" and is "subject to and must comply with all rules, regulations, and policies of the FCC." Next, the questioned events of default were eliminated. Finally, limitations on assignee's gross revenues and programming liabilities were eliminated; limits on annual capitalized lease obligations were changed from \$25,000 singly or in the aggregate, to \$100,000 singly or \$250,000 in the aggregate; and limits on annual capital expenditures were changed from \$100,000 to \$250,000.

On May 22, 1991, Baseman filed a response to the May 15th amendment. Petitioner raises concerns that the applicants had not submitted copies of certain documents and agreements, such as the tower site and studio building leases, and the Employment Agreement between assignee and Edwards. Petitioner questions the arrangement whereby CRI will lease, to the assignee, the station's tower for a one-year period and studio/office building on a month-to-month basis. Baseman also speculates about possible restrictive clauses in

Smith explains that CRI's reason for requiring Edwards to enter into an employment agreement with WPTT, Inc. is based on the fact that Edwards is a "key person" in the transaction. He states that CRI chose to sell WPTT-TV to Edwards "at extremely favorable terms" since CRI was purchasing WPGH-TV and had to sell Channel 22, it had no leverage and was in a weak position to obtain a market price for the station. Secondly, the sale to Edwards was a reward for his many years of loyal service to the station. Further, CRI wished to encourage minority ownership in a top 20 television market. Therefore, it was necessary, in CRI's opinion, to have Edwards remain with the station. Also, from a business standpoint, CRI needed to ensure that WPTT, Inc. would not immediately sell the station without CRI realizing the value it expects from the transaction. "Thus, the employment agreement, in connection with a loan provision requiring CRI's consent to any sale of the station, operate to ensure that if WPTT, Inc. sells the station within the term of Mr. Edwards' employment agreement, it will first satisfy its loan obligation to CRI. These provisions do not prohibit WPTT, Inc. from selling the station at any time, they in no way represent an effort by CRI/SBG to control Mr. Edwards' operation of the station, and they do not restrain competition in the Pittsburgh market."

Edwards explains that there are two reasons why he was willing to enter into an employment agreement with WPTT, Inc. First, on a purely emotional level, he has been with WPTT-TV for approximately 13 years and has developed a great sense of loyalty to the station. Secondly, from a business perspective, "I am aware that I am the key person in the proposed sale, and that WPTT-TV's creditors are relying on the continued presence of my talents and managerial skills at the station. I therefore determined it would benefit both me and the station to commit to entering into an employment agreement as a material term of the sale."

Discussion The Commission has long supported increased minority participation and ownership in the broadcast industry. Such participation benefits not only minorities, but the general public as well, by diversifying control of the media and thus the selection of available programming. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 99 FCC 2d 1249 (1985). The Commission recognized in that report, that seller financing can facilitate minority entrance into the broadcast industry. However, the Commission concluded that even in the context of seller financing to minority buyers, any automatic reversionary interest in a license is prohibited. When we questioned CRI's right to convert the debenture into 80% of the assignee's voting stock, the applicants amended the agreement to specify nonvoting stock. Note 2(f) of Section 73.3555 of the Commission's rules provides that holders of nonvoting stock shall not be attributed an interest in the issuing entity unless and until conversion is affected. We, therefore, find that CRI has not retained an interest in the WPTT-TV license in contravention of Section 73.1150 of the Commission's rules.

Section 73.3555(a)(3) of the rules prohibits control of two television stations in the same area. The cross-interest policy, which complements the multiple-ownership rules, is intended to prevent the principals of a licensee of a broadcast facility to have a "meaningful relationship" with a second facility serving essentially the same area. See Re-examination of the

Commission's Cross-Interest Policy, 4 FCC Rcd 2208 (1989). "The objective of the policy is the promotion and maintenance of full competition within a given broadcast area," Cleveland Television Corp. v. FCC, 732 F. 2d, 962, 969 (D. C. Cir. 1984). The Commission has recognized that "to allow one entity to exercise a significant role in the operation of one medium in the community, coupled with an investment in another media outlet in the same area, might in some instances result in the egregious diminution of the arm's length competition and the diversity of viewpoints that cross-interest policy seeks to foster." Wisconsin Television, Ltd., 59 RR 2d 193, 195 (1985). Normally, however, a mere debtor-creditor relationship in one station in a market does not, by itself, trigger concerns under the cross-interest policy. "[A]n extension of the 'cross-interest' policy to encompass mere creditor relationships would cut a swath across the entire broadcasting industry without any rational basis." Morris, Pierce & Pierce, 88 FCC 2d 713, 717-8 (Rev. Bd. 1981), review denied, FCC 83-31 (released January 25, 1983). Here CRI is only providing financing to WPTT, Inc. None of CRI/SBG's principals will be employees or consultants of the assignee. The assignee is free to operate Channel 22, within the confines of the negotiated and fully disclosed agreements, as it sees fit. There are no agreements between the assignor and assignee concerning the type of programming to be broadcast on Channel 22 nor will CRI/SBG principals be otherwise involved in the day-to-day operation of the station.

While the petitioner did not have the benefit of viewing the lease agreements or the employment agreement when he raised a questions about them, they have now been filed and he was served with copies of them. After reviewing their provisions, we conclude that they are not inconsistent with the cross-interest policy or the multiple-ownership rules. They are the result of a negotiated agreement between the parties which takes into consideration reasonable business decisions of both seller and buyer. Both parties want to maintain flexibility and the leases reasonably achieve that result. The employment agreement requirement also reflects reasonable business judgement. CRI only seeks legitimate business safeguards with respect to a "key person," Edwards. Furthermore, we disagree with petitioner's interpretation of the provision in the Term Note that prohibits prepayment by assignee without prior written consent of CRI. Based on our interpretation, we find that WPTT, Inc. has the right to refinance or sell the station without first obtaining CRI's approval. The clause only affects assignee's right to prepay and it does not restrict future sales or refinancing rights. We also note that CRI's conversion rights are, by their terms, subject to the Commission's multiple-ownership rules and cross-interest policy. Moreover, with respect to the bank account and the provision which permits CRI to receive direct payments from those who owe money to the assignee, the Security agreement has now been amended to provide that these conditions will only occur after default by WPTT, Inc. Likewise, access to a borrower's financial statements and books is typical of loans in the broadcasting industry and is reasonable under the circumstances here. Accordingly, we find that the agreements between CRI and WPTT, Inc. fully comply with the multiple ownership-rules and the Commission's cross-interest policy.

EEO Matters

The Pleadings Baseman also objects to a grant of the WPTT-TV and the WPGH-TV applications because of allegedly inadequate minority employment at Channel 53 and Channel 22. Relying on the Annual Employment Reports submitted to the Commission, petitioner states that in 1989, WPGH-TV had four full-time minority employees (out of 58 total full-time employees) and for 1990, minority employment declined to three full-time minority employees (out of 58 total full-time employees). Likewise, Baseman alleges that CRI's record for WPTT-TV is also deficient. In 1989, Channel 22 had six full-time minority employees (out of a total of 43 full-time employees), while in 1990, WPTT-TV had five full-time minority employees (out of a total of 49 full-time employees.) Baseman concludes that these numbers demonstrate serious violations of the Commission's EEO policies and that the WPGH-TV application should not be granted.

WPGH-TV responds that the reduction of one full-time minority employee between 1989 and 1990 occurred only because one minority employee's status had been changed, at her request (owing to child care arrangements), from full-time to part-time. Moreover, WPGH-TV argues that since the total minority labor force percentage in Pittsburgh is 7.3%, its 5.2% 1990 minority employment level is 71% of labor force parity and, thus, is in compliance with EEO guidelines. SBC also responds that its EEO record provides no basis for denying the assignment. Even after the 1990 decrease in full-time minority positions, the total percentage of minority employees at WPTT-TV is 10.2%, which is more than 100% parity with the total Pittsburgh minority labor force.

Discussion The EEO policies and practices of Stations WPGH-TV and WPTT-TV were reviewed by the Commission and found to be acceptable at the time of the stations' last renewal in 1989. There is nothing in the materials submitted by Baseman that would alter our earlier determinations or otherwise cause us to

denied and the assignment applications are granted this day, subject to the condition that the sale of Station WPTT-TV be consummated prior to the consummation of the sale of Station WPGH-TV.

Sincerely,

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

cc: Donald E. Martin, Esq.
Arthur B. Goodkind, Esq.

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June 21, 1991 11:15am

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EXHIBIT C

Pink
WPTT-TV

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Nov 5 4 03 PM '92

IN REPLY REFER TO:

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Dear Messrs. Liberman and Leader:

This is in reference to the "Complaint and Request for Ruling," filed on behalf of WNUV TV-54 Limited Partnership ("WNUV"), licensee of television station WNUV-TV, Baltimore, Maryland, and Mark I. Baseman.

WNUV alleges that Sinclair Broadcast Group, Inc., licensee of television station WPGH-TV, Pittsburgh, Pennsylvania, abused the Commission's processes by initiating state court litigation against Baseman, and using threats, reprisals and character attacks, to intimidate Baseman, a petitioner to deny the application of Commercial Radio Institute ("CRI") (which is controlled by the same principals as Sinclair) to assign television station WPTT-TV, Pittsburgh, Pennsylvania to Edwin Edwards. The Commission granted that application on June 21, 1991. WNUV requests that the Commission find Sinclair's actions contrary to the public interest and order it to cease its conduct immediately. WNUV also asks the Commission to issue a declaratory ruling that WNUV's and Baseman's actions did not constitute an abuse of the Commission's processes. WNUV acknowledges that Baseman, a Pittsburgh attorney, filed a petition to deny at WNUV's behest. The parties disagree as to the propriety of their respective actions. Sinclair denies that it has abused Commission processes and argues that WNUV's action, i.e., hiring a local resident to file a petition in a proceeding

in which WNUV would have no standing, is itself an abuse of the Commission's processes.

By way of background, WNUV states that in January 1991, program suppliers disclosed that the principals of Sinclair, David D. Smith, J. Duncan Smith, Robert E. Smith, and Frederick D. Smith ("the Smiths"), then-licensee of television station WBFF(TV), Baltimore, Maryland,¹ were using coercive economic pressures to deny WNUV quality syndicated programming in the Baltimore market. According to WNUV's account, the Smiths, who had just applied to sell WPTT to an employee and to acquire WPGH, indicated to program suppliers that they would link program licensing in Pittsburgh (where they allegedly claimed they would be "the only game in town") to exclusive agreements with WBFF in Baltimore. Fearing retaliation, WNUV engaged Baseman to file a petition to deny CRI's application to assign WPTT to Edwin Edwards, who was WPTT's general manager. WNUV claims that, as the application appeared designed to give the Smiths continued control over WPTT even after they acquired WPGH, WNUV believed that the Smiths were attempting to gain control over two television stations in the Pittsburgh market. As a result of Baseman's March 4, 1991, petition against the WPTT application, the WPTT application was amended a number of times to address the Commission's multiple ownership and cross-interest concerns. On June 21, 1991, the Commission granted both Pittsburgh applications, and the transactions were consummated on August 31, 1991.

WNUV alleges that after Baseman's pleadings were filed, the Smiths engaged in harassing behavior, such as menacing telephone calls, threatening letters, and public accusations of racism against Baseman and his law firm. WNUV further states that before the Pittsburgh application grants became final, (during the period in which Baseman could have filed a petition for reconsideration or an application for review), the Smiths filed a summons in equity in Pennsylvania state court and commenced discovery to determine who, aside from Baseman, was involved in the attempt to block the Pittsburgh sale. WNUV also states that once the transactions became final, the Smiths converted the equity proceeding into an action at law and served a summons on Baseman -- but without having served a complaint on Baseman, WNUV claims Baseman does not know what the Smiths are alleging or what relief they are seeking.

In response, Sinclair argues that the WNUV/Baseman filing is an attempt to obfuscate ongoing civil litigation in the state court, and charges that they are trying to use the Commission as a shield from money damages in the civil suit. Sinclair argues

¹ WBFF's current licensee, Chesapeake Television Licensee, Inc., is owned by the four Smiths.

essentially that the Commission has no involvement in a state court proceeding, such as its suit against Baseman, involving tortious conduct, and that a declaratory ruling is inappropriate when there is no actual controversy or no uncertainty before the Commission. Both WNUV/Baseman and Sinclair reiterate their principal arguments in their replies and further responses. In a supplemental pleading, WNUV provides more specific examples of the Smiths' alleged anti-competitive conduct in Pittsburgh and Baltimore. Sinclair denies the allegations and again questions Baseman's real motives in filing a petition to deny in which Sinclair alleges he was a paid "straw man."²

Upon consideration of the parties' arguments, as well as all of the information before us, we decline at this time to issue the requested declaratory ruling or to otherwise grant the relief requested.

With respect to the allegation that Sinclair abused the Commission's processes by filing an action against Baseman in state court, we are unable to conclude based upon the information before us that the suit was initiated solely or primarily to intimidate or harass Baseman. Furthermore, it appears that the gravamen of Sinclair's suit addresses a private matter, involving rights arising under state law. Such a controversy is more appropriately resolved in the state court proceeding. The Commission does not assume jurisdiction in private matters between licensees. See, e.g., Patrick Henry, 69 FCC 2d 1305, 1311-12 (1978); McAlister Television Enterprises, Inc., 60 RR 2d 1379, 1383-84 (1986). Moreover, although WNUV alleges that the effect of the suit's pendency is to chill speech protected under

² WNUV also raises a collateral issue as to whether WPTT and WPGH misrepresented to the Bureau in the WPTT assignment application that there were no agreements between the Smiths and WPTT concerning WPTT-TV's programming and that WPTT would be a Home Shopping Network ("HSN") affiliate after closing. As WNUV points out, WPTT and WPGH have been operating under a local marketing agreement. Sinclair explains that WPTT was forced to drop its affiliation under intense pressure from cable franchisees, an unanticipated circumstance when WPTT contracted with HSN. WNUV has provided no evidence that would lead us to believe that WPTT made a misrepresentation as to its intended programming when its assignment application was granted. Further, the agreement went into effect on January 6, 1992, over four months after the WPTT sale closed. The Commission's Field Operations Bureau did, however, conduct an independent investigation of the WPTT-WPGH arrangement to determine if it constituted an unauthorized transfer of control. The FOB determined that it did not. Upon our review of the station's local marketing agreement, we find that no enforcement action is warranted.

the First Amendment, we are unable to determine from the record the precise nature of the conduct for which Sinclair seeks redress. Even if we could, however, comity would require that we presume the adequacy of Pennsylvania law to protect these interests. Furthermore, there is no record evidence whatsoever to indicate that such a presumption would be unwarranted.

With respect to the allegation that Sinclair has abused the Commission's processes by threatening, intimidating, and harassing Baseman and WNUV, we note that the conduct alleged does not involve the types of threats the Commission has considered abusive or potentially abusive in past cases. See Fort Collins Broadcasting Co., Inc., 38 FCC 2d 707 (1972) (no abuse found where the licensee threatened suit, and made public statements addressing the merits of petitions to deny and the responsibility of the petitioners); Chronicle Broadcasting Co., Inc., 27 RR 2d 743, 771-773 (1973) (licensee-commissioned investigation of a complainant); compare Patrick Henry, *supra* (pattern of conduct involving threats to file lawsuits, and statements that could be construed as physical threats, warrant further inquiry in a hearing).

With respect to the contentions that Baseman's and WNUV's conduct in filing the petition to deny constituted or did not constitute an abuse of process, regardless of whether, as a legal matter, an abuse of our processes occurred in this case, we decline to undertake any further enforcement action. We note that, as a general matter, Commission policy strongly favors the disclosure in licensing proceedings of both the fact that an individual is filing in his status as counsel, and the identity of the party represented. We also note that WNUV's and Baseman's actions appear contrary to this policy. In this instance, however, it does not appear that the integrity of our processes were jeopardized, since WNUV had a colorable basis for asserting standing to petition to deny, and thus would not have been precluded by the Commission from raising on its own behalf the objections Baseman raised. Furthermore, it is the Commission's general policy to address whatever merits objections to license grants may have, regardless of whether the objector has standing under the standards applied in federal courts. Moreover, it does not appear that the lack of disclosure in this case resulted in relevant information not coming to the Commission's attention in a timely manner. Compare Gulf Coast Communications, Inc., 81 FCC 2d 499 (Rev. Bd. 1980), recon. denied, 88 FCC 2d 1033 (Rev. Bd. 1981), rev. denied, FCC 82-168 (April 6, 1982). Under these circumstances, we see no reason to undertake further enforcement action, or to issue the requested declaratory ruling.³

³ We note that on October 29, 1992, Channel 63, Inc., licensee of television station WIIB, Bloomington, Indiana, filed a petition to deny a number of assignment applications of

Thus, we find that no action is warranted on this matter.

~~----- "Complaint and Request for Relief" IS WEPEDV~~

Certificate of Service

I, Ruth E. Omonijo, a secretary in the law offices of Baker & Hostetler, here certify that I have caused copies of the foregoing "Consolidated Reply to Oppositions" to be hand-delivered this 26th day of April, 1993 to the following:

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