

NMTV's Odessa station (which took place in April 1991). The minutes also fail to indicate any instance in which Aguilar or Duff expressed an opinion different than Crouch's opinion. The minutes fail to indicate any action independent from TBN on the part of Aguilar or Duff.

D. Lack of Candor/Misrepresentation

NMTV's opposition to the Borowicz petition to deny contains a series of statements that were designed to give the Commission the impression that it was an independent organization under the bona fide control of Aguilar and Duff. After NMTV was required to respond to specific questions by the Commission, however, it turned out that those statements were either deceptively incomplete or outright lies.

For example, in response to a challenge to its financial qualifications, NMTV claimed to be relying upon a loan from the Bank of California to purchase the Wilmington station. Attachment 6, Summary Pp. 3-4, P. 40. NMTV did not disclose that on March 13, 1991, the \$400,000 escrow payment it made had come not from the Bank of California but from a TBN account. Attachment 14, Pp. 13-14. Moreover, the balance of the money came not from a bank loan but from a TBN loan. See Attachment 19. These facts, which obviously had an important bearing on NMTV's bona fides, were not disclosed until TBN was forced to specifically disclose that information.

NMTV also wrote:

NMTV has its own bank accounts from which it pays its own employees and other creditors, and has its own revenues, from the sale of broadcast time and spots. NMTV receives its own contributions as a recognized 501(c)(3) organization. (P. 11).

This excerpt is nothing more than a series of distortions which paints a seriously misleading picture of NMTV's finances. While NMTV does have its own bank account, TBN officers sign checks on that account. Furthermore, if Duff has any authority to sign checks as NMTV's Treasurer, that authority is limited to checks of less than \$1,000. NMTV also failed to disclose that with respect to WTGI, it was TBN instead of NMTV who was raising funds to purchase WTGI. See Section C4, supra. When faced with a specific question, NMTV was forced to admit that it had received no funds earmarked for the WTGI purchase but that TBN had received nearly \$37,000 in such funds. Attachment 10, Pp. 12-13.

NMTV's opposition also contained the following statement (at P. 31):

Petitioner has made no showing that Mrs. Duff and Rev. Aguilar [sic] aren't directors, or that they don't go to meetings, vote on corporate business or comply with their corporate fiduciary responsibilities.

What NMTV never bothered to tell the Commission is that Aguilar never attended the directors' meeting dealing with the issue at hand: the purchase of WTGI. It also did not disclose that Crouch held the unilateral power to

approve the sale because he held Aguilar's proxy. See
Attachment 23.

This pattern of deception continued in NMTV's
response to the Commission's inquiry letter. In her
affidavit, Duff claimed that she "at least helped
~~formulate the representations that are made in the FCC~~

been convicted in 1976 of a criminal charge of assault." Attachment 6, P. 36 n.23. Of course, Aguilar had to have been aware of his conviction, so that statement is disingenuous unless Aguilar is not considered part of NMTV.

Even if NMTV is considered to be under the control of Paul Crouch, however, the statement is demonstrably false and deceptive. Crouch writes in his affidavit:

Rev. Aguilar's story of his conversion from a drug addict, biker, and ex-convict to a minister and evangelist for Jesus Christ is inspiring. He has told that story any number of times on our programming. (Emphasis added).

Attachment 10, P. 4. Thus, the excuse that NMTV had "just learned" of Aguilar's criminal record is a fraud. Crouch has admitted that he knew of Aguilar's past as an ex-convict.

IV. LAW AND ANALYSIS

TBN's use of NMTV as a minority front to expand its broadcasting empire and to evade the Commission's multiple ownership rule is one of the most cynical and systematic abuse of the Commission's processes ever. The facts offered above conclusively demonstrate that NMTV is not minority-controlled but is under the absolute control of TBN and Paul Crouch. Consequently, the issues listed above must be specified.

A. Issues 1-4

An entity has de facto control over a station if it controls or can potentially control station operations.

KOWL, Inc., supra. In the case of NMTV, TBN has both exercised actual control over its operations and has the potential to exert further control over the minority

unauthorized transfer of control, abuse of process, and one-to-a-market issues against Arch, CBI, and their principals. The facts upon which the Commission relied in adding issues are as follows:

A. Chase Junior was and is a 5.445-percent stockholder in the Chase family enterprises

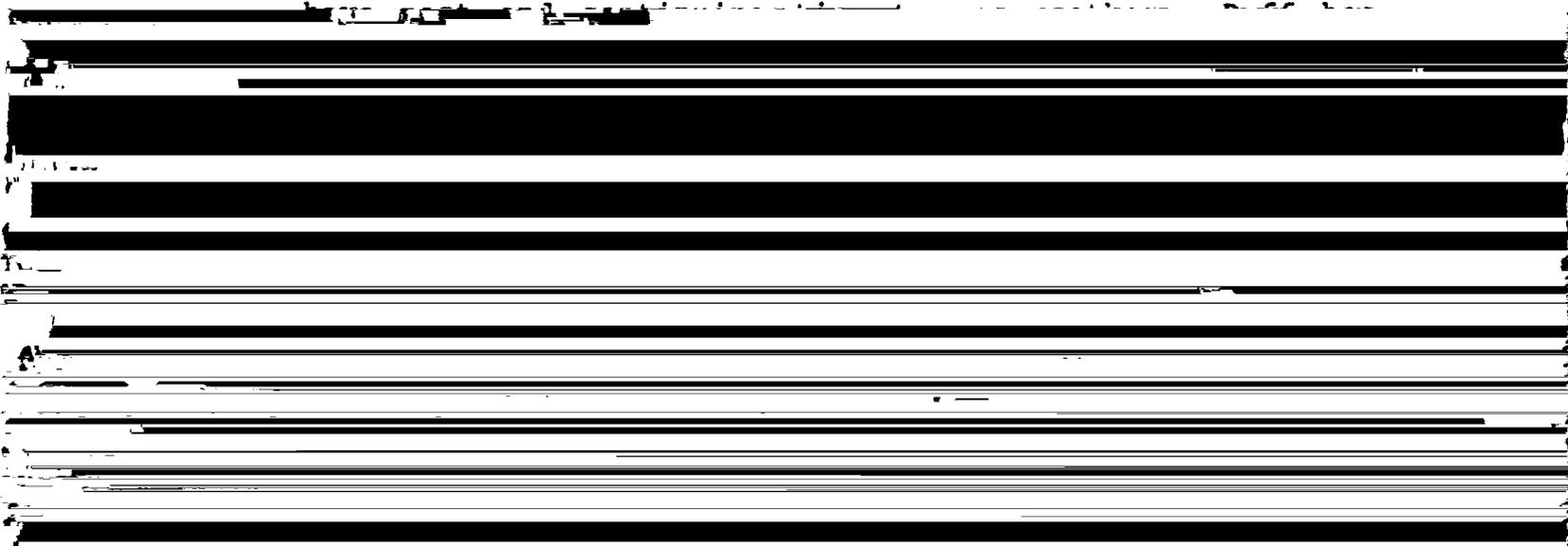
September 12, 1986, and continued well after the consummation of that transaction on Oct. 2, 1987. Chase Communications Corp., through subsidiaries, filed an application to acquire Station WPTR-TV, Channel 24, Memphis, TN, on February 10, 1986, which was granted March 28, 1986. The parties closed the sale on June 30, 1986. A contract also on file discloses that in August of 1984, Chase Junior pledged all of the stock of Arch as security for a revolving line of credit for the use of Arch and three separate Chase family limited partnerships.

E. After Station WTIC-TV began operation, Arch and Chase B/casting shared the same counsel and the same national sales representative, and the stations advertised on one another.

F. After the sale, Chase Junior continued his affiliation with Chase B/casting as its Chief Executive Officer, and was personally relieved of responsibility for debts incurred by Arch.

5 FCC Rcd at 1643, 67 RR 2d at 817-818. In addition, the Commission relied upon the family relationship between the Chases.

This situation presents a much stronger case for the addition of qualifications issues than existed in Chase. Each of the factors relied upon by the Commission in Chase is present here to one degree or another. It is undisputed that both organizations and their directors



and F in Chase concerned the past and continuing relationships in the Chase family.

Factor B in Chase was Chase Senior's indirect financial assistance to Arch and Chase Junior. In this case, TBN is NMTV's source of financing. TBN officials also directly control NMTV's finances by signing checks on the NMTV bank account. NMTV's Treasurer, on the other hand, cannot sign checks of more than \$1,000 without a second signatory. Moreover, TBN not only lent NMTV funds but then conducted its own fundraising to repay the loans. Providing funds to an entity is one means of controlling that entity. Exercising direct control over the entity's finances is a much more powerful means of control.

The Commission also relied upon Chase Senior's representation that he intended to acquire a substantial equity interest in Arch shortly after it began broadcasting. Here, while TBN and NMTV are non-stock corporations, Crouch has always been the President and a director of both organizations. Moreover, each of NMTV's officers (except for Aguilar) are TBN employees.

The Commission also relied upon the fact that Arch and CBI shared the same counsel and national sales representative and advertised on each other. Paragraph E. Similarly, TBN and NMTV have the same counsel and consulting engineer. More, TBN's newsletter promoted NMTV's Portland station and the proposed acquisition of

the Wilmington station and raised funds for the Wilmington purchase.

Finally, while none of the directors are blood relatives, Matthew Crouch, the son of Paul Crouch, is NMTV's Assistant Secretary. Attachment 1, P. 4, Attachment 2, P. 5. Jan Crouch, Paul Crouch's wife and a TBN officer, participated in the tour of WTGI. Attachment 21, P. 1. Moreover, while there was no direct evidence of Chase Senior's involvement in Arch, to say Paul Crouch is actively involved in NMTV is a massive understatement.

Thus, a review of just the factors relied upon by the Commission in Chase provides an appropriate basis for the specification of qualifications issues. This case, however, contains several indicia of control that were not present in Chase. The most important factor is that TBN provides NMTV with virtually all of its programming, which is also carried on TBN stations. The Commission has recognized that control over a station's programming is perhaps the most important indicia of control. Although NMTV had a full opportunity to show that Duff and Aguilar exercise independent control over NMTV programming, no such control exists.

The record also shows that TBN has exercised direct control over NMTV operations, particularly with respect to the proposed Wilmington purchase. It was a TBN

employee (Dale Osborn) who first inspected the property. A potential employee of WTGI was referred to another TBN Vice President concerning possible employment. As noted above, TBN's Vice President for Finance signs checks on NMTV's bank account.

The activity on the part of TBN's employees and officials must be contrasted with the passivity of Aguilar and Duff. Aguilar has very little, if any, contact with NMTV's operations. When a meeting was held to ratify the proposed purchase of WTGI, Aguilar was not present. Crouch held his proxy. While Duff has had some involvement in NMTV's affairs, no reliable evidence exists that she has ever exercised any independent decision-making authority over its programming or other vital aspects of its operation. Moreover, it is impossible to tell when Duff is acting as a TBN employee and when she is acting as an NMTV director, particularly since both companies have the same office.

Appropriate issues must be specified against TBF because of TBN's control of NMTV, which is nothing more than a front being used to evade the multiple ownership rule. TBN is clearly the real-party-in-interest of NMTV. "[A] real-party-in-interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed." Ocean Pines LPB Broadcast Corp. 5 FCC Rcd 5821, 5827. 68 RR 2d 577.

583-584 (Rev. Bd. 1990) (Concurring Statement of Board Member Esbensen, see also Concurring Statement of Board Member Blumenthal). In Western Cities Broadcasting, Inc., 5 FCC Rcd 6177, 6179 (MMB 1990), the Bureau indicated that if a station owner was found to be the real-party-in-interest in an application filed in his daughter's name, "such a determination would indeed raise material and substantial questions about [the station's] qualifications to be or remain a Commission licensee." Since TBN and TBF have the same directors, an issue must be specified to determine whether TBN is a real-party-in-interest in NMTV.

An abuse of process issue must also be specified against TBF. In Chase, the Commission wrote:

We generally believe that an unauthorized

Commission's processes by establishing NMTV as a front to circumvent a Commission rule. Such misconduct must be punished.

If it is found that TBN controls NMTV, TBN will have an attributable interest in thirteen commercial television stations that are not minority-controlled. It would therefore be in violation of Section 73.3555(d) of the Commission's rules, and TBN's renewal application could not be granted under those circumstances.

Finally, it must be noted that NMTV has filed for and received many LPTV construction permits and that it has claimed a minority preference in those applications. See Attachment 3, P. 1. The evidence which shows that NMTV is not a bona fide minority-controlled entity also raises questions as to whether NMTV and/or TBN have abused the Commission's processes by claiming an undeserved minority preference. The Commission has warned:

All applicants should be aware that improper preference claims violate Federal law. 18 USC §1001. Additionally, evidence of such claims could place in jeopardy all Commission authorizations then held by the wrongdoer, as well as adversely affecting the grant of any further authorizations.

Lottery Selection Among Applicants, 93 FCC 2d 952, 967, 53 RR 2d 1401, 1415 (1983). In RKO General, Inc. (KFRC), 5 FCC Rcd 3222, 3224-3225, 67 RR 2d 1428, 1432 (1990), an applicant for an AM station was found unqualified to be a

Commission licensee because he was the real-party-in-interest of LPTV applications filed in the names of his family members. If the Commission concludes that TBN is the real-party-in-interest of NMTV, TBN and its directors would not be qualified to remain a Commission licensee.

B. Issue 5 - Lack of Candor/Misrepresentation

In RKO General, Inc. v. FCC, 670 F.2d 215, 228-230 50 RR 2d 821, 835-837 (D.C. Cir. 1981), RKO's application for renewal of its Boston television station was denied

refused to disclose matters of substantial decisional significance that it was required to disclose. Accordingly, a lack of candor/misrepresentation issue must be specified.

In its opposition, NMTV claimed to be relying upon a bank loan when, in fact, it had received funds directly from a TBN account and would receive \$3,600,000 more from TBN. NMTV's opposition was affirmatively misleading because it failed to disclose NMTV's financial reliance on TBN.

NMTV also tried to show its independence by stating that it had its own bank account. As in RKO, this statement was "technically correct" but seriously misleading. NMTV never voluntarily disclosed that a TBN officer signed checks on the NMTV account or that its Treasurer lacked sole authority to sign checks of more than \$1,000. NMTV had an affirmative obligation to report all facts of potential decisional significance since Borowicz placed the relationship of NMTV and TBN squarely at issue. Instead, it dissembled.

Borowicz's petition also raised substantial questions about Aguilar's and Duff's role in NMTV's affairs. NMTV's opposition failed to disclose pertinent facts concerning their lack of involvement in NMTV affairs. NMTV claimed that Borowicz had not shown that the minority directors had not acted as directors or

attended meetings. Of course, NMTV knew that Aguilar had not attended the meeting where the WTGI purchase was approved.

NMTV's attempt to hide facts from the Commission cannot be excused because some of the facts were disclosed at the Commission's specific direction in response to the inquiry letter. When NMTV filed its opposition, it was obviously attempting to have the Commission deny the Borowicz petition based solely upon the pleadings. If the Commission had not taken that action, many critical facts would never have been disclosed. Moreover, NMTV's response to the inquiry letter does not demonstrate complete candor. It tried to portray Duff as having an active and independent role in preparing NMTV applications when those applications were substantively identical to TBN applications. Accordingly, TBN's and MNTV's repeated failures to be candid provide an independent basis for specifying qualifications issues.

C. Issues 6-7

It is indisputable that NMTV failed to report Aguilar's felony conviction when it was obliged to do so. These facts are not the only basis for specifying qualifications issues, however. NMTV's submissions on this question again show an intent to deceive the Commission. For that reason, Section 73.3514/1.65 and

lack of candor/misrepresentation issues must be specified against TBF.

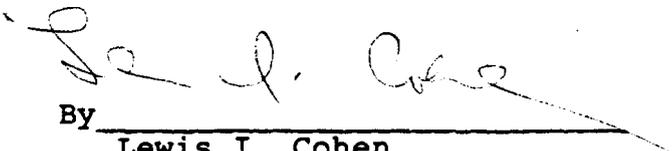
NMTV's explanation for why Aguilar's conviction was not previously disclosed was that it had just learned of

Commission's processes.^{12/} Appropriate action must be taken.

Accordingly, Glendale asks the Commission to grant this petition to deny.

Respectfully submitted,

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Date: December 27, 1991

^{12/} TBN may be using companies other than NMTV as fronts to evade the multiple ownership rule. As reported in the January 28, 1989 Los Angeles Times article (Attachment 15 to this petition), TBN's relationship with All-American TV, Inc., which owns four commercial television stations, bears striking resemblances to its relationship with NMTV. As with NMTV, All-American carries TBN's programming, TBN has loaned All-American \$3.75 million, and All-American's President receives free air-time and use of TBN's production studios. Given the similarities between NMTV and All-American, the Commission should conduct a full investigation of the TBN-All-American relationship or allow Glendale to conduct discovery on that relationship under the designated issues.

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June 13, 1991

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Federal Communications Commission
Mass Media Services
P. O. Box 358180
Pittsburgh, Pennsylvania 15251-5180

ATTN: Ownership Section

RE: Ownership Report for Trinity Broadcasting of Florida, Inc.,
Licensee of WHFT(TV), Miami, Florida

Dear Ms. Searcy:

Transmitted herewith on behalf of the above-referenced licensee is an Ownership Report, filed on FCC Form 323, covering WHFT(TV), Miami, Florida. This report is submitted in compliance with section 73.3615 of the Commission's rules and regulations.

Pursuant to section 1.1104 of the Commission's rules, a check in the amount of \$35.00 made payable to the Federal Communications Commission, and with the required "Fee Processing Form" (FCC Form 155), are also tendered herewith.

The applicant respectfully requests that the enclosed copy of the application, marked "COPY," be stamped as received and returned to the undersigned.

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

Respectfully submitted,



[The main body of the document is almost entirely obscured by dense horizontal black lines, likely due to severe scanning artifacts or intentional redaction. Only a few faint, illegible fragments of text are visible.]

Approved by OMB
3080-0010
Expires 8/30/92

CERTIFICATION

6. List all contracts and other instructions required to be filed by section 73.30.3 of the Commission's rules and regulations. Only licenses, permits, or otherwise exercises de facto control over the subject licensee or permittee shall respond.)

Description of contract or instrument	Name of person or organization with whom contract is made	Date of Execution
N/A		

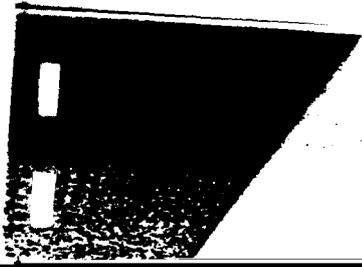
7. Capitalization (Only licensees, permittees, or a reporting entity with a majority interest in or that otherwise exercises de facto control over the subject licensee or permittee, shall respond.)

Class of Stock (preferred, common or other)	Voting or Non-voting	Number of Shares			
		Authorized	Issued and Outstanding	Treasury	Unissued
N/A-nonprofit/nonstock corporation					

Remarks concerning family relationships, attribution exemptions and certifications: (See Instructions 4, 5 and 6)

izable stockholders and partners.

(The numbered items below refer to line numbers in the following table.)



FCC FORM 323