

Even a cursory examination of Commission and station files reveals that TBN and its President, Paul Crouch, absolutely control NMTV. NMTV's board includes Crouch as President, and three TBN employees, Crouch's son Matthew,^{13/} Charlene Williams, and Patsy Jane Duff, who is one of the two minority "voting" directors. See Exhibit 11 hereto (Updated Ownership Report for NMTV, Inc., November 15, 1990).

Not only do TBN principals and loyal staff dominate NMTV by name, TBN dominates NMTV in practice. TBN's phone number is the same as NMTV's phone number, and a TBN post office box is used as NMTV's post office box. See Exhibit 14 hereto (examples of cover pages of 1990 Form 395s for TBN and NMTV stations).

Mrs. Duff is hardly qualified in her own right to operate major market, full power broadcast facilities.^{14/} She lacks a formal education and has a background teaching Sunday School and serving as a telephone counsellor for TBN. See Exhibit 15 hereto (Jane Duff biography). She formerly served as a TBN Vice President (see Exhibits 15 and 16) but sometime before 1985 apparently was demoted. She signed the KTBN-TV 1988 EEO program as "Administrative Assistant to the President" and Paul Crouch

Actually, Mrs. Duff has been identified by the Los Angeles Times as Paul Crouch's secretary, earning a salary in 1987 of \$21,405. Neither she nor the third voting member of the NMTV Board in 1989, a TBN-associated pastor named Rev. Phillip Espinoza, earned anything for their role in NMTV. M. Pinsky, "Liberal Reading of FCC Minority Rule has Helped TBN's Growth," Los Angeles Times, January 28, 1989, Metro Section, P. 1 Col 1 (Exhibit 18 hereto). Nor is there any evidence that either Mrs. Duff or Rev. Espinoza ever did anything for NMTV other than sign papers sent them by the lawyers or Paul Crouch.

All of the customary indicia of real party in interest control, familiar to every FCC trial lawyer and ALJ, are present here. TBN and NMTV use the same lawyer (Colby May, Esq.) and engineer (W. Ben Miller). See Exhibits 19 and 20 hereto. Programming statements associated with TBN and NMTV assignment applications have been identical down to the word. See Exhibits 21 and 22 hereto. So have EEO programs. See Exhibits 23 and 24 hereto. Even the Issues/Programs Lists of TBN and NMTV stations, while not precisely identical, follow exactly the same format and are developed through identical procedures. See Exhibits 25 and 26 hereto (other representative samples available on request).^{15/}

^{15/} Unfortunately, Petitioners are not sure they have either complete or accurate information on all of TBN's or NMTV's stations. TBN has not been particularly careful about complying with reporting requirements: nine of its seventeen full power TV stations (counting three full power "noncommercial" stations) never bothered to file ownership reports on time. See Exhibit 9 hereto (FCC letters to the nine stations). As shown infra, this is not a licensee which cares much for such formalities as

What is amazing is that TBN is so brazen about its role in NMTV. Its May, 1991 "Praise the Lord" newsletter refers throughout to the WTGI-TV acquisition as a TBN initiative, loosely using "we" throughout to mean TBN, not NMTV; not even mentioning the names of the minorities purportedly controlling NMTV (while mentioning that Paul Crouch is NMTV's President); expressly seeking to lead the newsletter's readers into believing that WTGI-TV is to be part of the TBN's international dynasty of stations, and asking viewers to send TBN, not NMTV, the money to pay for the acquisition of WTGI-TV! See Exhibit 27 hereto. TBN quite boldly has held out to its readers (and, through its broadcasts, presumably to its viewers) that it will control WTGI-TV. This, taken alone, is disqualifying conduct.^{16/}

This raises a serious question of whether TBN, and not NMTV, is the applicant. The Commission has repeatedly stated that "[t]he test for determining whether a third person is a real party in interest is whether that person has an ownership interest, or will be in a position to actually or potentially control the operation of the station." Arnold L. Chase, 61 RR2d 111, 135 (1986), citing KOWL, Inc., 49 FCC21d 962 (Rev. Bd. 1974); see also American International Development, 43 RR2d 411 (1978).

^{16/} See Radio Carrollton, 43 RR2d 472, 473-74 (Rev. Bd. 1973) (nonparty held himself out as having an interest in an application).

Here, TBN's President has created a fictitious "minority" company by doing nothing more than putting the names of a faithful (and apparently fungible)^{17/} Hispanic minister and his Black secretary on the applications. If it should be this easy to create a minority "applicant", there will be literally no end to the number of "minority" broadcasters created as surrogates for nonminorities. The number of such entities will be limited only by the supply of compliant minorities.

Petitioner further notes that the misconduct occurring here also took place in connection with NMTV's previous acquisitions of stations serving Portland, Oregon and Odessa, Texas, and in connection with the acquisition of an unknown number of LPTV stations under the NMTV name, using minority preferences. Since these are repeated violations, then, revocation is the proper remedy. See BBA Enterprises, Inc., 31 RR2d 1373, 1404 (ALJ 1974) ("the continuing pattern of conduct of this licensee over the years which was violative of the Act and regulations and the cumulative nature of the violative acts of the licensee constitute a wanton disregard of the obligations owed by a licensee which calls for the imposition of the sanction of revocation of the licenses").

^{17/} A different Hispanic pastor, Phillip Aguilar, has replaced Rev. Espinoza. Nothing in the files indicates why this happened, or even when it happened. Nor is it clear what, if anything, either pastor ever did for NMTV besides have his name on its applications.

The import of these matters is less significant than their repetition, for the "fact of concealment" is of greater import than the "facts concealed." FCC v. WOKO, 329 U.S. 223, 227 (1946). See also RKO General, Inc. v. FCC, 670 F.2d 231, 233 (1981); Pass Word, Inc., 76 FCC2d 465 (1980) (revocation may be based solely upon a pattern of deliberate misrepresentation); WMOZ, Inc., 36 FCC 202, 237-39 (1964).

Chicanery such as this cannot be countenanced by the Commission. It is fundamental to the system of licensing that the Commission know who is in charge of the stations it licenses. See Lorain Journal Company v. FCC, 351 F.2d 824 (1965), cert. denied sub nom. WWIZ, Inc. v. FCC, 383 U.S. 967 (1966).

The Commission quite rightly examines broadcasters who play fast and loose with the ownership rules, for those rules, almost alone, determine whether the public is presumed to obtain a full spectrum of broadcast content. Seraphim Corp. (KGMC-TV), 2 FCC Rcd 7177 (1987); Phoenix Broadcasting Co., 44 FCC2d 838, 839 (1973); George E. Cameron, Jr. Communications (KROO), 91 FCC2d 870, 887-93 (Rev. Bd. 1982), recon. denied, 93 FCC2d 789 (Rev. Bd. 1983); rev'd on other grounds, 56 RR2d 825 (1984). The present case presents no exceptional equities meriting any departure from this longstanding policy.

Even were TBN's conduct not so patently violative of law, it would be grounds for hearing simply because of its anticompetitiveness. The acquisition of a TV station in a major market is no small matter, and the Commission is obliged to consider the anticompetitive effects of all applications submitted to it. FCC v. NCCB, 436 U.S. 775 (1978). Inasmuch as this transaction does not comport with either the letter or spirit of the multiple ownership rule, it should be examined in hearing even apart from the character aspects of TBN's abuse of the rule.

Finally, it cannot go unnoticed that the rule being abused is one designed to place control of broadcast stations in the hands of legitimate minorities. Statement of Policy on Minority Ownership in Broadcasting, 68 FCC2d 979, 982 (1978). The Commission has not hesitated to punish minorities who abuse this policy. See, e.g., Silver Star Communications-Albany, Inc., 3 FCC Rcd 6342 (Rev. Bd. 1988) (minority owner put nonminority wrongdoer in charge of station purchased in distress sale). The Commission must be even handed, dealing similar justice when nonminorities front off minorities to achieve illegal ends at the public's expense.

IV. TBN DEFRAUDED ITS VIEWERS INTO DONATING MONEY TO MEET THE ESCROW REQUIREMENTS FOR THE PURCHASE OF WTGI-TV. THOSE REQUIREMENTS HAD BEEN MET TWO MONTHS BEFORE TBN FALSELY APPEALED TO ITS VIEWERS FOR THE MONEY.

As already noted, TBN's May, 1991 "Praise the Lord" Bulletin (Exhibit 27 hereto) reads as though TBN is acquiring WTGI-TV. That is not all it does, however: it explicitly asks TBN viewers to send money for the acquisition of the station. It states: "IF EVERYONE WHO RECEIVES THIS LETTER WOULD SEND AN EXTRA \$5.00, WE WOULD HAVE ENOUGH TO PAY FOR CHANNEL 61! Remember also to PRAY -- we must have FCC approval as well as the finances to close the escrow."

Yet the May Newsletter also states that "we" (TBN?) made a "downpayment" on the station in March. In February 20, NMTV's lawyer, Colby May, wrote to Hon. Helen S. Balick, U.S. Bankruptcy Judge for the District of Delaware, that NMTV "is prepared to make a cash deposit of \$400,000, representing 10% of its proposed purchase price .. .by close-of-business February 26, 1991." See Exhibit 28 hereto. Those funds apparently were actually paid on or about March 15, 1991. See WTGI-TV Assignment Application, March 27, 1991, Exhibit 1 (Exhibit 29 hereto.)

Obviously, if TBN had represented to the Commission and a bankruptcy court in February that it had the money to buy the station, it has no business asking the viewers for that money now.

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Only two inferences are possible from these facts. One possible inference is that TBN/NMTV misrepresented its financial abilities to the Court and the Commission, and when it filed the application actually did not have reasonable assurance of the funds to complete the purchase. That inference is logically rebutted, however, by the fact that the \$400,000 is not refundable if the buyer defaults. See Exhibit 20 hereto.

It is hard to recall conduct so deceitful, although one very similar instance does come to mind. PTL of Heritage Village Church and Missionary Fellowship, Inc., 71 FCC2d 324 (1979) (designating hearing on allegations that licensee used funds raised over the air for purposes different than those represented to viewers.)^{18/} See also Faith Center, Inc., 82 FCC2d 1 (1980); cf. Fidelity Radio, Inc., 1 FCC2d 1145 (Rev. Bd. 1965) (subsequent histories of cases omitted).

V. CONCLUSION

It is well established that the Commission cannot grant an application without further investigation if it lacks sufficient facts to determine that renewal would serve the public interest. Bilingual-Bicultural Coalition on the Mass Media v. FCC, 595 F.2d 621, 629-630 (D.C. Cir. 1978). See also Citizens for Jazz on WRVR, Inc., 775 F.2d 392, 397 (D.C. Cir. 1975) ("[i]t would be peculiar to require, as a precondition for a hearing, that the petitioner fully establish...what it is the very purpose of the hearing to inquire into.")

Furthermore, Petitioners are to be included in the investigative and hearing process. Bilingual, supra. This avoids the problem, so often encountered by petitioners, of the petition to deny process being stacked against them by the unavailability of information in the sole possession of the broadcaster. Cf. Stone v. FCC, 466 F.2d 316, rehearing denied, 466 F.2d 331 (D.C. Cir 1972).

^{18/} The "Praise the Lord" monthly bulletin summarizes actual broadcasts. While Petitioner lacks tape recordings made over TBN licensed facilities, he asserts on information and belief that such broadcasts generally parallel the content of Exhibit 27 hereto.

Where the facts are in dispute, it is an abuse of discretion to refuse to do an investigation. NBHC v. FCC, 775 F.2d 342 (D.C. Cir. 1985). Moreover, the investigation must be meaningful, especially where, as here, the Commission faces an applicant openly hostile even to requests to read the public file. See Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988).

For the foregoing reasons, the Commission should set the above referenced application for hearing; request TBN and other entities controlled by TBN, including NMTV, to file early renewal applications; set those applications for hearing; and deny all of the applications. 19/

Respectfully submitted,

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David Hovig

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Application of:)

DELAWARE VALLEY BROADCASTERS,
LIMITED PARTNERSHIP, DEBTOR-IN
POSSESSION)

(Assignor))

and)

NATIONAL MINORITY TV, INC.)

(Assignee))

For Assignment of WTGI-TV,
Channel 61, Wilmington, Delaware)

To: Chief, Mass Media Bureau

File Number: BALCT-910329AE

CONSOLIDATED OPPOSITION TO PETITION TO DENY
AND INFORMAL OBJECTIONS

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SUMMARY

Petitioner has filed a purported Petition to Deny which, with the exception of his format allegations, is totally unsupported by anything more substantive than references to newspaper articles and documents taken from the Commission's files and the public record. Accordingly, Petitioner's allegations are simply not "supported by an affidavit of a person or persons with personal knowledge thereof ..." which show "that [the] grant of the application would be prima facie inconsistent with the public interest." 47 U.S.C. § 309(d)(1).

Specifically, Petitioner requests that National Minority TV, Inc.'s application be designated for hearing because of the potential loss of WTGI's Spanish-language program format in the Philadelphia market. Petitioner's allegations ignore the last 15 years during which the Commission has depended on the marketplace as the best and most efficient mechanism for ensuring program diversity. This policy has been followed consistently by the Commission and endorsed by the Supreme Court.

In addition, Petitioner has submitted insufficient evidence to compel the Commission to reverse or waive its now over 15 year policy. The Petition utterly lacks any showing either that there is an ascertained need for Spanish-language format programming, or that similar programming is not available from other sources. In point of fact, however, there are alternate sources of Spanish-language programming in the Philadelphia market. In addition, the wisdom of the Commission's reliance on the marketplace to provide program diversity is shown by the fact

that another television station whose signal is viewed in the Philadelphia market, WTVE, Channel 51, Reading, Pennsylvania, has expressed an interest in picking up WTGI's Spanish-language programming if NMTV's application for assignment is approved.

Petitioner's allegation that NMTV is a "sham" organization, or a "front" for Trinity Broadcasting Network is also legally and factually unsupported. Petitioner's repeated citation of and reliance upon KIST and its progeny are totally inapposite, since NMTV is not requesting, nor is the Commission granting it, integration credit under the standard comparative issue. NMTV's application is to be evaluated under section 73.3555(d)(1)(i).

In adopting the present multiple-ownership rules which allow

minority owners are not owners--i.e., are not fully functioning directors of a nonprofit/nonstock corporation.

Not only does the Petition attempt to apply to NMTV the wrong legal standards, it also conveniently ignores the rather profound factual differences between NMTV and the circumstances pertaining to comparative broadcast applicants in KIST and its progeny upon which Petitioner relies. For example, NMTV is an organization which is over ten years old and which is qualified to do business in no less than three states. It has its own employees, has operated two licensed broadcast stations, and is presently the licensee of channel 24 in Portland, Oregon. NMTV is recognized as tax-exempt by the United States government and three different states. Its television stations have, and do, generate revenues for NMTV, and as a tax-exempt organization NMTV receives its own contributions. It has its own employee policies, its own bank accounts, its own insurance, and it pays its bills and employee salaries from its own accounts. To claim that NMTV is a "sham" organization is patently ridiculous.

Similarly, Petitioner has not raised a "substantial and material question of fact" that NMTV is a "front" for Trinity. It has not shown that NMTV's minority directors do not function as directors or that they have violated their fiduciary respon-

TBN newsletter which not less than twice refers to Channel 61 as an NMTV station, and which identifies Dr. Crouch as the president of NMTV. These allegations also overlook the fact that the same newsletter accurately describes NMTV's relationship to Trinity Broadcasting Network as one of "affiliation."

Similarly erroneous are Petitioner's allegations that NMTV or Trinity Broadcasting Network has somehow failed to disclose the relationship. NMTV has twice applied to the Commission for the assignment of construction permits, and has in each application made full disclosure of the broadcast and other interests of Dr. Crouch and Mrs. Duff. At the Commission's request the articles of incorporation and bylaws of NMTV have been reviewed by the Commission. Petitioner's allegations are particularly ridiculous in view of the fact that in almost every instance they are supported by citations to applications and other documents that NMTV (or Trinity Broadcasting Network) has filed with the Commission.

Finally, Petitioner's allegations that NMTV has misrepresented its financial qualifications to the Commission, or, in the alternative, that Paul Crouch, NMTV's president, has fraudulently solicited contributions, simply are not supported by the facts. NMTV is financially qualified, under applicable Commission precedent, because it relies on funds from a bank loan. However, there is nothing immoral nor fraudulent for NMTV's president to solicit contributions for the purchase prior to closing so that

NMTV will not have to add the burden of debt service in operating a station which has already once gone bankrupt.

Petitioner utterly fails to raise a single issue suggested by law or fact that grant of the WTGI assignment to NMTV is not prima facie in the public interest. His Petition should therefore be expeditiously denied and dismissed.

policies, and disregard the extensive and long-standing disclosures which NMTV has made in the public record regarding its relationship to the Trinity Broadcasting Network.² In short, Petitioner's filing generates heat but no light and certainly doesn't raise a question of fact that the grant of NMTV's application would be "prima facie inconsistent with the public interest." 47 U.S.C. § 309(d)(1).³

1. Petitioner essentially raises three issues: (1) that ~~any change in the Spanish language format of NMTV is not in~~

and would require the Commission to engage in a constitutionally suspect choice of a secular format over a religious one. The claim that NMTV is "front" for the Trinity Broadcasting Network is utterly unsupported by any statement from anyone with personal knowledge of the facts, as is required by section 309(d) of the

qualifications in the assignment application. For these reasons, and the further reasons provided below, Petitioner's Petition should be denied and dismissed, and the WTGI-TV assignment approved.

I. FACTUAL OVERVIEW

A. WTGI-TV History

3. WTGI-TV's licensee, Delaware Valley Broadcasters, Limited Partnership, Debtor-In-Possession ("Delaware Valley") has been in bankruptcy since 1987 in the United States Bankruptcy Court for the District of Delaware (Case No. 87-69). It has submitted reorganization plans which, for numerous reasons, either failed or were unacceptable to Delaware Valley's creditors. Pursuant to the directions of the Bankruptcy Court, public bids for the acquisition of Delaware Valley's assets, including the WTGI-TV license, were gathered. NMTV submitted its initial bid of \$3.5 million in December 1990. Only one other party, Believer's Broadcasting Network, Inc. (Believers) submitted a bid. Believer's is a religious program producer. On January 29, 1991, at the final bidding session of the bankruptcy court in Wilmington, Delaware NMTV increased its offer to Four Million Dollars, the purchase price now specified in the Purchase Agreement, as amended in the March 5, 1991 Addendum Agreement.⁴

⁴/ Exhibit 3 attached.

television stations since early 1987. Its first facility was channel 42, Odessa, Texas (BAPCT-870203KF). Channel 42 was acquired as an unbuilt construction permit from Alfred H. Roever, III, who was unable to construct. If NMTV had not acquired the authorization no new television service would have been inaugurated for the Midland-Odessa area, and the Commission has long-recognized the importance of initiating new service to the public. Christian Broadcasting of the Midlands, Inc., 99 F.C.C.2d 578 (Rev. Bd. 1984); Communications Properties, Inc., 92 F.C.C.2d 45 (Rev. Bd. 1982); Town and Country Radio, Inc., 70 F.C.C.2d 572 (Rev. Bd. 1978).⁶ In its Odessa assignment application (hereinafter "Odessa Assignment") NMTV

the state of California, and possesses all corporate power necessary to construct, own and operate [channel 42] and carry out the provisions of this Agreement. Buyer's president, Paul F. Crouch, however, is an officer and director of the organizations specified in Exhibit C, which in the aggregate holds interests in the maximum number of television facilities permitted by non-minority controlled organizations under Commission rule 73.3555, 47 C.F.R. § 73.3555. Accordingly, Buyer will be required to establish compliance with rule 73.3555(d)(1)(A) and 73.3555(d)(2)(A) . . . before the assignment specified herein can be approved by the FCC. Buyer further represents and warrants that it will take any and all reasonable steps to establish compliance with Commission rule 73.3555 . . . as specified in this paragraph 7.a.; however, in the event the FCC does not approve the assignment for reasons associated with rule 73.3555, and its interpretation and/or application thereof, then this Agreement shall automatically become void, and Buyer and Seller shall be relieved of any and all obligations to the other whatsoever without liability.

Further, and most significantly, in response to a staff request NMTV filed copies of its Articles of Incorporation and Bylaws as a supplement to the Odessa assignment on April 14, 1987 (Exhibit 5 attached). These charter documents, which remain in effect today, unambiguously provide that each of the three directors of NMTV have one equal vote in all matters. Section 9, Quorum, of Article III of NMTV's bylaws states:

A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article III [which permits a majority of directors present at a meeting, whether or not they constitute a quorum to adjourn any meeting]. Every act or decision done or made by a majority

which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Nonprofit Corporations Law, especially those provisions relating to (a) a direct or indirect material financial interest, (b) appointment of committees, and (c) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the remaining quorum for that meeting.

Moreover, Article II, Section 3, Termination of Membership, of NMTV's bylaws provides:

The membership of any member shall terminate upon occurrence of any of the following events:

- (a) the resignation of the members;
- (b) the death of the member;
- (c) the determination by a majority of the Board of Directors that such termination would be in the best interest of the corporation. Such a determination by a majority of the directors may be without cause.

8. In December 1987 NMTV filed its second assignment application, this time for channel 24, Portland, Oregon. In that