Glendale Broadcasting Company
MM Docket No. 93-75
Exhibit No. ____________

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In Re: Request of:)
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NATIONAL MINORITY TV, INC.)
)
)
Regarding Application of Multiple)
Multiple Ownership Rule 73.3555(d),)
The 14 Station Exception)

93-75

TO: The Commission

REQUEST FOR DECLARATORY RULING
OF NATIONAL MINORITY TV, INC.

National Minority TV, Inc. ("NMTV"), licensee of KNMT(TV), Portland, Oregon, by its undersigned counsel and pursuant to Commission rule 1.2, 47 C.F.R. § 1.2 (1990), hereby respectfully requests a declaratory ruling regarding the application of the 14 station ownership limit afforded minority-owned entities under Commission rule 73.3555(d) to nonprofit/nonstock organizations. NMTV seeks clarification that the "minority-owned" standard set forth in rule 73.3555(d) is met by a nonprofit organization when a controlling number of its voting board members are individuals from recognized minority groups, and when the nonprofit organization is in compliance with state law regarding its chartering and operations, without resorting to consideration of other factors such as whether the minority directors are involved in day-to-day station operation. In support of its request NMTV shows and states as follows:

Federal Communications Commission

Docket No. 93-75 Exhibit No. GBC 216

Presented by Cohen

Disposition
- Identified 12.7.93
- Received 12.7.93
- Rejected

Reporter [illegible]

Date 12.7.93

I. Factual Context

A. NMTV's Corporate Status and Background

1. NMTV is a California Nonprofit Corporation Organized on September 16, 1990.[1] From its incorporation until November 1990, it had the same three directors: Paul F. Crouch, Mrs. P. Jane Duff, and Rev. Philip David Espinoza. Mrs. Duff is an African-American female, and Rev. Espinoza is an Hispanic male. In November 1990, Rev. Espinoza resigned from NMTV and was replaced with Rev. Philip Aguilar, also an Hispanic male.[2] In early October, 1991 a fourth director was added to NMTV's board, Rev. E. V. Hill, an African-American male. A majority of NMTV's directors have always been members of minority groups.

2. NMTV's organic documents provide that the corporation's directors are its members, are self-perpetuating, and have only one vote. For example, Section 9, Quorum, of Article III of NMTV 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 of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of the California Nonprofit

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1/ NMTV was originally incorporated under the name of Translator TV, Inc.

2/ The circumstances surrounding Rev. Espinoza's resignation and Rev. Aguilar's election to the board, should they be relevant, were extensively covered in NMTV's response to the Commission on
(footnote continued on next page)

Corporation's 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 as 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 member;

(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.

3. NMTV operates in full compliance with the laws of the state of California. It is also qualified to do business in the states of Texas, Oregon, and Delaware, and it operates in compliance with the laws of those states as well. NMTV is recognized by the IRS as a tax-exempt 501(c)(3) organization, and is tax exempt in the States of California, Texas and Oregon. All of the assets of NMTV are irrevocably dedicated for charitable purposes, and NMTV is not operated for private gain. NMTV also operates a charitable relief program known as "His Hand Extended." Under

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September 24, 1991 in connection with BALCT-910329KE and that response is incorporated by reference herein (hereinafter "NMTV Response").

this program food and clothing are collected and distributed to the needy in the Portland area.

4. NMTV's directors include Dr. Crouch, who is the president of the Trinity Broadcasting Network ("Trinity"). Trinity and its Trinity affiliated organizations own and operate 12 commercial television stations.[3] Trinity was started in 1973 and over the past 18 years it has become the largest group owner of religious television stations and low power television/ translator facilities in the country. Arbitron rates Trinity as the number one religious program service in the United States.

5. Director Rev. Aguilar founded Set Free Christian Fellowship as a church in 1982. Since then the church has grown in membership, and currently over 4,000 participants attend regular worship services. Set Free Christian Fellowship is located in Anaheim, California, in an inner city area that is economically depressed with high levels of crime and substance abuse. The

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3/ Those stations, all of which are UHF facilities, are as follows:

KTBN-TV, Channel 40, Santa Ana, California
WLXI-TV, Channel 61, Greensboro, North Carolina
WDLI-TV, Channel 17, Canton, Ohio
WHSG-TV, Channel 63, Monroe, Georgia
KPAZ-TV, Channel 21, Phoenix, Arizona
KTBO-TV, Channel 14, Oklahoma City, Oklahoma
KTBW-TV, Channel 20, Tacoma, Washington
WHFT-TV, Channel 45, Miami, Florida
WKOI-TV, Channel 43, Richmond, Indiana
WCLJ-TV, Channel 42, Bloomington, Indiana
WTBY-TV, Channel 54, Poughkeepsie, New York
KDTX-TV, Channel 58, Dallas, Texas

church's primary ministry is to reach out to the community's needy and drug addicted, and it operates several homes to provide housing, food and clothing to assist church members, recovering alcoholics and drug addicts, and people with criminal pasts. Rev. Aguilar and his Set Free Christian Fellowship have received numerous commendations from community leaders for the work the church has done in aiding the needy and in cleaning up depressed urban areas. The church has also been awarded the "Disney Land Community Service Award."[4] Set Free Christian Fellowship uses property owned by Trinity on favorable terms to operate half-way types of homes, and receives $5,000.00 a month from Trinity to organize and transport 14 prayer counselors to the Trinity counseling center in Tustin, California and to assist Trinity in various acts of charity.

6. Dr. Hill has been the pastor of the Ebenezer Baptist Church in Watts, California for over 25 years. His church is one of the most vibrant and dynamic in the entire LA area. Dr. Hill and his church have received countless community awards and commendations from local, state and national leaders. The church

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4/ While Rev. Espinoza is no longer a director of NMTV, it is important to note that he too is the pastor of a dynamic English and Spanish language church in the San Fernando Valley. Rev. Espinoza has pastored the LA Trinidad Church since 1966. The Los Angeles Times and NBC News have featured his congregation of over 700 because of its effective community outreach and growth. Rev. Espinoza has been active in assisting the local government in neighborhood improvement programs and been recognized by the community as an outstanding leader.

operates soup kitchens, and provides many needed services to the needy and disadvantaged members of the Watts community. Dr. Hill has served on a number of presidential advisory commissions and is recognized as one of the most effective African-American leaders in America today. Other than a few appearances on Trinity programs, and occasional assistance from Trinity in generating support for LA soup kitchens, Dr. Hill has no present or past connection with Trinity.

7. Mrs. Duff has been involved with broadcasting for over 11 years as a senior executive for Trinity. In addition to her position with NMTV, she is a salaried employee of Trinity Broadcasting Network and serves in a senior management position as "Assistant to the President," the president being Paul F. Crouch. Over her tenure in broadcasting Mrs. Duff has not only managed the work of dozens of people, she has also developed innovative and unique public affairs programs. Among such programs is her "Public Report" series which highlighted community problems and leaders. Mrs. Duff is also the director which is most involved in overseeing the routine and general operation of NMTV.

B. <u>NMTV's Management and Method of Operation</u>.

8. NMTV's Response included a great deal of information concerning how NMTV is actually managed, how executive decisions are made, and who makes them. Mrs. Duff is the party responsible

for day-to-day management of the corporation, receives reports from station managers, and is responsible for hiring and firing personnel. Mrs. Duff generates and signs purchase orders for station equipment, and receives and reviews a check log for NMTV.

9. Rev. Aguilar attends most board meetings and reads the minutes of the meetings sent to him. He also speaks with Mrs. Duff periodically about NMTV business. Rev. Aguilar receives and reviews regular financial statements and audited financial statements when they are prepared.

10. Dr. Crouch is not involved in the day-to-day operation of the station unless Mrs. Duff brings a particular problem to his attention.

11. Dr. Hill has not been a member of the board long enough to do more than participate in a board meeting in October when he was elected to the board.

12. Mrs. Duff and Dr. Crouch's offices are at Trinity Broadcasting Network. With the exception of Rev. Aguilar and Dr. Hill, all of NMTV's principals are salaried employees of Trinity. NMTV is a program affiliate of Trinity, and Trinity often loans funds for station acquisition to NMTV at low interest rates, with the obligation payable out of donations and contributions received by Trinity from NMTV's station service area.

13. NMTV has operated two full power television stations, KMLM, Odessa, Texas and KNMT, Portland, Oregon. In addition to its operation of KNMT, NMTV is the permittee or licensee of the following low power television facilities:

K33DE, Little Rock, Arkansas (license)
K56DZ, Fresno, California (license)
W26AU, Wilmington, Delaware (permit)
W18AY, Portland, Oregon (license)
W62BV, Charlotte, North Carolina (license)
W24BK, Columbus, Ohio (license)
W57BK, Toledo, Ohio (permit)
W68CD, Toledo, Ohio (license)
W51BR, Columbia, South Carolina (permit)
W58BQ, Greenville, South Carolina (permit)
K36CJ, Salt Lake City, Utah (license)
W52BD, Huntington, West Virginia (permit)

While the Odessa facility was sold on April 19, 1991, when NMTV operated both stations in 1990 it had more than 13 full time employees, and 6 part time employees. Of those employees (full and part-time) 26 percent were minorities and over 36 percent were women. Currently, as reflected in NMTV's 1991 Annual Employment Report (FCC Form 395-B) for KNMT, NMTV has seven full time employees, three of which are minorities (nearly 42 percent). This is particularly noteworthy since Portland has an extremely small minority population, as does the Pacific northwest generally.[5]

5/ The FCC's Renewal Branch reports that the labor force statistics for Portland include 2.4 percent Blacks, 1.9 percent Hispanic, 2.1 percent Asian, 0.6 percent of Native Americans and Pacific Islanders, and 43 percent women.

C. **NMTV is Well Known to the Commission, and it has Twice Previously Been Approved to Acquire Unbuilt Construction Permits Under Commission Rule 73.3555(d).**

14. NMTV, its purpose and its organization, is well known to the Commission. NMTV has acquired, constructed, and operated two full power television stations since early 1987. The first facility to which it received a license was channel 42, Odessa, Texas (BAPCT-870203KF). NMTV acquired channel 42 as an unbuilt construction permit from Alfred H. Roever, III who was unable to construct. In its Odessa assignment application (hereinafter "Odessa Assignment") NMTV outlined its compliance with Commission rules 73.3555(d)(1) and (d)(2), explaining that it was a nonprofit/nonstock California corporation with three directors--Mrs. Duff, Rev. Espinoza, and Dr. Crouch. The Odessa Assignment also noted that Dr. Crouch was the president of the Trinity Broadcasting Network (and its associated Trinity organizations), and as such currently had a cognizable multiple-ownership interest in 12 other television stations. Mrs. Duff involvement in other broadcast corporations with Dr. Crouch was also disclosed.

15. The January 10, 1987 Purchase Agreement for Channel 42, Odessa, fully disclosed the legal composition of NMTV, and stated the following in paragraph 7(a):

> Buyer's Organization and Standing. Buyer is a nonprofit corporation duly organized and validly existing and in good standing under the laws of 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 a director of the organizations specified in Exhibit C, which in the aggregate holds interests in the maximum number of television facilities permitted by nonminority 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 (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.

This provision clearly demonstrated NMTV's intention to be fully compliant with the multiple-ownership rules, and provided that if the Commission did not believe NMTV and its proposed acquisition of channel 42, Odessa complied with the multiple-ownership rules the entire transaction would be voided. Further, and 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. These charter documents, which remain in effect today, unambiguously provide that each of the directors of NMTV have one equal vote in all matters. Based on the submission of these documents, and the governing provisions, and without further inquiry concerning any other matter the Commission granted the channel 42 assignment.

16. In December 1987 NMTV filed its second assignment application, this time for channel 24, Portland, Oregon (hereinafter "Portland Assignment"). Once again, NMTV acquired the construction permit from an entity, Greater Portland Broadcasting Corporation, which had been unable to make <u>any</u> progress on station construction. In that application it made virtually the identical disclosure regarding Mrs. Duff, Dr. Crouch and the Trinity Broadcasting Network. The December 17, 1987 Asset Purchase Agreement for channel 24 provided at paragraph 7.b. a full disclosure on Dr. Crouch's position as an officer and director of the Trinity Broadcasting Network, and its associated operating companies. Mrs. Duff's broadcast related interests were again disclosed. As in the channel 42 assignment, a detailed showing was provided in the channel 24 assignment again describing the history of NMTV and noting that two of its directors were minorities. At that time, since NMTV's corporate documents were already part of the public record, it was not necessary to resubmit those documents. The Commission granted the channel 24 assignment and the sale was consummated on December 19, 1988. KNMT-TV, channel 24, signed on November 16, 1989 (BALCT-891205KH), a scant 11 months after consummation.

17. On March 29, 1991 NMTV filed an assignment application to acquire WTGI-TV, Wilmington, Delaware from Delaware Valley Broadcasters, Limited Partnership, Debtor-In-Possession (BALCT-910329AE). WTGI-TV had been in bankruptcy since February 1987, and under the continuing jurisdiction of the United States Bankruptcy Court for the District of Delaware (Case No. 87-69). WTGI-TV had submitted reorganization plans which, for numerous reasons, either failed or were unacceptable to the Bankruptcy Court and/or Delaware Valley's creditors. Pursuant to the directions of the Bankruptcy Court, public bids for the acquisition of WTGI-TV, and all of the assets of Delaware Valley, were gathered. NMTV submitted an initial bid during this process in December 1990 and NMTV's bid was ultimately approved.

18. In the WTGI-TV assignment application NMTV, as it had done in the Odessa and Portland assignments, provided a detailed listing of the broadcast holdings of its principals, including Dr. Crouch and Mrs. Duff. In addition, NMTV included a limited waiver request of 73.3555(d)(1) so the processing of the WTGI-TV assignment application could proceed without delay even though the sale of KMLM(TV), Odessa, Texas (BALCT-901217KI), which had been approved on February 27, 1991, had not been consummated.[6] NMTV made the same disclosures and representations in this

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6/ Before a ruling on this waiver request became necessary, NMTV consummated the sale of its KMLM, Odessa facility.

application as it had in its Odessa and Portland Assignment applications.

19. Section 2(j) of the WTGI-TV Purchase Agreement specifically provided, in pertinent part, that:

> [s]hould the Commission not grant [NMTV] a waiver of section 73.3555 of its rules and regulations, or authorize the assignment of the above listed station, for whatever reason, then this agreement shall automatically become null and void and the parties shall be released from any and all obligations of the other whatsoever.

20. On May 10, 1991 a Petition To Deny the WTGI-TV Assignment was filed by Dan Borowicz, the chief engineer of WTGI-TV. Among the allegations made was a charge that NMTV did not comply with Commission rule 73.3555(d), and that it was a "sham" corporation for Trinity because, _inter alia_, NMTV's minority directors took no part in the day-to-day management of the station. The petition also supported its allegations by reference to facts which were well known to the Commission--_i.e._, that: Mrs. Duff and Dr. Crouch worked for Trinity; NMTV was a program affiliate of Trinity's; and, NMTV and Trinity used the same engineer and attorney. The pleading cycle was finally ended on July 2, 1991, after numerous requests for extensions and a motion to accept a late filing were submitted by Mr. Borowicz. Subsequently, on September 13, 1991, the Chief of the Video Services Division sent a letter to NMTV requesting voluminous information concerning NMTV's directors, its day-to-day

management, and a detailing of its relationship with the Trinity Broadcasting Network. The Commission's inquiry was extremely broad ranging, delving into NMTV's minority directors' personal history, its corporate method of decision-making, and other subjects that were far afield of whether NMTV was a validly formed corporation, and whether its directors or owners were properly elected and qualified.[7]

21. NMTV promptly responded to the Bureau's request on September 24, 1991. Unfortunately, before any response or ruling could be issued by the Commission the Purchase Agreement between NMTV and Delaware Valley expired on October 1, 1991.[8] Accordingly, on September 30, 1991 the Bankruptcy Court issued an order which stated that effective October 1, 1991 the contract regarding the sale of WTGI-TV to NMTV was expired and voided.

7/ As an example of the breadth of the staff's inquiry, the Commission asked Rev. Aguilar to explain a quote attributed to him by a newspaper. This request was made in spite of numerous rulings from the Commission to the effect that newspaper articles provide no evidence which may properly be considered in evaluating a petition to deny. (47 U.S.C. § 309(d)) See, Storer Communications, Inc., ___ F.C.C.2d ____, 61 Rad. Reg. 2d (P&F) 654, 656 (M. Media Bureau 1986); Mississippi Authority for Educational TV, 79 F.C.C.2d 577, 579, 47 Rad. Reg. 2d (P&F) 1359 (1980); and, Central Texas Broadcasting Company, Ltd., ____ F.C.C.2d ____, 64 Rad. Reg. 2d (P&F) 332 (M. Media Bureau 1987).

8/ The contract was originally due to expire on September 1, 1991, however, upon motion of NMTV with the Bankruptcy Court a 30-day extension of the contract was ordered. In issuing that extension, the Bankruptcy Judge noted that no further extensions would be given. NMTV provided notice of this fact to the Commission on September 9 and again on September 12, 1991.

NMTV's application was therefore dismissed on October 1, 1991 as moot.

22. The Commission has not yet acted on the allegations raised in the petition to deny the WTGI-TV assignment. Without a resolution of these issues NMTV cannot realistically hope to seek to acquire other broadcast facilities pursuant to section 73.3555(d). Accordingly, Declaratory Relief is appropriate under Commission 1.2.

II. Questions Presented

23. NMTV respectfully requests Declaratory Relief and answers to the following questions in order to ensure complete compliance with the Commission's rules, and to resolve the staff's apparent uncertainty concerning the meaning and application of 73.3555(d) issues raised in the WTGI-TV assignment:

(1) to qualify under rule 73.3555(d) as "more than 50 percent owned by one or more members of a minority group" must an applicant provide evidence beyond a showing that the legal owners of the applicant are qualified minorities, *i.e.*, such as evidence of participation in the day to day management of the corporation or the advocacy of programs and policies uniquely relevant to minority groups?

(2) If the answer to question one is negative, does minority-control, as used in section 73.3555(d)(3)(iii) prohibit a nonminority-controlled corporation from assisting and/or relating to the minority owned licensee corporation in the following ways:

(a) entering into a program affiliation agreement;

(b) loaning funds at favorable rates;

(c) sharing common officers;

(d) using common employees;

(e) having salaried employees of the nonminority-controlled corporation as principals of its minority-owned corporation; and,

(f) having substantially similar or even identical benefit plans, personnel practices and other operational similarities?

III. Supporting Legal Arguments

A. NMTV is a Properly Qualified Corporation and its Directors Qualify as "Owners" as Set Forth in 73.3555(d)(3)(iii).

24. As noted above, NMTV has been in existence and in good standing for over 11 years. Its board of directors have been remarkably stable over its period of existence, and it had the same directors for ten years. Indeed, since its incorporation, it has lost only one director, and two new directors have been added. Its organic documents provide that the corporation is controlled by its board of directors, with each director having one vote, and that the board of directors are self-perpetuating.

25. Accordingly, even though NMTV is a nonprofit organization and no one owns any equity in the corporation, for legal purposes its directors are its "owners." This accords with traditional Commission policy. "The key distinguishing attribute

of an organization with a self-perpetuating board is that the governing board is the sole locus of control; such a board lacks even the limitation of an underlying voting body on its control that theoretically exists over the boards of membership organizations and governmental entities." Notice of Inquiry in MM Docket No. 89-77, 54 Fed. Reg. 15957, 15964 (1989). Cf., Roanoke Christian Broadcasting, Inc., 52 Rad. Reg. 2d (P&F) 1725, 1727 (Rev. Bd. 1983), rev. denied FCC 83-441 (released September 27, 1983). As stated in North Land Communication, 100 F.C.C.2d 914, 58 Rad. Reg. 2d (P&F) 825, 828, n.3 (Rev. Bd. 1985), "directorships of a non-stock licensee ... equat[e] with ownership," citing Roanoke Christian Broadcasting, Inc. See also, Farragut Television Corp., 8 F.C.C.2d 279, 10 Rad. Reg. 2d (P&F) 50, 54 (1967) (the Commission recognizes that "individuals holding positions of personal interest and responsibility in nonstock corporate applicants have been treated by the Commission as participating owners").

26. In creating the minority exception under section 73.3555(d) the Commission was very clear in strictly equating "minority control" with minority legal ownership. Specifically, rule 73.3555(d) provides, in pertinent part, as follows:

> (d)(1) No licensee for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners,

members, officers or directors, directly or indirectly, owning, operating, or controlling, or having a cognizable interest in, either:

(i) more than fourteen (14) stations in the same service, or

(ii) more than twelve (12) stations in the same service which are not minority controlled.

(d)(2) No licensee for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating, or controlling, or having a cognizable interest in, either:

(i) TV stations which have an aggregate national audience reach exceeding 30 percent, or

(ii) TV stations which have an aggregate national audience reach exceeding 25 percent which are not minority controlled.

(d)(3) For purposes of this paragraph:

. . .

(iii) "Minority-controlled" means more than fifty (50) percent owned by one or more members of a minority group.

(iv) "minority" means Black, Hispanic, American-Indian, Alaskan Native, Asian and Pacific Islander.

The Commission's black letter rule equates "control" with "ownership." There is no requirement for integration of ownership into management, no mention of minority programming.

The rule and its accompanying notes are bereft of any mention of any other legal requirement other than the organization be "minority-controlled"--which is specifically defined and limited to be "more than 50 percent owned by one or more members of a minority group." In the context of a nonprofit/nonstock organization with a self-perpetuating board that standard is met when the voting directors of the corporation are members of a qualified minority group.

B. In Adopting the Minority Ownership Exception to the Multiple-Ownership Rule (Rule 73.3555(d)) the Commission Established a Different Standard for Determining "Minority-Control" Than it Did Under the Integration Criteria of the Standard Comparative Issue, and Under the Tax Certificate and Distress Sale Policies.

27. On October 20, 1983 the Commission initiated its General Docket No. 83-1009 relating to the relaxation of the multiple-ownership rules. When it issued its August 23, 1984 Report and Order In Multiple-Ownership - Seven Stations Rule, 100 F.C.C.2d 717, 56 Rad. Reg. 2d (P&F) 859 (1984), it discussed the impact its proposed changes in the multiple-ownership rules would have upon minorities in paragraphs 87-96. In this discussion the Commission noted that it had taken several affirmative steps to stimulate minority-ownership, and specifically highlighted the tax certificate and distress sale policies pronounced in its Statement of Policies on Minority-Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 42 Rad. Reg. 2d (P&F) 1689 (1978).

In the context of the Multiple Ownership Rules, however, the focus of the Commission's concern was on the inability of minority owners to obtain financing. Specifically, the Commission stated at paragraph 93 "that the major barrier to increased minority ownership is the unavailability of adequate financing." In paragraph 94 the Commission went on to more fully enunciate its concern with regard to enhancing minority ownership in its relaxation of the Rule of Seven as follows:

> In conclusion, we believe it is the availability of adequate financing for station acquisition that is of crucial importance to prospective minority owners. Therefore, the appropriate focus of our efforts is to promote the availability of financing to minorities on equal terms as all other owners. If it is, then minorities will be on an even footing with others in bidding for stations at market prices. If such financing is not made available to minorities, then they will remain largely unable to purchase stations, either at yesterday's prices, today's high prices, or the hypothetically higher prices following relaxation of the Rule of Sevens. Minorities per se are no more disadvantaged by marketplace prices than any other small would-be owners, if financing can be made available through Commission actions, the marketplace prices can be paid. If financing is unavailable, then it makes little difference how high marketplace prices go. It would be inappropriate for the Commission to retain or adopt rules in order to deflate market prices artificially so as to assist any particular group.

28. In its Reconsideration of Multiple-Ownership - Seven Stations Rule, 100 F.C.C.2d 74, 57 Rad. Reg. 2d (P&F) 966 (1985), the issue of a group owner's participation in the two additional stations permitted under the 14-station cap was specifically discussed and approved. The Commission observed that the

national multiple-ownership rules were not primarily intended to function as a vehicle promoting minority ownership in broadcasting. However, since the financing of station acquisitions (and costs of operations, including program acquisition) had traditionally been the primary obstacle to increasing minority ownership, the Commission established the new 14-station cap as an incentive to permit group owners to work with and assist minorities in acquiring broadcast stations. There was no limit or restriction placed on the level of that assistance, as long as the organization or entity holding the additional two authorizations was, in fact, minority owned. The Commission stated it this way:

> Thus while it would be inappropriate to retain multiple ownership regulations for the sole purpose of promoting minority ownership, we now believe that a minority incentive should be included in the rule adopted by our action today. Accordingly, we are adopting rules today which permit group owners of television and radio stations to utilize a maximum numerical cap of fourteen (14) stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Multiple Ownership Reconsideration, 57 Rad. Reg. 2d (P&F) at 982 (underlining added).

In establishing the standard for "minority-controlled," the Commission provided that:

> We believe that a greater than fifty (50) percent minority ownership interest is an appropriate and meaningful standard for permitting increases to the rules adopted herein [footnote omitted]. Multiple Ownership Reconsideration, 57 Rad. Reg. 2d (P&F) at 982.

This is precisely the standard finally incorporated in rule 73.3555(d)(3)(iii).[9] NMTV's directors, which under its charter documents are the only members of the corporation and which control the corporation by their affirmative votes, comply with these rules and policies.

29. A review of NMTV's record shows that the minority incentive memorialized in 73.3555(d) is working exactly as the Commission intended. Is there any doubt, but for the minority incentive of the Commission's rules, that Mrs. Jane Duff, Rev. Philip Aguilar and Rev. E.V. Hill would not be principals of a broadcast entity which once owned two television stations? But for section 73.3555(d), how likely is it that a minority controlled corporation like NMTV would be the licensee of a station in Portland, one of the top 30 television markets with an extremely low percentage of minorities? Is there any minority controlled organization which owns two or more full power television stations which does <u>not</u> rely on a larger organization

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9/ Moreover, this same standard for minority-control in order to obtain a preference in LPTV/television translator lotteries is found in FCC Form 346, Section V, Minority Preference, Instruction 3.c., <u>viz</u>:

> Unincorporated associations and nonstock corporations with members. If a majority of the members are minorities, the entity is entitled to a minority preference.

The standard set forth in FCC Form 346 was mandated by statute, 47 U.S.C. § 309(i)(3)(A).

or national network for construction financing and a majority of its programming through program affiliation agreements?[10]

30. The Commission specifically narrowed the definition of "minority-controlled" to be "minority-ownership" in its Multiple-Ownership - Seven Stations Rule for two reasons. The first is that increasing minority involvement in broadcasting was not a primary purpose for the rules. The second is that the Commission was addressing a single issue--increasing minority ownership which it perceived could be cured with additional financing, rather than other issues such as minority programming, which could require minority integration into the day-to-day operation of the stations' facilities. The purposes to be served by the exception to the multiple ownership rule were limited and much narrower than the policies which the Commission attempted to promote in its previous pronouncements regarding incentives to increase minority ownership and operation of broadcast facilities. For example, in its Statement of Policy on Minority Ownership of Broadcasting Facilities, supra, the Commission set forth for the first time its policy regarding tax certificates and distress sales. The language used throughout the Statement of Policy on Minority Ownership of Broadcasting Facilities makes it clear that the Commission was attempting to increase minority ownership as a lever or means to increase minority management, minority program-

10/ Note, for example, the ties between Blackstar Communications, Inc. and Home Shopping Network.

ming, and the diversity of broadcast voices. "Ownership" was used as a conjunctive with "management" and with "programming." In order to enhance these objectives the Commission adopted the twin pillars of tax certificates and distress sales. The language used by the Commission is as follows:

> Full minority participation in the ownership and management of broadcast facilities will result in a more diverse selection of programming. 42 Rad. Reg. 2d (P&F) at 1692. We believe that diversification in the areas of programming and ownership--legitimate public interest objectives of this Commission--can be more fully developed through our encouragement of minority ownership of broadcast properties. Id.
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> The court [in TV 9, Inc. v. FCC, 495 F.2d 929, 28 Rad. Reg. 2d (P&F) 1115 (D.C. Cir. 1973, cert. denied., 418 U.S. 986 (1974))] made plain that minority ownership and participation in station management is in the public interest both because it would inevitably increase the diversification of control of the media and because it would be expected to increase a diversity of program content. 42 Rad. Reg. 2d (P&F) 1693.
>
> In conjunction with our customary examination of assignment and transfer applications [footnote omitted] we intend to examine such applications where a sale is proposed to parties with a significant minority interest to determine whether there is a substantial likelihood that diversity of programming will be increased. In such circumstances, we will make use of our authority to grant tax certificates [footnote deleted] to the assignors or transferors where we find it appropriate to advance the policy of increasing minority ownership. 42 Rad. Reg. 2d (P&F) 1694-95.
>
> Moreover, in order to further encourage broadcasters to seek out minority purchasers, we will permit licensees whose licenses have been designated for revocation hearings, or its renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to transfer or assign their licenses at a "distress sale" price