

[footnote deleted] to applicants with a significant minority ownership interest, assuming the proposed assignee or transferee meets our other qualifications. 42 Rad. Reg. 2d (P&F) 1695.

No such similar conjunctive requirements exists under rule 73.3555(d), or in the Multiple Ownership--Seven Stations Rule Reports and Orders. Minority ownership in the multiple-ownership rules is seen as an end in itself.

31. The absence of this conjunctive requirement represents a reasoned Commission judgment on the burden to be allocated to the applicant before the applicant is eligible for a monetary benefit. In the instance of the multiple-ownership rules, the benefit offered minority owners is simply the waiver of the Commission's rules. With respect to the tax certificate and distress sale rules the government is conferring a financial benefit on minorities, in effect a subsidy, to assist the transaction. In the case of a tax certificate the government effectively pays a nonminority controlled entity to sell its broadcast facilities to minorities by increasing the net return from any sale to a minority. The government pays the subsidy in lost tax revenue. Similarly, the distress sale mechanism permits the sale of a facility to avoid the devastating possibility of a license revocation (with its commiserate loss in capital investment). In addition, the distress sale process not only reaps significant savings for the government in not having to conduct complicated and protracted hearings, it also has the

effect of reducing the tax liability the seller would otherwise have had to pay on a full value sale versus a distress sale.

32. Since these policies involve a direct government subsidy or benefit the Commission may require that a higher standard of proof is necessary to show entitlement to the benefit. The government is effectively underwriting programs and costs at taxpayer expense for the highly laudable goal of increasing minority ownership and minority management and programming. In the case of rule 73.3555(d) no such direct benefit is conferred, so less is required. Only ownership is required. In this way the important goal of increasing minority ownership is fostered, without the more onerous requirement of minority management and programming.

33. Moreover, requiring a standard higher than mere ownership may work at cross purposes with the ostensive reason for the rule--to increase the availability of capital for minority station acquisition. Rule 73.3555(d) encourages exclusively private investment to further minority ownership of broadcast facilities. Private financing would be chilled if the Commission required that entitlement for the waiver required certain management involvement or a specific program format. Moreover, to remove any ambiguity which may have existed between a comparison of the requirements specified in Statement of Policy on Minority Ownership of Broadcasting Facilities, supra,

supplemented, _____ F.C.C.2d _____, 52 Rad. Reg. 2d (P&F) 1301 (1982), and the purposes in the multiple-ownership rules, the Commission specifically defined "minority-controlled" in rule 73.3555(d) as "minority-ownership." Indeed, the application of this interpretation in this manner is the only one which is consistent with the Commission's prior approval of NMTV assignment applications under the rule.¹¹

34. Similarly, although strenuously argued in the Wilmington petition to deny, KIST and its progeny are wholly irrelevant to NMTV's situation. Clearly NMTV is not requesting comparative enhancement under the standard comparative issue. The application of the integration factor developed in the comparative hearing context is inapposite in the assignment context, and nowhere in the multiple ownership rules or the Commission's pronouncements concerning the same is there any mention of "integration of ownership and management." Indeed, there is no mention of "management" at all.

35. NMTV is also seeking declaratory rulings since the Commission's interpretation and application of its policies changes over time. While NMTV has twice previously been approved under rule 73.3555(d) the inability of the Commission to render a decision in the WTGI-TV assignment may herald a change in the application of its policies. Because this creates uncertainty in

^{11/} To NMTV's knowledge no other party has ever been processed under this section of the multiple ownership rules.

the industry, and in this case has essentially paralyzed NMTV from proceeding with any future plans to acquire and construct new facilities, clarification is necessary.¹²

C. Trinity's Assistance to and Relationship With NMTV Does Not Constitute "Legal Control" of NMTV Within the Meaning of Section 73.3555(d).

36. The record is clear that NMTV is a validly qualified, existing and functioning corporation. As noted above, NMTV has

12/ A clear example of the Commission's policy changes and clarifications involve the use of limited partnerships. In the 1978 Statement of Policies on Minority Ownership of Broadcasting Facilities, limited partnership were not specifically contemplated. In its 1982 Supplement (52 Rad. Reg. 2d (P&F) 1301), the Commission noted that tax certificates and distress sales could be awarded to limited partnerships which had minorities as general partners, provided such minorities owned no less than 20 percent of the equity, and in fact operated as general partners with full operational control. As the use of limited partnerships became more popular in the pursuit of initial broadcast licenses, the Commission further clarified that the other media holdings of limited partners would not be assessed against the partnership provided the standards established by the Uniform Limited Partnership Act were met. Multiple Ownership Rules, 97 F.C.C.2d 997, 55 Rad. Reg. 2d (P&F) 1465 (1984). Following that assessment, it became clear that certain of the "safe harbor" provisions under the Uniform Limited Partnership Act, which permitted limited partners to act on behalf of the limited partnership, permitted limited partners to have too much management involvement to fully award complete integration credit. Accordingly, in its Ownership Attribution, ___ F.C.C.2d ___, 58 Rad. Reg. 2d (P&F) 604 (1985), the Commission stated that in order to fully insulate limited partners under the diversification and integration criterion of the standard comparative issue, all limited partners had to agree not to act on behalf of the partnership, or be employed by the partnership. Even following these clarifications, however, the policy appeared to remain in flux. In Independent Masters, Limited, 104 F.C.C.2d 178, 60 Rad. Reg. 2d (P&F) 835 (1986) the Review Board awarded a 100 percent minority integration credit to a limited partnership which had a minority partner who owned only 10 percent of the equity, even though the Commission had previously established a minimum 20 percent ownership requirement.

its own federal income tax exemption, and is tax exempt in three different states. NMTV owns its own assets, and has its own revenue, both from an affiliation agreement with Trinity and from the sale of program time and production facilities. NMTV pays its own taxes and prepares and files its own tax returns. NMTV has its own employees, who are hired, fired and paid by NMTV. NMTV is a legally separate corporation and it has not now nor ever has been a subsidiary of or legally controlled by Trinity Broadcasting Network.

37. NMTV does not deny, however, that it has longstanding and pervasive ties with Trinity, as outlined here, and as more fully outlined in NMTV's Response. Among those ties include the fact that NMTV received financing for its station acquisition from Trinity at favorable interest rates (e.g., 5 percent). As noted in the WTGI-TV assignment, Trinity agreed to provide construction financing, and entered into an affiliation agreement with NMTV under which a portion of the revenues under the affiliation agreement would pay off NMTV's debt, and which used the equipment at NMTV's station as security. NMTV and Trinity have a program affiliation agreement with respect to KNMT-TV, Portland, Oregon, and formerly had such an agreement with respect to NMTV's Odessa station, KMLM-TV. Although Trinity does not have legal control of NMTV's board, most of NMTV's directors have some connection with Trinity in one form or another. Dr. Crouch

is the president of Trinity. Mrs. Duff is the assistant to Mr. Crouch in managing Trinity and is a salaried employee of Trinity. Rev. Aguilar, while he is the pastor of a separate church, has had a cooperative relationship with Trinity, uses Trinity property at little or no cost, and receives reimbursement from Trinity for various services provided to Trinity by Rev. Aguilar's Set Free Ministries. Dr. Hill has been a guest on Trinity programming, and occasionally Trinity helps Dr. Hill raise funds for the soup kitchens his church runs in Watts. Moreover, salaried Trinity employees constitute the remainder of NMTV's corporate officers. Many of NMTV's agents, such as its communications counsel and broadcast consulting engineer, also serve in similar capacities for Trinity.

38. Despite this acknowledged record of close ties, however, there is no fact which contradicts the essential fact that NMTV maintains a separate corporate and legal existence from Trinity, complies in all respects with federal and state law, and functions as a separate corporation.

39. For example, while NMTV receives construction financing from Trinity on favorable rates, there is no evidence that NMTV's obligation to Trinity is illusory. For example, there is no acceleration clause or other limiting clause if NMTV chooses to change its program format. The obligation is secured by NMTV's station equipment, but the financing arrangement gives Trinity no

debentures, no voting power or voting rights, nor does the financing agreement, in any way, affect the legal independence of NMTV. See, for example, James R. Serra, ___ F.C.C.2d ___, 42 Rad. Reg. 2d (P&F) 73 (1977); Wisconsin Broadcasting, Inc., ___ F.C.C.2d ___, 10 Rad. Reg. 2d (P&F) 203 (1954); Westinghouse Broadcasting Co., Inc., ___ F.C.C. ___, 10 Rad. Reg. (P&F) 987 (1954). The mere existence of a creditor/debtor relationship, even if the debt is large, does not in and of itself establish a nexus for the control of one corporation over another. Cf. Morris, Pierce & Pierce, 81 F.C.C.2d 713, 50 Rad. Reg. 2d (P&F) 959 (Rev. Bd. 1981) (creditor/debtor relationship alone does not raise cross-interest question). In point of fact, it was to increase financing of minority controlled acquisitions that the minority exception to the 12-station rule was ostensibly adopted by the Commission. Trinity's financial assistance to NMTV is concrete proof that the Commission's policy objectives are, in fact, being met.

40. The fact that Trinity and NMTV share consulting engineers and attorneys does not compromise NMTV's essential legal separateness from Trinity. In fact, it would go against human nature to allow the corporations to relate to one another and share common principals but require the minority controlled corporation to hire strangers to fulfill its corporate purposes.

41. Trinity and NMTV do, in fact, share common principals. There is no evidence in the record, nor is there any such evidence, that TBN principals, when they are acting on behalf of NMTV, do not act in accordance with the wishes of NMTV's board at properly called meetings or that NMTV's actions are not properly ratified by its board. There is no evidence that the employees of NMTV are given orders or accept and obey orders from Trinity employees who are not also principals of NMTV. There is no evidence that NMTV's books or records are not kept separately from Trinity's, or that its revenues and debts are not separately accounted for, which they are.

42. There is no evidence that Trinity personnel, as opposed to NMTV's principals, hire or fire personnel, make personnel policies or decisions, make programming policies or decisions, or in any other way make decisions or determine policies on behalf of NMTV.

43. Rather, the evidence shows that NMTV is a legally separate corporation from Trinity, and that neither Trinity nor any of its affiliated organizations have any legal right to control NMTV's decisions. Neither Trinity nor any affiliated organization have any financial or other arrangements which would give that corporation any sort of voting power or control of NMTV's corporate decisions. There is no power granted in NMTV's bylaws, or in any written agreements, financing or otherwise,

which affects NMTV's principals' ability to make decisions on behalf of NMTV, to control its corporate, personnel and program policies, or to do or not do any act required of the corporation. There is no evidence that corporate acts undertaken on behalf of NMTV are not undertaken by NMTV's principals or employees.

44. Accordingly, the record shows that despite NMTV's ties with Trinity it is still a "minority controlled" corporation within the meaning of the Commission's multiple ownership rules, specifically, section 73.3555(d)(3)(iii).

D. NMTV's Record of Broadcast Service and the Prompt Construction of Stations Shows that the Public Interest is Best Served by Continuing to Allow it to Qualify Under the Minority Exception as it is Presently Structured and Operated.

45. When NMTV acquired the channel 42, Odessa, Texas construction permit in 1987 it immediately began construction and inaugurated program service within a year. Without NMTV's acquisition of the Odessa CP no new service would have been brought to the Midland-Odessa area. Mr. Roever, the original holder of the authorization, had been totally unable to construct, and had made it clear that he would not be able to proceed with bringing broadcast service to the area.

46. In constructing the Odessa facility, NMTV invested over Six Hundred Fifty Thousand Dollars. It employed five people, and not only created jobs and increased tax revenues, but helped elevate the self-image of the Odessa community. When NMTV sold

KMLM in April 1991 it made no profit, and essentially made the facility available for what it cost to construct. The program service offered by NMTV at KMLM not only included the programming of the Trinity Broadcasting Network, but a significant percentage of public affairs and informational programming.

47. Similarly, when NMTV purchased channel 24 in Portland, the previous owners, Greater Portland Broadcasting Corporation, had been unable to construct for over two years due to a lack of financing, and the inability to obtain required building authorizations. NMTV acquired channel 24 (KNMT) in December 1988, and began broadcast operations 11 months later, on November 16, 1989. Without NMTV's involvement no new service would have been provided to Portland. For this reason alone NMTV has provided a valued public service, since the Commission has long recognized the importance of initiating new broadcast service to the public. See, e.g., Communications Properties, Inc., 92 F.C.C.2d 45, 52 Rad. Reg. 2d (P&F) 981 (Rev. Bd. 1982); Town and Country Radio, Inc., 70 F.C.C.2d 572, 44 Rad. Reg. 2d (P&F) 144 (Rev. Bd. 1978).

48. As with Odessa, in constructing Portland NMTV made a significant investment, over Two Million Dollars. It employs seven full time employees and four part time employees. Three of its full time employees are minorities and two are women. In Portland NMTV took an authorization which the prior holder was

unable to construct and promptly inaugurated program service to the community, provided needed jobs, and increased the local tax base. KNMT provides significant percentages of public affairs and informational programming as well as the programming of the Trinity Broadcasting Network. In addition, KNMT-TV operates a direct relief program, the "His Hand Extended" program, which collects and distributes food, clothing and other supplies for the needy and disadvantaged in the Portland area. NMTV distributes those supplies through area churches and local ministries. Moreover, NMTV provides locally produced programs each week.

49. Based on these factors, NMTV provides a significant public service. Moreover, NMTV does not operate with a commercial purpose or for private gain, and all of its assets are irrevocably dedicated for charitable purposes. Accordingly, based on its significant level of public service, and its proven track record of promptly constructing and activating new broadcast service to the public, NMTV believes it is entitled to continue as an organization qualified in accordance with Commission rule 73.3555(d).

IV. Conclusion

50. NMTV has twice before been approved by the Commission as compliant with Commission rule 73.3555(d). To NMTV's knowledge no other organization or individual has requested an

authorization under that rule. NMTV provides a significant and important service to the public, both in its programming and in its community outreach programs, such as the "His Hand Extended" program. Three of its four directors are individuals from recognized minority groups, and over 42 percent of NMTV's full time employees are minorities. Each of NMTV's directors are accomplished individuals with careers demonstrating a commitment to public and community service.

51. NMTV has fully disclosed the involvement of Dr. Paul Crouch and Mrs. Jane Duff with the Trinity Broadcasting Network. Nothing in Commission rule 73.3555(d) precludes that involvement. Moreover, the involvement of the Trinity Broadcasting Network with NMTV, through funding and programming, not only meets the Commission's standards in rule 73.3555(d), but was specifically contemplated in the Multiple-Ownership Reconsideration, supra. NMTV's qualifications, and the involvement of Dr. Crouch, Mrs. Duff and the Trinity Broadcasting Network in NMTV's governance and operations, have twice been previously disclosed and twice been previously approved by the Commission. However, the Commission's failure to issue a ruling in the WTGI-TV assignment has forced the necessity for this requested Declaratory Ruling.

WHEREFORE, National Minority TV, Inc. hereby respectfully requests that the Commission issue a Declaratory Ruling pursuant to Commission Rule 1.2 advising that it complies with Commission Rule 73.3555(d).

Respectfully submitted,

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