

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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|--|---|---------------------|
| In Re Applications of |) | MM Docket No. 93-75 |
| |) | |
| TRINITY BROADCASTING OF FLORIDA, INC. |) | BRCT-911001LY |
| |) | |
| For Renewal of License of Television Station WHFT(TV) Miami, Florida |) | |
| |) | |
| GLENDALE BROADCASTING COMPANY |) | BPCT-911227KE |
| |) | |
| For Construction Permit Miami, Florida |) | |

VOLUME II-C

HEARING EXHIBITS

TRINITY BROADCASTING OF FLORIDA, INC.
TRINITY BROADCASTING NETWORK
NATIONAL MINORITY TELEVISION, INC.

TBF Exhibits 105-106

TRINITY BROADCASTING OF FLORIDA,
INC.,

TRINITY BROADCASTING NETWORK,

NATIONAL MINORITY TELEVISION,
INC.

Mullin, Rhyne, Emmons and Topel,
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TRINITY BROADCASTING NETWORK
NATIONAL MINORITY TELEVISION, INC.

TBF Exhibit 105 Testimony of Colby M. May

Tab A May, Dunne & Gay May 1983
Representation Agreement

Tab B May, Dunne & Gay May 1983 Billing

Tab C February 3, 1989 Representation
Agreement for NMTV

Tab D Sample Bills for TBN and Affiliated
Companies

Tab E TTI August 25, 1981 Tax Exempt
Recognition

Tab F TTI Bylaws

Tab G August 19, 1983 FCC Public Notice

Tab H February 28, 1984 Minority Preference
Certifications

Tab I May 1987 Edition of FCC Form 346

Tab J February 1988 Edition of FCC Form 346

Tab K List of NMTV Television Translator
Applications

Tab L Miami Hearing Designation Order

Tab M Minutes of NMTV's April 20, 1993 Board Meeting

Tab N January 10, 1987 Purchase Agreement

Tab O NMTV Program Affiliation Agreement with TBN

Tab P February 3, 1987 Odessa Construction Permit Assignment Application

Tab Q Corporate Documents for NMTV (formerly TTI) Submitted to Mr. Stewart on April 14, 1987

Tab R January 28, 1989 Los Angeles Times Article

Tab S Standard TBN Affiliation Agreement (Two Samples)

Tab T Letter of Jane Duff Dated May 2, 1988 Re KOIN-TV, Inc. Draft Lease

Tab U Lease with KOIN-TV, Inc.

Tab V Portland Assignment Application

TBF Exhibit 106 Testimony of Phillip David Espinoza

Tab A Letter of David P. Espinoza Dated July 23, 1990, to Dr. Paul F. Crouch

Tab B Letter of David P. Espinoza Dated July 23, 1990, to Jane Duff

TESTIMONY OF COLBY M. MAY

1. My name is Colby M. May. I reside at 2338 Walnut Street, Falls Virginia 22046. I am a partner in the law firm of May & Dunne, Chartered, 1000 Thomas Jefferson Street, N.W., Suite 520, Washington, D.C. 20007. I am communications counsel for National Minority TV, Inc. ("NMTV"), the Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity" or "TBN"), and Trinity Broadcasting of Florida, Inc. ("TBF").

2. I was admitted to the practice of law in the Commonwealth of Virginia in June, 1980. I am also licensed to practice law in the District of Columbia, and was admitted to bar of the District of Columbia in November, 1985. I am admitted to practice in the following courts:

- a. The Supreme Court of Virginia, admitted June 5, 1980;
- b. The United States Court of Appeals for the Fourth Circuit, admitted June 13, 1980;
- c. The United States District Court, Eastern District of Virginia, August 15, 1980;
- d. The United States Court of Appeals for the District of Columbia Circuit, September 20, 1980;
- e. The United States Court of Claims, admitted May 15, 1981;
- f. The District of Columbia Court of Appeals, admitted November 13, 1985; and,
- g. The Supreme Court of the United States of America, admitted May 23, 1988.

3. I am a member of the following legal associations:

- a. the Virginia Bar Association;

Federal Communications Commission

Docket No. 93-25 Exhibit No. TPF168

Presented by TOPP TMGAV

Identified 12.1.93

Disposition Received 12.1.93

Rejected

Reporter A. W. Shivers

Date 12.1.93

- b. the District of Columbia Bar Association;
- c. the Federal Bar Association (member Administrative Law Division); and,
- d. the Federal Communications Bar Association, and I have been a member of the following committees:

Continuing Legal Education;
Adjudicatory Practice;
Mass Media Practice.

4. I began my law school matriculation in the fall of 1976 at George Mason University School of Law, and attended night classes. I completed my matriculation in May, 1980. I regularly attend continuing legal education classes, including classes in the communications field, such as the 1992 class *New Broadcast Multiple Ownership Rules*.

5. I was introduced to the communications law field in May, 1977 when I became a law clerk in the law offices of James A. Gammon. I continued as a law clerk in Mr. Gammon's office until my graduation from law school and admission to the bar in June, 1980. Upon my admission to the bar I became an associate with Gammon & Grange, the successor law firm to Mr. Gammon's practice. In January, 1981 I became a partner in Gammon & Grange. At all stages of my work with Mr. Gammon and Gammon & Grange I developed a special interest in communications and broadcast matters. Indeed, since my admission to the bar over 13 years ago I have primarily devoted my practice to representing clients at the Federal Communications Commission in matters of broadcast licensing, ongoing compliance with Commission rules, regulations and policies,

and cable matters impacting the broadcast industry. In May, 1983 I left Gammon & Grange and co-founded the firm of May, Dunne & Gay, and continued developing my specialty practice in communications and broadcast matters. In May, 1986 the May, Dunne & Gay firm was restructured and became May & Dunne, Chartered. Since that time, my partner, Joseph E. Dunne III, and I have continued to devote our practice primarily to communications and broadcast matters, although we have also handled a number of matters involving employment law and nonprofit tax matters.

6. Some of my earliest work on applications for FCC broadcast authorizations dealt with the issue of integration credit for nonprofit/nonstock applicants under the Commission's comparative evaluating criteria set forth in the 1965 Policy Statement On Comparative Broadcast Hearings. Mr. Gammon represented many nonprofit/nonstock religious applicants for new radio and television construction permits. Where there were competing applicants he specifically instructed me that the Commission based integration credit on the percentage of directors or trustees of the nonprofit/nonstock company who were proposing to work full time at the station. In other words, while there was no equity or stock that could be "owned" in a nonprofit/nonstock company, the Commission treated the trustees or directors of such companies as the "owners." My understanding of this principle was confirmed in one of the earliest cases I ever worked on. The case involved the application of Word Broadcasting Network, Inc. ("Word"), a nonprofit/nonstock corporation, for a new television

facility in Louisville, Kentucky, BC Docket No. 79-281. Administrative Law Judge Conlin awarded Word an integration preference since one of its four directors proposed to work full time at the station. Initial Decision, FCC 81D-30, released June 29, 1981.

7. I was also involved in the original preparation of an application submitted by Roanoke Christian Broadcasting, Inc. ("Roanoke Christian") for a television station in Roanoke, Virginia (BPCT-800409KE). That application was filed in April, 1980, just before my admission to the bar. I worked with Mr. Dunne in the preparation of the application and throughout the case. The Initial Decision of Judge Gonzalez awarded the permit to Roanoke Christian, due largely to an integration preference based on the fact that three of its four directors proposed to work full time at the station. Roanoke Christian Broadcasting, Inc., 92 F.C.C.2d 1483 (ALJ 1982). The Review Board affirmed, and I believe the case is regarded as the leading precedent that the Commission treats the directors of a nonprofit organization as the "owners." Roanoke Christian Broadcasting, Inc. 92 F.C.C.2d 1477, 52 Rad. Reg. 2d (P&F) 1725 (Rev. Bd. 1983).

8. While a law clerk for Mr. Gammon I was also impressed with the importance of Noe v. Federal Communications Commission, 260 F.2d 739, 104 U.S.App. D.C. 221 (D.C. Cir. 1958). I reviewed the Noe decision as part of the work I was doing in helping to prepare and review various broadcast applications and in making a

comparative evaluation of profit versus nonprofit organizations competing for the same broadcast authorization. The Noe decision confirmed what I was learning about the differences between nonprofit/nonstock entities and for-profit companies. In particular I took note of the court's statement that:

[i]n previous comparative hearings, the Commission has always recognized the necessity of distinguishing non-business organizations from the ordinary stock corporation ... [w]e therefore see no impropriety in the Commission's differentiating the educational and religious organization involved in the present case from the usual business corporation, in applying its customary comparative criteria. [260 F.2d at 742] (Emphasis added; citations omitted.)

Indeed, my earliest work in this area confirmed the court's holding that nonprofit organizations, which were controlled by directors or trustees rather than stockholders, were treated and regarded as different from for-profit companies by the Commission, particularly on the issue of ownership and control.

9. In May, 1983 my firm, then known as May, Dunne & Gay, began representing TBN and its related companies, Trinity Broadcasting of Arizona, Inc. ("TBA"), Trinity Broadcasting of Denver, Inc. ("TBD"), Trinity Broadcasting of Florida, Inc. ("TBF"), Trinity Broadcasting of Indiana, Inc. ("TBI"), Trinity Broadcasting of New York, Inc. ("TBNY"), Trinity Broadcasting of Oklahoma City, Inc. ("TBOC"), and Trinity Broadcasting of Seattle ("TBS"). Copies of the initial billings reflecting that arrangement are attached in Tab A and Tab B. Translator TV, Inc. ("TTI"), which later became National Minority TV, Inc. ("NMTV"), was not listed as a company covered under the fee agreement.

However, I did represent TTI as its needs required, even though I had no written fee agreement with TTI (by then NMTV) until February 3, 1989 (Tab C).

10. I have been billing NMTV for work done on a continuing monthly basis since February, 1987. NMTV's billings were included as a separate itemization on bills forwarded to TBN, which also included itemized billings for TBN, TBA, TBD, TBF, TBI, TBOC, TBS (later known as Trinity Broadcasting of Washington), and other listed companies (Tab D). I charged NMTV at the same rates I charged TBN and its related companies. I separately itemized NMTV and TBN (and the other companies noted on my billings), and sent the bills to Dr. Paul F. Crouch at TBN for payment because I knew that TBN provided accounting services for NMTV. I also understood that TBN charged to NMTV the itemized billings of NMTV that it paid.

11. I was not directly involved in the original incorporation of TTI. However, I understand that TTI was formed by Dr. Crouch on September 16, 1980, shortly after the Commission adopted a Notice of Proposed Rulemaking, Docket 78-253, 82 F.C.C.2d 47 (1980) (NPRM), looking toward the establishment of low power television as a new broadcast service.

12. In the 1980 NPRM, the Commission originally proposed adopting a paper hearing process which would be limited to only three comparative criteria of equal weight: (1) the first applicant to file a complete and sufficient application; (2)

minority ownership and control of greater than 50%; and (3) noncommercial applicants proposing a noncommercial service. NPRM, 82 F.C.C.2d at 68 (§ 70). These three criteria were presented as a "first draft" by the FCC staff, and no mutually exclusive applications were to be processed until the review criteria were settled. 82 F.C.C.2d at 68-69 (§§ 71 and 79). The NPRM also proposed that in order to avoid giving any premium to an interim filing, no first-filed preference would be awarded in cases involving applications filed during the pendency of the rulemaking. 82 F.C.C.2d at 69 (§ 79).

13. About two months after its incorporation, TTI filed 17 television translator applications:

- a. Forth Worth (Dallas), Texas, channel 62, BPTT-801105IK
- b. San Bernadino, California, channel 60, BPTT-801106IL
- c. St. Louis, Missouri, channel 61, BPTT-801106IM
- d. San Francisco, California, channel 51, BPTT-801107IH
- e. Sacramento, California, channel 63, BPTT-801107IQ
- f. Wheaton, Maryland (Washington, D.C.), channel 42, BPTT-801112IN
- g. Las Vegas, Nevada, channel 51, BPTT-801121JQ
- h. Crestline, California, channel 47, BPTT-801121JP
- i. Portland, Oregon, channel 57, BPTT-801201IN
- j. Spokane, Washington, channel 57, BPTT-801201IO

- k. Philadelphia, Pennsylvania, channel 42, BPTT-801204IG
- l. Columbus, Ohio, channel 50, BPTT-801204IH
- m. Cleveland, Ohio, channel 55, BPTT-801204II
- n. Rockford, Illinois, channel 57, BPTT-801204IJ
- o. Houston (Stafford), Texas, channel 56, BPTT-801205IC
- p. Fort Worth, Texas, channel 43, BPTT-801223IG
- q. San Antonio, Texas, channel 50, BPTT-810106IJ

These applications were submitted between November 5, 1980 and January 6, 1981. All were ultimately dismissed (without participating in any lottery), except the application for Houston (Stafford), Texas, channel 56 (BPTT-801205IC), which was granted on January 29, 1988. TTI (by then NMTV) later sold that construction permit to Third Coast Broadcasting, Inc. on November 16, 1989.

14. TTI was incorporated as a nonprofit/nonstock California corporation and received recognition as a tax exempt public charity from the Internal Revenue Service on August 25, 1981 (Tab E). Under IRS law the assets of TTI were irrevocably dedicated for charitable purposes, not for private gain or profit. Its Bylaws, Article II, Section 2 - Members, provide that:

[t]he members of this corporation shall be the persons who from time to time are the members of the Board of Directors of this corporation. (Tab F)

The original three directors were Dr. Paul F. Crouch, Mrs. Jane Duff, and Rev. David Espinoza.

15. When TTI filed the 17 translator applications (listed above) in late 1980 and early 1981, the Commission had not yet adopted any minority preferences, and TTI's applications claimed none. However, in 1983 the Commission did provide for minority preferences when it adopted a lottery procedure for such applications. Second Report and Order, Docket No. 81-768, Lottery Selection Among Applicants, 93 F.C.C.2d 952, 53 Rad. Reg. 2d 1401 (May 27, 1983) ("LPTV Lottery Selection"). Based on this, I advised Mrs. Jane Duff, the Director of TTI with whom I worked most often, that TTI was entitled to certify a minority preference under the new procedures. My advice was also based on the Commission's August 19, 1983 Public Notice, (Mimeo No. 6030) instructing television low power and translator applicants to supplement pending construction permit applications on FCC Form 346 (Tab G).

16. My advice was based on the following language from both publications, which was consistent with my own legal experience and training that, in the case of a nonprofit/nonstock company, the Commission focused on the directors when applying its policies and procedures. In LPTV Lottery Selection (¶¶ 68-69), the Commission specifically stated that for purposes of determining whether an applicant was qualified to certify a minority preference:

[w]e agree with IBN and the Corporation for Public Broadcasting (CPB) that nonstock corporations, as well as licensees operated by commissions, boards, or other governmental bodies should be judged as to minority status on the basis of the composition of the board. We believe this treatment also should apply, for diversity purposes, to the holdings of board members. The same treatment should be afforded both nonprofit and for-profit nonstock corporations. (Emphasis added.)

The Commission went on to provide in paragraph 69 that:

[u]pon further consideration of our Notice proposal at paras. 39-40, regarding treatment of trusts, we believe that as to the minority ownership preference, the percentage each beneficiary derives as a portion of the whole should be considered, with more than fifty percent total minority share being required in order for preference to be awarded.

In its August 19, 1983 Public Notice providing instructions on how to complete Form 346, the Commission stated that the minority preference was available to specified entities as follows:

Minority Preference

. . .

3. Other entities will be entitled to a minority preference as follows:

. . .

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

d. Unincorporated Associations or nonstock corporations without members. If a majority of the governing board (including executive boards, boards of regents, commissions and similar governmental bodies where each board member has one vote) are minorities, the entity is entitled to a minority preference. (Emphasis added.)

I considered to be dispositive the Commission's statements that minority status was determined "on the basis of the composition of the board" and that "if a majority of the members [or governing board] . . . are minorities, the entity is entitled to a minority preference."

17. When I advised Mrs. Duff that TTI could claim a minority preference, I sent her a copy of the Commission's August 19, 1983 Public Notice with the new instructions for FCC Form 346. Mrs. Duff signed minority preference certifications, which TTI submitted to the Commission on February 28, 1984 in connection with its St. Louis, Philadelphia and Columbus applications (Tab H).

18. Since issuing the first minority preference certification instructions for FCC Form 346 on August 19, 1983, the Commission has issued two new editions of Form 346. The May, 1987 edition (Tab I) and the June, 1988 edition (which is still current) (Tab J) carried forward the same instructions for certifying a minority preference, and I continued to rely on those instructions.

19. In February, 1987 TTI changed its name to National Minority TV, Inc. ("NMTV"). Since July 2, 1987 NMTV has filed a total of 33 television translator applications with the Commission (listed in Tab K), and I have advised NMTV in connection with those applications that it could certify that it was entitled to a minority preference. My advice has remained the same since there have been no changes in the Commission's directives in LPTV Lottery Selection or the Form 346 instructions. The only exception to my advice was in the March-April 1993 filing window for television translator applications. NMTV submitted five applications at that time, and I advised that NMTV withhold its certification of a minority preference because of the Commission's Hearing Designation

Order ("HDO") in this proceeding (Tab L), which put at issue NMTV's status as a minority owned entity.

20. I also advised Dr. Crouch to abstain from voting in NMTV's April 20, 1993 Board meeting (Tab M). I did this for the same reason, namely that NMTV's qualifications as a minority owned company and its independence from Dr. Crouch and TBN had just been called into question in the HDO. I thus felt that Dr. Crouch should abstain in that meeting, where the Board was to vote on the election of Armando Ramirez as a Director and the retention of my law firm to jointly represent NMTV as a party in the Miami proceeding along with Trinity Broadcasting of Florida, Inc. and TBN. This was conservative, and I believe prudent advice, although I have since advised NMTV that Dr. Crouch should continue to participate in all votes of the Board.

21. In January, 1987 I assisted NMTV, primarily working with Mrs. Duff, in the negotiation of an agreement to purchase the unbuilt construction permit for KMLM-TV, Channel 42, Midland-Odessa, Texas ("Odessa CP"). Because Dr. Crouch was a Director of TBN and various TBN owned and operated companies, he was at the maximum level of television station ownership permitted under the Commission's multiple ownership rule (Rule 73.3555). As a result, NMTV's negotiations for the Odessa CP required the inclusion of a special provision that the Commission authorize NMTV's acquisition under the Rule of 14 minority ownership exception to the multiple ownership rule. The multiple ownership rule limited any one

individual's or organization's ownership interests to no more than 12 commercial television stations. The January 10, 1987 Purchase Agreement for the Odessa CP (Tab N) contained this special requirement in paragraph 7.a.:

Buyer's Organization 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 director of the organizations specified in Exhibit C, which in the aggregate hold 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, 47 C.F.R. § 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.

22. This Purchase Agreement was executed by Mrs. Duff, as NMTV's Vice President. I advised Mrs. Duff that in my opinion NMTV qualified for the minority ownership exception to the multiple ownership rule because it was a minority owned company by virtue of the fact that a majority of the Directors were minorities. I based that advice on my reading of the February 1, 1985 Memorandum Opinion and Order, Docket No. 83-1009, Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership, 100

F.C.C.2d 74, 57 Rad. Reg. 2d (P&F) 966, 982 (¶ 45) ("Multiple Ownership MO&O"), where the Commission stated:

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 rules 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 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Group owners having a cognizable interest in at least one minority controlled television or radio station may utilize a maximum numerical cap of 13 stations. Extending this policy to the audience reach limit for television, we believe that a group owner having cognizable interests in a minority controlled television station should be allowed to reach a maximum of 30 percent of the national audience, provided that at least five percent of the aggregate reach of its stations is contributed by minority controlled stations. (Footnote omitted; emphasis added.)

It seemed clear to me that the use of the word "cognizable" meant that the group owner could have an active role in station operations, since under the Commission's rules "cognizable" owners are not insulated from such involvement.

23. Consistent with the Multiple Ownership MO&O, rule 73.3555(d) (now rule 73.3555(e)) provided in pertinent part as follows (emphasis added):

(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 have a cognizable interest in, either:

(i) more than fourteen (14) stations in the same service, or more than twelve (12)

stations in the same service which are not minority controlled.

(2) No licensee for a commercial TV broadcast station should be granted, transferred or assigned 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 have a cognizable interest in, either:

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

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

(3) For purposes of this paragraph:

(iii) 'Minority control' 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.

24. I interpreted the Multiple Ownership MO&O and the rule to allow NMTV to acquire the Odessa CP notwithstanding Dr. Crouch's interest in 12 other commercial television stations at the time. In fact, I believed, and so advised Mrs. Duff and Dr. Crouch, that the Commission was expressly encouraging group owners and/or their principals to become involved in minority owned companies, and to provide to such companies as much help as possible in all areas of operations to help ensure success. And precisely for that reason I believed it was appropriate for NMTV to have a program affiliation agreement with TBN (Tab O); for TBN to advance loans

and provide an open line of credit for NMTV; for TBN to provide NMTV with business and accounting services such as accounts payable and payroll processing; for NMTV to use and have access to TBN employees to aid in engineering matters, station and studio construction, and FCC applications; for TBN and its employees to provide technical and engineering advice and operational and maintenance manuals; for NMTV and TBN to share common officers and personnel performing ministerial functions; for NMTV to have similar insurance and benefit plans as those of TBN; and for TBN to generally assist NMTV in succeeding.

25. My advice was buttressed by the comments of Commissioner Patrick in partially dissenting to the Multiple Ownership MO&O. He stated that:

... the right to purchase broadcast stations over the established ceiling turns upon the race of the proposed owners alone. No further showing is required with respect to how these new owners may contribute to diversity ... (57 Rad. Reg. 2d (P&F) 966, 988).

This confirmed my own understanding of how the Commission intended the Rule of 14 exception to work, namely that: as long as a majority of the directors of a nonprofit/nonstock organization were minorities they would be regarded as the owners in control and would qualify under the rule.

26. NMTV's Odessa construction permit assignment application was filed on February 3, 1987 (BAPCT-870203KF) (see Tab P). To my knowledge this was the first application filed under the Rule of 14 exception to the multiple ownership rules. During the processing

of the assignment application I had a number of communications with the Commission's processing staff regarding the application and the involvement of Dr. Crouch and TBN. During these discussions, which occurred primarily with Mr. Alan Glasser, a staff attorney, I even mentioned that Mrs. Duff was an employee of TBN. My discussions with the staff culminated in an informal request from Mr. Roy Stewart, then Chief of the Video Services Division of the Mass Media Bureau, that NMTV's Articles of Incorporation, Bylaws and organizational minutes be submitted for review. Mr. Stewart told me that he was interested in determining that NMTV's affairs were governed by the majority vote of its directors, and that unanimous votes were not required. I provided the requested documents to Mr. Stewart on April 14, 1987 (Tab Q). The staff then granted the Odessa construction permit assignment application in June, 1987. This further confirmed my belief that NMTV's structure complied with Commission policy.

27. After the Odessa and Portland construction permit assignments were granted, I was again reinforced in my belief that NMTV, and its relationship to TBN, fully qualified for the Rule of 14 minority exception when I read a January 28, 1989 article in the Los Angeles Times (Tab R). The article was entitled *Liberal Reading of FCC Minority Rule has Helped TBN's Growth*, and the author, Mark Pinsky, referred to a conversation with "Alan Glasser, a staff attorney with the FCC" and attributed to Mr. Glasser that the FCC

"[had its] doubts about NMTV's compliance with the rule of 14 minority exception, but after examining the 'corporate papers' ... the Commission decided that NMTV's structure was 'consistent with the policy' providing for minority ownership and control."

The article further reported that

"[Mr. Glasser] could not recall whether Commission officials were aware that Duff was Crouch's employee, but if they had it would have been considered 'a minor thing.'"

This confirmed my belief that NMTV, and its relationship with TBN, and the fact that Mrs. Duff was a TBN employee, were consistent with the Commission's rules and were contemplated by the provision in 73.3555(d) (now (e)) for a "cognizable" interest.

28. I also believed, and so advised NMTV and Mrs. Duff, that since the NMTV Board could vote at any time to change its make-up or change NMTV's relationship with Dr. Crouch and TBN, there was no bar to TBN providing services and assistance to NMTV. In fact, NMTV obtained special concessions from TBN that I had seen no other broadcaster obtain. For example, NMTV's program affiliation agreement with TBN gave NMTV the right to cancel with 120 days notice. (See Tab O, p. 9.) This allowed NMTV the freedom to start and grow with TBN's program offering, but at any time NMTV wished to go its own way it could. To my knowledge, no other program affiliate of TBN has this right. TBN's standard affiliation agreement, which I drafted, provides for a standard term of years with no voluntary cancellation clause for the affiliate. (See Tab S, pp. 8-9 and 19-20.)

29. In addition, when I worked with Mrs. Duff in helping her negotiate NMTV's lease with KOIN-TV, Inc. for antenna tower space for Channel 24, Portland, she insisted that the landlord (KOIN-TV) not have the right to cancel the lease if NMTV changed its religious format (Tab T). Mrs. Duff was prepared, however, to agree to a rent increase if NMTV no longer provided a religious format. KOIN-TV, on the other hand, did not want a competitor with a general entertainment format on its tower, and felt that a cancellation right was important. Eventually, Mrs. Duff's position prevailed, and the final lease did not have a cancellation provision if NMTV changed its format (Tab U). This was important because it protected the integrity of NMTV's right to cancel its program affiliation with TBN.

30. After the Odessa construction permit assignment application was filed in February, 1987, I did advise Mrs. Duff that NMTV should hold its meetings separately from those of TBN and that it should no longer be included on TBN's combined annual financial statement. I gave this advice because NMTV (TTI), which had been essentially inactive for seven years, was now about to become active with the acquisition of its first FCC authorization. Since the construction and operation of a full power television station is a major business, I also believed, and communicated to Mrs. Duff, that it would be easier to track NMTV's growth and development if its financial statements were broken out and treated completely separately from those of TBN. NMTV took my advice, and

since that time it has held separate corporate meetings from those of TBN and has similarly separated its annual financial reporting.

31. I was responsible for drafting the Odessa construction permit assignment application (Tab P). In doing so I relied on previous NMTV applications and documents in my files. During the course of this FCC proceeding I have learned that the application contained the following mistakes: Section 2, Table 1, failed to list two Assistant Secretaries of NMTV, Philip Crouch and Terrence Hickey; Exhibit I failed to list two additional television translator applications, Sacramento, California, channel 63, and Cleveland, Ohio, channel 55; Exhibit I also stated that each of NMTV's television translator applications had noted a minority enhancement credit, while in fact only three applications, St. Louis, Philadelphia and Columbus noted such a credit; and Exhibit I stated that NMTV had the same three officers since its organizational meeting of September 19, 1980. These mistakes were not intentional, and the information in question was correctly shown in other filings made with the Commission.

32. On December 18, 1987 NMTV filed a second assignment application to acquire an unbuilt construction permit, this time for channel 24, Portland, Oregon (BAPCT-871218KH) (Tab V). The Portland assignment was patterned on the Odessa assignment, and contained virtually the identical material. The Portland Asset Purchase Agreement (at ¶ 7.b.) contained near verbatim disclosure on Dr. Crouch and TBN and the requirement that the application be