BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Applications of	)	**MM Docket No. 93-75**
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	**File No. BRCT-911001LY**
For Renewal of License of Station WHFT(TV), Miami, Florida	)	
	)	
and	)	
	)	
GLENDALE BROADCASTING COMPANY	)	**File No. BPCT-921227KE**
For Construction Permit Miami, Florida	)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

HEARING EXHIBITS

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

TBF EXHIBIT 120

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(202) 659-4700

Federal Communications Commission

Docket No. 93-75 Exhibit No. 120

Presented by T.B.F.

Disposition
- Identified ✓
- Received ✓
- Rejected

Reporter M.K. FLEISHMAN

Date 12/23/93

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February 21, 1992

HAND DELIVER

RECEIVED
FEB 21 1992
Federal Communications Commission
Office of the Secretary

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: WHFT-TV, Miami, Florida, BRCT-911001LY

Dear Ms. Searcy:

Transmitted herewith, on behalf of Trinity Broadcasting of Florida, Inc. (TBF), is an original and four copies of its "Opposition to Petitions to Deny" filed in connection with the above-referenced pending renewal application.

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

Respectfully submitted,

MAY & DUNNE, CHARTERED

By: _____
Joseph E. Dunne III
Attorney for Trinity Broadcasting of Florida, Inc.

JED:gmcB26
xc: All Per Attached Certificate of Service

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Application of:	)	
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	File No. BRCT-911001LY
	)	
	)	
For Renewal of License of Commercial Television Station WHFT-TV, Miami, Florida	)	

To: The Commission

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

Respectfully Submitted by:

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Its Attorneys

Dated: February 21, 1992

EXECUTIVE SUMMARY

The license renewal application of Trinity Broadcasting of Florida, Inc. ("TBF") for WHFT-TV, Miami, Florida, has been contested by Glendale Broadcasting Company ("Glendale") and the Spanish American League Against Discrimination ("SALAD"). Both argue that the Trinity Broadcasting Network, which shares a controlling number of common directors with TBF, is an undisclosed real-party-in-interest, and exercises de facto control over National Minority TV, Inc. ("NMTV"), the licensee of KNMT-TV, Portland, Oregon. NMTV, and TBN, Petitioners allege have lacked candor or misrepresented facts in order for NMTV to qualify for the minority-ownership exception under Rule 73.3555(d).

These assertions, however, are unsupported by fact or law. Commission precedents makes it clear that there can be no undisclosed real-party-in-interest issue when the party has, in fact, been disclosed. The involvement of Dr. Crouch and the Trinity Network with NMTV has been abundantly disclosed on numerous occasions in Commission filings since 1987. These disclosures are dispositive of the issue. Brian L. O'Neill, 6 FCC Rcd. 2572, 2574 (1991).

Similarly, charges that Trinity Network and Dr. Crouch possessed de facto control over NMTV are equally unavailing. The charges overlook the two central facts that must inform any examination of the relationship between Trinity Network and NMTV. First, both of these organizations are non-membership, nonprofit, public charities in which no individual has an equity or other pecuniary interest. Secondly, Trinity Network and NMTV are bound together by common purposes--by their joint evangelical mission.

Even under a traditional "de facto control" analysis Petitioners fail to raise a substantial and material question of fact concerning whether TBN/Crouch have a vested right or power to control the corporation, particularly the station's finances, personnel decisions, or programming.

NMTV/Crouch did not mislead or deceive the Commission in failing to promptly report the felony conviction of Rev. Aguilar. The conviction was disclosed within 60 days after the application was filed. No motive to deceive can be imputed to the applicant, since the conviction was not disqualifying and Rev. Aguilar's criminal past is well-known and closely associated with his ministry.

The remaining assertions against the TBF renewal primarily involve claims that one of NMTV's minority directors, Rev. Philip Aguilar, an hispanic male, runs a "bizarre cult." Such allegations are not relevant to TBF's qualifications to remain a licensee and are not cognizable by the Commission absent the court adjudication. Trinity's fundraising practices comply with all applicable accounting standards and with existing IRS rules and regulations. NMTV/Trinity did not misrepresent who controls its funds, even though a nonofficer of NMTV signed two checks, because he did so in the mistaken belief that he <u>was</u> an officer of NMTV.

Finally, these challenges to TBF's renewal have failed to provide specific allegations of fact which raise substantial and material questions of fact that the grant of TBF's application is <u>prima facie</u> inconsistent with the public interest, convenience and necessity.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In Re: Application of:	)	
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TRINITY BROADCASTING OF FLORIDA, INC.	)	**File No. BRCT-911001LY**
	)	
	)	
For Renewal of License of Commercial Television Station WHFT-TV, Miami, Florida	)	

To: The Commission

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

Trinity Broadcasting of Florida, Inc. ("TBF"), licensee of WHFT, Miami, Florida, by its undersigned attorneys, and pursuant to section 73.3584 of the Commission's rules and regulations, 47 C.F.R. §73.3584 (1991), hereby submits this opposition to the petitions to deny filed by Glendale Broadcasting Company ("Glendale") on December 27, 1991 and by Spanish American League Against Discrimination ("SALAD") submitted on January 2, 1992 (collectively "Petitioners").[1]/

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[1]/ Pursuant to section 73.3584 Trinity Broadcasting of Florida, Inc. was required to file its opposition to the petitions to deny on January 27, 1992 and February 3, 1992, respectively. TBF requested a one-week extension of time to file a consolidated opposition to the Glendale and SALAD petitions. On January 31, 1992, TBF requested a two-week extension of time. SALAD consented to the extension of time requested, and Glendale opposed. On February 18, 1992 TBF filed a further short extension of three days, until February 21, 1992. SALAD consented and Glendale was notified of the request.

I. BACKGROUND

1. Trinity Broadcasting.

TBF is a nonprofit, religious corporation. It is associated with Trinity Christian Center of Santa Ana, Inc., which operates under the name of Trinity Broadcasting Network ("Trinity Network"). TBF and Trinity Network are both nonmembership, nonstock corporations. Their Boards of Directors are controlled by the same group of individuals, and it is in that sense that they are "associated" corporations. The TBF broadcast station, WHFT-TV, is one of eleven full power commercial television stations and four noncommercial television stations that are associated with Trinity Network.[2]/ In connection with its application for WHSG(TV), Monroe, Georgia, Trinity estimated that its stations reached 17.63% of the total U.S. ADI households without calculating coverage obtained with TV translators. The Trinity Network also operates more than 100 television translator stations, a cable television program service which reaches more than 7.5 million homes through Trinity Network's uplink satellite facilities, and more than a dozen television stations licensed to transmit programming outside the United States.

Trinity Network is the largest electronic evangelical ministry in the United States, if not the world. Its inspirational programming reaches tens of millions of homes every day. Trinity Network is a 24-hour service. It features a core of religious

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[2]/ Trinity Network, through its president, Dr. Paul F. Crouch, also has a cognizable interest in National Minority TV, Inc., the licensee of KNMT-TV, Portland, Oregon, discussed infra.

programming produced by Trinity Network, but also includes religious programming produced by other ministries and other denominations, public affairs programming, human interest programming, health and exercise programming, and informational, educational and instructional programming. The Arbitron rating service ranks the Trinity Network service as the most viewed religious programming service in the United States.

Trinity Network has received countless commendations and recognitions for exceptional service to the public, including acknowledgements from presidents Reagan and Bush and Los Angeles Mayor Thomas Bradley. Trinity Network has received over 50 "Angel Awards" from Religion in Media ("RIM") for programming excellence, as well as several "Golden Halo" awards. In 1981 the National Religious Broadcasters Association awarded Trinity Network its "Broadcaster of the Year" award, followed, in 1986, by its "Foreign Broadcaster of the Year" award.[3]/

In addition to providing a religious programming service, Trinity Network's associated stations are all actively involved in the life of their communities of license. Each station maintains a 24-hour prayer telephone line, staffed by volunteer "prayer partners" who are good listeners and who are trained to direct troubled callers to local social service agencies and local churches. Each Trinity Network associated station also produces

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[3]/ In the November 19, 1990 issue of The Chronicle of Philanthropy, Trinity Network was ranked as the 111th (out of 400) largest public charity in the United States. The article also noted that Trinity Network only expends 6% of its total income for fundraising.

local religious and public affairs programming and makes program time available to other local ministries. And, each associated station sponsors in its local community the His Hand Extended program, an outreach effort which solicits contributions of food and clothing within the community and distributes them to needy individuals and families.

2. **Dr. Paul F. Crouch**.

Trinity Network was founded in 1973 by Dr. Paul F. Crouch, an ordained minister who has been involved in the operation and management of broadcast stations since 1961. Dr. Crouch is a director and President of Trinity Network, and is also a director and President of each of the associated broadcast stations. Dr. Crouch and his wife Jan co-host the Network's signature program, The Praise the Lord Program.

3. **National Minority TV**.

In addition to carriage of its program service over associated facilities and cable television, Trinity Network has entered into program affiliation agreements with the licensees of approximately ten full-power television broadcast stations. National Minority TV, Inc. ("NMTV"), currently licensee of KNMT, Portland, Oregon, is one such Trinity Network programming affiliate. NMTV is a California Nonprofit Corporation organized on September 16, 1980, for religious and charitable purposes. It is a tax-exempt organization under the Internal Revenue Code and under California, Texas and Oregon law. From its incorporation in 1980 until November 1990, NMTV had the same three directors: Dr. Paul F. Crouch; Mrs. P. Jane Duff, an employee of Trinity Network; and

Rev. David Espinoza. Mrs. Duff is an African-American female, and Rev. Espinoza is an Hispanic male. In August 1990, Rev. Espinoza resigned from NMTV and was replaced by Rev. Philip Aguilar, also an Hispanic male. 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.

3. **Prior Related Proceedings**

In 1987, National Minority TV filed applications to acquire two unbuilt full-power television construction permits, one in Odessa, Texas and the other in Portland, Oregon. At that time, Dr. Crouch's position on the NMTV Board of Directors and as President of NMTV, when combined with his interests in the Trinity Network associated stations, would have resulted in his having interests in more than 12 commercial broadcast stations. For that reason, the Broadcast Bureau informally requested that NMTV submit its charter documents -- Articles of Incorporation and By-Laws -- in order to permit the Bureau to determine whether Dr. Crouch's interest in NMTV was to be treated as "attributable" to him and Trinity Network for purposes of the Commission's 12-station multiple ownership limitation. 47 C.F.R. §73.3555. After examination of these documents and acceptance of NMTV's showing that it was a nonprofit, nonmembership corporation, the Bureau granted both the Odessa and Portland applications as a routine matter. The Bureau thus accepted NMTV's showing that it was a minority-owned applicant, since two of its three Board members were minority individuals. Accordingly, Dr. Crouch's positions as a

director and President of NMTV were not attributable for purposes of the multiple ownership rule. 47 C.F.R. §73.3555(d).

In late 1990, NMTV, which had previously decided to dispose of its Odessa station (which it had constructed and put on the air) decided to acquire WTGI-TV in Wilmington, Delaware, an operating broadcast station which had been under the jurisdiction of the bankruptcy court since 1987. NMTV's transfer application for the Wilmington station was opposed by Dan Borowicz, the Chief Engineer of WTGI-TV. Borowicz complained about NMTV's plan to discontinue Spanish-language programming over the station. In a string of pleadings, he also charged that NMTV was a "sham" corporation because, inter alia. Dr. Crouch and Mrs. Duff worked for Trinity Network; Dr. Crouch served as a Director and President of both Trinity Network and NMTV; NMTV was a program affiliate of Trinity Network; NMTV borrowed funds from Trinity Network to acquire WTGI-TV;[4]/ and Trinity Network and NMTV used the same engineer and attorneys.

While the Wilmington transfer application was pending the Commission, on September 13, 1991, through the Chief, Video Services Division, addressed a letter of inquiry to NMTV seeking further information based upon Borowicz's allegations that NMTV was

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[4]/ In its March 29, 1991 application, NMTV certified its access to the funds necessary to close the transaction by relying on a December 7, 1990 letter from the Bank of California which was submitted to the FCC by NMTV in its Opposition To Petition To Deny. The Trinity loan agreement was entered into in August, 1991, and was disclosed in response to a Commission letter, dated September 13, 1991 requesting further information.

"controlled by Trinity, Crouch, or both." NMTV responded in detail to the Staff request on September 24, 1991. Shortly thereafter, the deadline for consummation of the Wilmington transfer, as extended by the bankruptcy court, expired. NMTV accordingly requested dismissal of the WTGI-TV transfer application as moot. The Staff dismissed the application, noting that the issues raised in the Borowicz petition to deny would still require consideration by the Commission.

Following dismissal of the Wilmington transfer application, NMTV, on November 18, 1991, filed a Request For Declaratory Ruling, seeking clarification of the "minority ownership" exception to the 12-station rule as applied to NMTV.

On October 1, 1991, TBF filed its application herein for renewal of the license of WHFT-TV. On December 27, 1991, and January 2, 1992, respectively, Glendale and SALAD filed their petitions to deny the renewal of the WHFT-TV license, resurrecting the "real party-in-interest" and de facto control allegations made by Borowicz in the Wilmington proceeding.

The Commission has not acted on NMTV's November 18, 1991, Request For Declaratory Ruling. A copy of that request is appended to this Opposition (See Exhibit 1), and TBF hereby supports NMTV's request for declaratory relief.

II. REASONS WHY THE GLENDALE AND SALAD PETITIONS SHOULD BE DENIED

Petitioners Glendale and SALAD charge essentially (i) that NMTV is a "sham" or "front" for Trinity Network which, they allege, is the "real party-in-interest" to the licenses held by NMTV; (ii) that Trinity Network, through Dr. Crouch, possesses "de

facto" control over NMTV; and (iii) that by misrepresenting or being less than candid about its relationship with NMTV, Trinity Network has shown itself to be unqualified to continue as a Commission licensee. These allegations are wholly without merit, and the facts relied upon by the Petitioners do not establish a prima facie basis for designating Trinity Network's renewal application for a hearing.

1. **Neither Trinity Nor Dr. Crouch Is An Undisclosed Principal**

In their real party-in-interest broadside, Petitioners miss the mark completely. Certainly, Dr. Crouch and, through him, Trinity Network, are real parties-in-interest with respect to NMTV. Dr. Crouch is part of the NMTV control group. But that fact was fully disclosed in NMTV's first broadcast license application in 1987 (BALCT-870203KF), as it has been in every subsequent license application and ownership report filed with the Commission by either NMTV or Trinity Network. Those filings also made clear Mrs. Duff's association with Dr. Crouch on a number of Trinity Network Boards. The Commission requires disclosure of every party who has an interest in application. Once disclosure is made, there can be no real party-in-interest issue.

The gravamen of a real-party-in-interest issue is nondisclosure. As the Commission recently stated: "[a] real-party-in-interest inquiry is relevant only to an undisclosed interest in an application, ..." Brian L. O'Neill, 6 FCC Rcd. 2572, 2574, 69 Rad. Reg. 2d (P&F) 129 (1991) (emphasis added). The record here is crystal clear. Trinity Network and Dr. Crouch fully

disclosed their relationship to NMTV from the outset. Petitioner Glendale's suggestion to the contrary does nothing more than provide a slim foundation for disingenuously confusing the standard applicable in resolving real party-in-interest issues with the one applicable to issues involving de facto control. Glendale Petition, p.7.

2. Petitioners Have Not Alleged A Prima Facie Case of De Facto Control

Petitioners' allegations that Trinity Network and Dr. Crouch possess de facto control over NMTV are equally unavailing. Petitioners overlook or have chosen to ignore the two central uncontroverted facts that must inform any examination of the relationship between Trinity Network and NMTV. First, both of these organizations are nonmembership, nonprofit corporations in which no individual has an equity or other pecuniary interest. Secondly, Trinity Network and NMTV are bound together, indeed not by controlling ties, but rather by their common evangelical mission.

As distinguished from a real party-in-interest inquiry, which is grounded solely on the issue of disclosure -- and Trinity Network and NMTV have made abundant disclosures regarding Dr. Crouch, Mrs. Duff and their positions with both charitable organizations -- de facto control is an inquiry into whether station control has been improperly passed to another organization. The prohibition against unauthorized transfer of control is grounded in specific provisions of the statute. As the Commission has stated, "[s]ection 310(b) of the Communications Act . . ." provides

that no transfer of a Station license, or any right thereunder, or control of any corporation holding such a license is permitted prior to Commission consent." Coral Television Corp., 29 F.C.C.2d 266, 272, 21 Rad. Reg. 2d (P&F) 1114 (1971).[5]/

The Commission has stated that "a realistic definition of the word control includes any act which vests in a new entity or individual the right to determine the manner or means of operating a license and determining the policy the licensee will pursue." WHDH, Inc., 17 F.C.C.2d 856, 863, 16 Rad. Reg. 2d (P&F) 185 (1969). This decision and others of the Commission establish that it is not merely the influence or persuasive abilities of an individual to convince others who jointly control with him or her that is the focus of the inquiry under section 310(b). Rather, the Commission is concerned with actions that give one individual the actual right or power to dominate the operation of the licensee. In the present context, petitioners have cited nothing that vests in Dr. Crouch the power or right "to determine the policy [NMTV] will pursue" within the meaning of WHDH, Inc., supra.

a) Where nonprofit, nonmembership organizations are involved, the issue of de facto control cannot be resolved by searching for economic indicia of control. When religious and charitable organizations have parallel purposes, as do Trinity Network, TBF and NMTV, no transfer of control can be inferred, as Petitioners would have it, simply because the organizations share common beliefs, jointly carry out their missions, rely on

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[5]/ Section 310(b) has been redesignated section 310(d). See P.L. 554 (82nd Cong.), July 16, 1952, 66 Stat. 716 §8.

volunteers, share office space and loan money to each other. The traditional analysis for de facto control, developed in the context of for-profit and stock enterprises, cannot be blindly applied to nonstock, tax-exempt charitable corporations such as NMTV, Trinity Network, or TBF.

Nonprofit corporations operate in a different legal environment than for-profit corporations, to which the standard "control" test has traditionally been applied. For example, nonprofit public charities operate on donations. Those donations may be of financial support, but they may also be of office space, equipment, services of consultants, and even services of volunteers. The culture of a nonprofit organization is dominated by the necessity and universality of the use of donations, not only in terms of finances, but also in terms of goods or services. Thus, for example, there is absolutely no probative weight in Petitioner Glendale's argument that Trinity Network controls NMTV because NMTV's directors receive no compensation from NMTV in their role as directors. For a nonprofit corporation, the volunteering of services by directors, or others in an organization, is the norm rather than the exception.[6]/

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[6]/ To use a publicly available example, the largest protestant denomination in the United States is the Southern Baptist Convention. The constitution of the Southern Baptist Convention provides that officers and employees may be paid by the agency, but "no salaried employee or officer shall be a member of the directors of the agency." Constitution of the Southern Baptist Convention, Article VI(6). For a nonprofit organization, then, the standard is noncompensation for members of the board of directors, rather than compensation.

In addition, in any analysis of the relationships between two nonprofit organizations, one may not rationally set aside the fact that the organizations operate and are fundamentally united by their shared purposes. Trinity Network, NMTV and TBF are all public charities. All were organized by their principals because of shared, strongly held common religious beliefs, because of a common commitment to evangelism, and because of a common conviction that their message can best be spread through the use of a television ministry. Actions which might, in a for-profit corporation be indicative of "control," are in the culture of religious ministries simply evidence of a shared religious fervor. In this context, Trinity Network's extension of favorable loan terms to NMTV, for example, springs not from some motivation of control, but from a desire to further the common goal.[7]/ Similarly, Trinity Network and NMTV's joint use of officers, equipment, even employees is unremarkable for nonprofit organizations, where shared goals often lead to joint ministries.

b) **Even under the traditional "commercial" standard, Petitioners have not made a prima facie case that Trinity Network and Dr. Crouch "control" NMTV**. The Commission has stated that the "de facto control" inquiry should focus on these questions: Who controls the licensee's financial affairs? Who directs the station's employees? Who determines the programming format?"

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[7]/ Nonprofit groups routinely make contributions to other nonprofit groups. In fact, the IRS grants tax exemption to nonprofit organizations, formed only to raise money to give to other nonprofit groups. See, 26 U.S.C. § 509(a)(3)(A) (1991).

Stereo Broadcasters, Inc., 87 F.C.C.2d 87, 95, 49 Rad. Reg. 2d (P&F) 1263 (1981). The record in the Wilmington proceeding clearly established that, with respect to NMTV, the answer to each of these questions is NMTV, its officers, its directors, and its employees.

Specifically, NMTV's Portland station KNMT has only NMTV employees, and its daily operations are directed by the station manager on site. As noted in Mrs. Duff's affidavit filed on September 24, 1991 in the Wilmington proceeding, she communicates directly with personnel at KNMT, and she alone directs the hiring and firing of employees. She sets personnel policy, and ensures implementation of NMTV's equal employment opportunity program. Mrs. Duff prepares and reviews NMTV's filings with the Commission. She reviews regular check logs, and approves purchase order expenditures generated by KNMT.[8]/ Mrs. Duff, and other officers of NMTV, including Dr. Crouch, are empowered to sign checks and disburse monies.[9]/

Moreover, under its affiliation agreement with Trinity Network, which was entered into in 1988 and reported to the Commission in NMTV's October 11, 1989 Ownership Report, NMTV

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[8]/ Glendale alleges without support, that Mrs. Duff's authority and responsibility for Trinity Network are "indistiguishable" from her responsibilities with respect to Trinity. Glendale's allegation is simply untrue.

[9]/ Allan Brown, who is currently an officer of NMTV, did sign checks for NMTV in 1991 when he was not an officer. However, in his affidavit attached as Exhibit 2, he explains that he believed he was NMTV's assistant-secretary and he signed the checks in "good faith." Mrs. Duff also mistakenly believed Mr. Brown was an assistant-secretary in 1991.

retains control over its programming -- the affiliation requires NMTV to broadcast only nine hours of Trinity Network programming per day, and the agreement may be cancelled with 120 days notice by either party (See Exhibit 3).[10]/ NMTV also controls its own finances, i.e., generates its own revenue, solicits for its own contributions, files its own tax returns and manages its own bank accounts. Nothing in the Program Affiliation Agreement or the Secured Promissory Note between Trinity Network and NMTV compromises or impinges on NMTV's right to manage its stations or select the programming broadcast on the stations. Indeed, the Program Affiliation Agreement is terminable by both parties. The Secured Promissory Note's only "indicia" of control over NMTV is that it is advantageous to NMTV.

c) **The Commission needs to clarify whether "ownership" in Section 73.3555(d) of the Rules means "51% ownership plus control" or simply "51% ownership."** While Trinity Network and Dr. Crouch believe it is clear that there has been no de facto exercise of control in the relationship with NMTV, the Commission should take note that the minority ownership exception to the multiple ownership rules speaks specifically in terms of "ownership" and not "control." If the Commission wishes now to impose a "control" test

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[10]/ Similarly, except for the favorable repayment terms, the promissory note between NMTV and Trinity Network appended as Exhibit 19 to Glendale's Petition, is unexceptional. It is a standard note with standard debtor/creditor terms. It is also in form, virtually identical to notes the Commission has approved in several recent transactions as fully compliant with the law. See, for example, the assignment of WLXI-TV, Greensboro, North Carolina (BALCT-910618NE), and KMLM-TV, Odessa, Texas (BALCT-901217KI).

under Section 73.3555(d), it should do so in a prospective-only ruling.

In the wake of the WTGI, Wilmington assignment, NMTV was left with uncertainty regarding a possible change in the Commission staff's view of the application of the minority-ownership exception to the 12-station rule. Accordingly, on November 18, 1991, NMTV submitted a Request for Declaratory Ruling seeking guidance from the Commission on the issue.[11]/ The gravamen of that request is that NMTV, a nonprofit charity, is, for FCC purposes, "owned" by its directors,[12]/ a majority of whom are minorities, and when the Commission implemented the minority exception to the Rule of 12 it defined "minority control" as "minority ownership." Nothing more was required. This is a literal interpretation of the Rule, and on its face is not inconsistent with sound policy. The Commission, it appeared, had determined that, for purposes of the 12-station exception, it would focus on equity participation by minorities and not hinder or preclude group owners from providing significant expertise in the management of the minority owned property. If the Commission intended otherwise, it should make that clear in a prospective only ruling. An appropriate vehicle to clarify the exception in Section 73.3555(d) is provided by NMTV's Request for

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[11]/ A copy of this filing is appended as Exhibit 1.

[12]/ See, e.g., Roanoke Christian Broadcasting, Inc., 52 Rad. Reg. 2d (P&F) 1725, 1727 (Rev. Bd. 1983). See also FCC Form 346, instruction 3.c.: "Unincorporated associations and nonstock corporations with members. If a majority of the members are minorities, the entity is entitled to a preference."

Declaratory Ruling filed on November 18, 1991. In any event the issue is one of law. It provides no basis for an evidentiary hearing in this proceeding.

3. Other Alleged Issues

Glendale and SALAD make numerous other accusations, all of which are objectively false, legally or factually unsupported, or simply irrelevant. Where these charges merit comment, they are discussed below.

a) NMTV and Dr. Crouch did not lack candor or misrepresent facts in reporting Rev. Aguilar's felony conviction. The facts are reasonably straightforward. Both Dr. Crouch and Mrs. Duff knew of Rev. Aguilar's conviction when he was elected to the Board of NMTV in 1990. Rev. Aguilar's former drug abuse and status as an ex-convict are, in fact, central defining features of his ministry, which concentrates on drug and alcohol abusers, ex-convicts and bikers. Rev. Aguilar had discussed his checkered past during several appearances in The Praise The Lord Show with Dr. Crouch, including one program with Anaheim's mayor.

Dr. Crouch delegates to Mrs. Duff responsibility for preparing and filing all applications to the Commission and apprising FCC counsel of relevant facts. He relied upon her to do so with respect to Rev. Aguilar's decade-old conviction and prison term. Mrs. Duff did not do so, primarily because she regarded Rev. Aguilar as a minister, and simply didn't focus on the necessity for reporting his distant criminal past

Mrs. Duff sent counsel a biographical statement for Rev. Aguilar in May 1991, in connection with counsel's preparation of

the Opposition to Petition to Deny in the Wilmington proceeding. At that time, counsel first became aware of Rev. Aguilar's criminal conviction. Both in a footnote and in a biographical statement filed with the Opposition, NMTV noted that Rev. Aguilar had been convicted of a felony and that it had incorrectly indicated otherwise in its application. This initial report was followed by the filing of an amendment to the NMTV Ownership Report and an extensive amendment to its assignment application three weeks after the initial disclosure. These disclosures predated by weeks any public disclosure of the fact of Rev Aguilar's prior conviction by any other source.

NMTV did not intentionally misinform the Commission concerning when it learned of the conviction. The statement in footnote 23 of the Wilmington Opposition, to the effect that, "in preparing this pleading, NMTV has discovered that Rev. Aguilar has been convicted . . . of the criminal charge of assault" is, as is obvious from the context, a statement of counsel alluding to the time when counsel learned of the conviction.[13]/

In any event, any breach of the Commission's Rules for failing to disclose the conviction in the Wilmington application was de minimis. Disclosure was provided within less than 60 days after the assignment application was filed, and the record fully corrected shortly thereafter. Full disclosure of the fact was made to the Commission before the fact was publicly revealed. If NMTV

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[13]/ Mrs. Duff's Verified Statements and Mr. May's Verified Statement are attached as Exhibit 4 and 5, hereto.

were consciously concealing facts from the Commission, it clearly would not have chosen to conceal a fact which is so widely known or so closely connected to Rev. Aguilar's public persona. Further, NMTV had no motive for deception, since the conviction, given its remoteness in time and the substantial evidence of Rev. Aguilar's rehabilitation, would not be disqualifying. See Allessandro Broadcast Co., 99 F.C.C.2d 1, 56 Rad. Reg. 2d (P&F) 1568 (Rev. Bd. 1984).

b) **Trinity Network's fundraising practices are consistent with the law**. SALAD charges that Trinity Network raised funds for the purchase of WTGI and then failed to return the donations when the sale was not consummated. While this charge is wholly unsupported, it also ignores applicable law. As shown in Exhibit 6, Trinity Network, to date, has taken no action with respect to funds donated for the WTGI purchase.[14]/ It is now undergoing its yearly audit by its independent financial auditors, one of the purposes of which is properly to account for such "restricted revenues." When the audit is completed, consistent with its standard procedure, Trinity Network will contact donors of these restricted funds and request instructions on the disposition of the gifts. This practice complies with the standards of the American Institute of Certified Public Accountants (Statement of

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[14]/ Dr. Crouch's and Mrs. Duff's affidavits included in Glendale Exhibits 10 and 14, noted that the funds raised by Trinity for the WTGI purchase would be used to offset a portion of NMTV's August 1991 debt to Trinity Network

Position 78-10) and all applicable IRS regulations and is the course that Trinity Network regularly follows.

c) **NMTV and Dr. Crouch did not show a lack of candor in certifying NMTV's financial qualifications based on a bank letter**. NMTV certified in the WTGI assignment that it had access to net liquid assets sufficient to close the assignment. When that certification was questioned in the Borowicz petition to deny, NMTV filed a December 7, 1990 letter from the Bank of California committing the funds then necessary to close the assignment and representing that the letter supported its financial qualifications.

The validity or candor of this certification was not affected by the fact that the applicant, NMTV, subsequently secured funds from a more favorable source. Any applicant, in a financial certification, only certifies that it has access to such funds, not, necessarily, that it will draw them down. At the time the certification was made, the Bank of California letter was the only documentary evidence that NMTV had access to the funds necessary to close the assignment. Nothing more was required.

d) **Allegations about "Rev. Aguilar's bizarre cult" are not relevant to TBF's qualifications, are unsupported, and are not cognizable by the Commission**. SALAD's petition brands Rev. Aguilar's Set Free Christian Fellowship Church in Anaheim as a "bizarre cult group." This charge is based, however, on a newspaper article and unsigned declarations, neither of which the Commission may consider competent to support Petitioner's