

there was no locus of independent control in the NMTV corporate structure. Put otherwise, Trinity Broadcasting Network controlled NMTV's decision-making process 100 percent.

e. Key Decisions in the History of NMTV

603. Even where one party controls another party, that fact may not be evident in connection with routine day-to-day operations. What is particularly revealing, however, is how the entity functions when faced with a major decision or crisis. In this case, the fingerprints of Trinity Broadcasting Network abound even in connection with routine day-to-day matters. When, however, one studies the major decisions that have confronted NMTV, Trinity Broadcasting Network's dominance becomes glaringly apparent. A review of the record reflects three major decisions that undeniably document Trinity Broadcasting Network's control: the problems arising with Phillip Aguilar; the decision to loan 1.5 million dollars to a MESBIC Community Brace, Inc.; and the decision to forgive the \$650,000 debt of Prime Time Christian Television, the party which purchased the Odessa station from NMTV.

604. The crisis concerning Phillip Aguilar arose in 1991 when it became obvious that Phillip Aguilar's performance as a director was so questionable as to raise doubts in anyone's mind as to his credibility as a director. Thus, he did not attend meetings nor did he cooperate with counsel in assembling information required to be presented to the

Commission. Moreover, questions were also being raised in newspaper articles concerning alleged misconduct in connection with Phillip Aguilar's charitable operations. It eventually became necessary to deal with this problem. The solution, suggested by Trinity Broadcasting Network's FCC counsel, was to dilute Phillip Aguilar's position by appointing a fourth director. This was done without any prior consultation with Phillip Aguilar. It was obviously a decision made by Paul Crouch over which the NMTV board had no control. Subsequently, problems continued to occur with Phillip Aguilar, ultimately resulting in his resignation shortly after a telephone conversation with Paul Crouch. The circumstances support a conclusion that if Phillip Aguilar wasn't asked to resign in so many words, it was at least made clear to him that his continued participation was no longer appreciated. Ultimately, it may be concluded from this incident that the directors of NMTV serve at the pleasure of Paul Crouch. If they cease to enjoy that pleasure, they are subject to being neutralized or ousted from their positions.

605. The control of Trinity Broadcasting Network is more glaringly evident in connection with the proposed loan to Community Brace. It was obviously decided independent of the NMTV board that NMTV would become the vehicle for the loan (the money, of course, would actually come from Trinity Broadcasting Network). Indeed, preparation for the loan were

underway prior to its approval by NMTV's board. Thereafter, the handling of the matter became the responsibility of Norman Juggert, Trinity Broadcasting Network's counsel. The only outside director capable of considering the Community Brace matter was Phillip Aguilar, since E. V. Hill, although a director at the time, was also a principal of Community Brace. Phillip Aguilar was not copied with documents or reports generated in the course of the negotiations. The ultimate decision not to proceed with the loan was made without any consultation with the NMTV board and was never reflected in any action of the board. The matter was never discussed with Phillip Aguilar, who had no idea why the loan was not made. It is readily apparent that the entire process was dominated by Trinity Broadcasting Network and that the NMTV board played no role beyond giving token approval to Trinity Broadcasting Network's plans.

606. The final episode relates to the decision to forgive the \$650,000 debt of Prime Time Christian Television, the party which purchased the Odessa station from NMTV. Even Paul Crouch was forced to concede that this action did not benefit NMTV in any way. The reason for the action was that Prime Time Christian Television was a Trinity Broadcasting Network affiliate.²⁴ Accordingly, Trinity Broadcasting Network would

²⁴ When the Odessa station was sold, only prospective purchasers that would continue the Trinity Broadcasting Network format were considered.

benefit from the forgiveness of the debt by ensuring a continued outlet for its programming in Odessa. It was obviously Trinity Broadcasting Network's interest that dictated this action. Both of the outside directors that voted to approve it -- E. V. Hill and Armando Ramirez -- did so without knowing the magnitude of NMTV's debt to Trinity Broadcasting Network, a fact that is wholly inconsistent with their having made an independent decision. They simply ratified what Trinity Broadcasting Network wanted to happen.

607. It is accordingly evident that in the major decisions affecting Trinity Broadcasting Network's interest, Trinity Broadcasting Network's wishes prevailed. The NMTV board's involvement was limited to giving token ratification to what Trinity Broadcasting Network had already determined to do.

f. Lack of Candor

608. Lack of candor may support a finding of de facto control, although it is not essential to it. GECC, supra, 52 RR 2d at 471. Here, there is ample evidence that Trinity Broadcasting Network/NMTV have been consistently candorless as to the facts concerning the operations of NMTV from the beginning through the instant hearing. Since this relates primarily to the abuse of process issue specified in this proceeding, it will be discussed below. Nonetheless, the lack of candor of Trinity Broadcasting Network/NMTV is also a

relevant indicator that Trinity Broadcasting Network has exercised de facto control of NMTV since the act of concealment is a virtual admission of the facts concealed.

g. Lack of Mitigating Factors

609. There is no basis for finding any mitigation that could arguably excuse Trinity Broadcasting Network exercise of de facto control of NMTV. The principal reason for this is that notwithstanding issues that were first raised in the Wilmington proceeding in 1991, there has been no change in the nature of the relationship between NMTV and Trinity Broadcasting Network. The Commission has excused fleeting or technical improper transfers of control unaccompanied by concealment or misrepresentation. Blue Ribbon Broadcasting, Inc., 90 FCC 2d 1023, 51 RR 2d 1474 (Rev. Bd. 1982). Obviously, the Commission could not excuse an ongoing violation that has never been abated, especially when it is accompanied by concealment. Indeed, Trinity Broadcasting Network/NMTV took the position in this proceeding that they would refuse to make any changes in their present practices unless first advised by the Commission as to what changes were required. This attitude is so fundamentally antithetical to the concept of licensee responsibility as to constitute an independent basis for disqualification. As the Commission emphasized in Trustees, supra, 44 RR 2d at 783:

"As a practical matter the FCC cannot rely on enforcement actions to make certain that our licensees operate in accordance with our rules. Our system is based to a great extent on voluntary compliance. If we were to permit all licensees to receive credit for 'corrective' actions taken after the Commission has investigated them, our system would break down. Even if we permitted only 'one free bite at the apple,' with over 9,000 licensees such a policy would make a mockery of broadcast regulation."

There is far less basis for tolerating a licensee which does not even change when its conduct comes under investigation but rather apparently expects to be given another bite at the apple even if its conduct is found deficient after consideration in this hearing. This is clearly not a licensee that can make any claim in mitigation of its misconduct.

610. Nor can any credible claim be made of reliance on counsel. This claim is again of more relevance to the abuse of process issue and will be addressed below. The Review Board, however, recently reaffirmed the longstanding policy that except in the most narrow of circumstances, parties cannot evade their responsibilities by reliance on advice of counsel. Algreg Cellular Engineering, FCC 94R-12, released July 22, 1994 at para. 69-70 (Algreg). Moreover, even if Trinity Broadcasting Network/NMTV did receive advice at one point that its arrangements were permissible, it has never sought to obtain independent legal advice since that initial advice became challenged in Wilmington proceeding and this proceeding.

611. It is clear that a recognition of error and an attempt at rectification would be a sine qua non of any claim of mitigation (which would be of questionable significance in any event). Obviously, no mitigation can be claimed under any theory by a licensee which disclaims accountability for its own actions and refuses to institute any changes in its methods of operation.

h. Resolution of the de facto Control Issue

612. In light of the foregoing, it must be concluded that Trinity Broadcasting Network has exercised pervasive control over every aspect of NMTV's affairs including finances, personnel, programming and the decision-making of NMTV's board of directors. Despite attempted concealment, Trinity Broadcasting Network's control is flagrant and undeniable. The only permissible conclusion is that TBF is unqualified to be the licensee of WHFT, Miami, Florida, on the basis of this issue alone.

2. NMTV, Paul Crouch and Trinity Broadcasting Network Abused the Commission's Processes by Using NMTV to Claim Unwarranted Minority and Diversification Preferences and by Providing Candorless Information Concerning NMTV's Ownership and Methods of Operation

613. The HDO also specified an issue as to whether NMTV, Paul Crouch and Trinity Broadcasting Network abused the Commission's processes by using NMTV to claim unwarranted low power minority preferences or exemptions from the multiple

ownership restrictions of Section 73.3555(e) of the Rules. At para. 39 of the HDO, the Commission declined to specify a separate lack of candor/misrepresentation issue but indicated that such matters could be considered in connection with the abuse of process issue.

614. In assessing this issue, it must be borne in mind that this is not the first occasion on which Trinity Broadcasting Network and Paul Crouch have faced serious character questions. In International Panorama TV, Inc., BC Docket No. 80-655, a misrepresentation issue was specified against an entity controlled by Trinity Broadcasting Network based on false representations relating to an ascertainment of community needs survey. The issue was ultimately found not to warrant the applicant's disqualification. While it was found that the false statement had been made, it was found that Paul Crouch had not been specifically aware of it (although his slipshod review of the application was faulted) and therefore had not had the specific intent to mislead the Commission. It was nonetheless found that the misconduct would have warranted a comparative demerit had the case been in a comparative posture. The misrepresentation at issue was the immediate responsibility of the employee. It had not been noticed by Paul Crouch since he signed the application without carefully reading it. Counsel discovered the misrepresentation shortly after the application was filed and, while he brought it to

the employee's attention, he failed to follow through to ensure its correction. Initial Decision of Administrative Law Judge Thomas B. Fitzpatrick, FCC 83D-4, released January 25, 1983. Thus, Trinity Broadcasting Network and Paul Crouch have previously been placed on notice of the seriousness of attempting to mislead the Commission. They have, in effect, been given one bite at the apple. Any further misconduct that might be found of a similar nature would necessarily undermine any basis for reliance on them as responsible licensees.

615. This issue is also of heightened sensitivity since it involves Constitutional implications. Thus, the Supreme Court has made clear that the Commission's Constitutional ability to implement minority preferences is not unlimited. Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990). The Commission must clearly treat the assertion of an improper minority preference with heightened severity, given that the effect of such an improper claim is to infringe the Constitutional rights of others, who might have received authorizations now held by NMTV but for its claimed preference.

a. Formation and Purpose of NMTV

616. Initially, the record is clear that NMTV was created in response to a Commission proposal to initiate a low power service and to award licensing preferences for minority owned applicants. The formation of NMTV -- then known as Translator

T.V., Inc. -- followed immediately after a Trinity Broadcasting Network board meeting at which the Commission's proposal was discussed and a determination was made to proceed either directly "or by encouraging its affiliates". Jane Duff conceded that this language was a reference to NMTV (then Translator T.V., Inc.). Paul Crouch conceded that NMTV was conceived in response to the Commission's low power proposal. TBF Exhibit No. 104, para. 21. Also, he testified in response to inquiry as to whether he discussed with anyone the propriety of claiming the minority preference later adopted:

"I don't recall any specific conversation, I think it was just well-known to all of us that the original purpose of TTI, later National Minority, was that if and when the Commission ever did through its policies create this preference that it certainly would be claimed and apparently this now is the case."

Tr. 2613. Paul Crouch also conceded that his goal at the time was to create a nationwide network of what he termed "Satellator" stations for the purpose of rebroadcasting the programming of Trinity Broadcasting Network. Of course, NMTV was never the exclusive means for creating this network. Trinity Broadcasting Network also purchased existing authorizations. NMTV's purpose was to file for new authorizations subject to the minority preference, as Paul Crouch recognized. Tr. 2686-89. There is thus no question that NMTV was formed for the purpose of seeking the

anticipated low power minority preference, which, of course, it subsequently did.

617. It is equally obvious that NMTV's purpose was later expanded to encompass filing for full power stations under the exemption to the 12-station limit applicable to Trinity Broadcasting Network. The record amply documents Paul Crouch's intent on finding ways to circumvent first the 7-station limit and later the 12-station limit, including the use of noncommercial licensees. NMTV had not been initially intended to seek full power stations, as reflected in its initial name -- Translator T.V., Inc. When, however, the Commission offered an exception to the 12-station limit for minority applicants, NMTV changed its purpose (and its name) and filed an application for a full power station premised on the minority ownership exception.

618. Faced with the irrebuttable fact that NMTV was created to seek the minority preference, NMTV and Trinity Broadcasting Network also sought to advance the argument in this proceeding that NMTV was also created for the purpose of assisting minorities, not merely to expand the scope of Trinity Broadcasting Network's religious network. Indeed, at one point, Jane Duff suggested that the assistance of minorities was the principal purpose of NMTV. In point of fact, it cannot be concluded that the purpose of NMTV was ever to any significant extent to assist minorities but rather the

purpose of NMTV has always been twofold, i.e., to extend the scope of Trinity Broadcasting Network's religious network and basically, as indicated by Paul Crouch at Tr. 2305:

". . . to fulfill the Great Commission as outlined in Holy Scripture to go into all the world and preach the gospel to every creature."

619. The conclusion that NMTV had no significant purpose of assisting minorities is warranted since there is nothing in NMTV's corporate documents, or in any documents filed with any state or federal authority, reflecting such a purpose. Perhaps more significantly, there is nothing in NMTV's actual conduct that reflected an interest in minorities beyond that necessary to colorably qualify for the minority preference or to otherwise comply with Commission policies affecting minorities. The record reflects that the extent of the minority population had never been a significant factor in the selection of locations for NMTV stations, either low or full power. The overwhelming consideration was rather the size or prominence of the location. Moreover, NMTV never sought to expand its board to encompass a larger number of minorities or minorities from the localities in which it operated. In addition, the top management of NMTV's largest station in Portland (the station manager and chief engineer) were prior Trinity Broadcasting Network employees who were not minorities. No attempt was made to find qualified minorities

for these positions. There is nothing in this record (beyond self-serving assertions) that reflects any special NMTV purpose of assisting minorities. Conversely, there is ample evidence that NMTV served Trinity Broadcasting Network's goal of extending the reach of its network. Thus, Trinity Broadcasting Network's goal was to spread its religious teachings as widely as possible. The record makes clear that Trinity Broadcasting Network desired to maximize the number of broadcast facilities available to it in order to accomplish its religious purpose.

620. It must further be concluded that the attempt of Trinity Broadcasting Network and NMTV to claim the existence of purpose of assisting minorities constitutes a lack of candor. This claim is a transparent after-the-fact rationalization resulting from the lack of any other viable explanation for the creation by Trinity Broadcasting Network of a purportedly separate company for the indisputable purpose of claiming minority preferences that Trinity Broadcasting Network could not claim itself. In WWOR-TV, Inc., 7 FCC Rcd 636, 638, 70 RR 2d 752, 756 (1991), the Commission found that where an applicant gives an account of its actions that is "at best without credibility and at worst false and misleading", that fact constitutes evidence that the application was filed with an improper motive. The same conclusion is warranted

here with respect to the patently spurious claim that NMTV had a special purpose of promoting minority concerns.

621. It can also be concluded that Trinity Broadcasting Network/NMTV abused the Commission's processes by claiming an unwarranted low power diversification preference. At the time it initially claimed the preference in February, 1984, both Paul Crouch and Jane Duff were members of the Trinity Broadcasting Network board holding combined de jure interests of 50 percent of the four member board. The diversification preference could not have been claimed had their combined interest been any greater, as clearly stated on the Commission form used to claim the preference. TBF Exhibit No. 101, Tab H, p. 2. In fact, however, their combined interest was greater since Paul Crouch controlled the interest of one of the remaining directors, his wife. His wife had been added to the board only a few months prior to the claiming of the preference. As discussed above, she was added to forestall hostile takeovers and not to function as a true director, which she had no interest in doing. Paul Crouch held her proxy and Norman Juggert, the fourth director and Trinity Broadcasting Network's counsel, conceded that the effect of her addition was to give Paul Crouch two votes on the Trinity Broadcasting Network board. Thus, the true combined interest of Paul Crouch and Jane Duff in Trinity Broadcasting Network as of February, 1984, was 75 percent, which rendered NMTV

ineligible for the diversification preference. Jane Duff resigned from the Trinity Broadcasting Network board, which had the effect of raising the interest attributable to Paul Crouch to 66 2/3 percent, which still left NMTV ineligible for the diversification preference. This is thus a further example of Trinity Broadcasting Network/NMTV claiming an unwarranted preference based on an ostensible ownership arrangement that served to mislead as to the actual locus of control.

b. The Reliance on Counsel Excuse

622. In addition to attempting to create a fictitious purpose for NMTV other than the obtaining of an unwarranted minority preference, Trinity Broadcasting Network/NMTV also attempt to establish their good faith by claiming reliance on the advice of Colby May, their joint counsel. As noted, this argument was recently rejected in Algreg, supra. See also RKO General, Inc. v. FCC, 670 F.2d 215, 50 RR 2d 821, 838 (D.C. Cir. 1981) (RKO). The situation in Algreg was not unlike this one since the applicants there sought to evade a Commission requirement by claiming that "ownership" did not encompass the right to share in profits. The Commission rejected this interpretation, just as it has rejected in this case the proposition that "ownership" relates only to the applicant's de jure organization. In Algreg, reliance on counsel's advice was found not to justify the parties' interpretation. The

Board acknowledged that there might be some circumstances where reliance on counsel might be justified, citing a case where a citizen's band licensee initially relied upon advice of counsel that the Commission had no right to inspect facilities in his home without a warrant. The licensee, however, subsequently realized his error, was candid in his dealings with the Commission, and was contrite and apologetic concerning violation of Rules that the Commission had later repealed. John K. Mollert, 61 FCC 2d 700 (Rev. Bd. 1976). The Board in Algreg found that the parties before it were not inexperienced novices like the licensee in Mollert and therefore were not entitled to similar indulgence. Here, of course, Paul Crouch is an experienced broadcaster who is also experienced in the business aspects of his ministry. Moreover, he has had direct experience with the Commission's requirement of licensee responsibility as a result of the International Panorama case, wherein a Trinity Broadcasting Network-controlled licensee narrowly avoided disqualification as a result of misconduct that Paul Crouch had taken inadequate steps to prevent. Paul Crouch learned -- or should have learned -- that the ultimate responsibility for compliance with Commission requirements rested with the licensee, not its employees or agents. Paul Crouch also learned -- or should have learned -- that a licensee cannot blindly rely upon counsel, given that the misconduct in

International Panorama was exacerbated by an error of counsel, which was subsequently a factor in Paul Crouch's decision to seek new counsel. The claimed reliance on counsel must be found insufficient as a matter of law to justify the false assertion of minority preferences.

623. The record in this case does not support the claim that Trinity Broadcasting Network/NMTV in fact relied upon counsel. With reference to the low power minority preference, Paul Crouch testified, as noted, that it was NMTV's original purpose from its inception to claim whatever minority preference might later adopt. Tr. 2613. Thus, the intent to claim the low power minority preference long predated any advice given by Colby May in 1984, when the preference was in fact claimed. With reference to the minority exemption to the 12-station full power limit, the record establishes that Paul Crouch was aware that NMTV's claim to that exemption was novel and not automatically assured. Thus, Paul Crouch testified that he instructed Colby May prior to the Odessa application:

"but I do recall one thing, I told Mr. May very explicitly, I said, if we go for this and he did make it clear to me that I believed we were the very first applicant to approach the Commission for this exception. And I said, we're plowing new ground, new territory here and I said, put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission. If they pass on it and approve it, fine, our goal was to acquire as many stations and network affiliates as we possibly could."

Tr. 2674 (emphasis added). Thus, Paul Crouch did not rely solely upon Colby May's advice. Rather he recognized that the appropriate procedure was to place all of the facts before the Commission so that it could make an informed judgment as to an issue that Paul Crouch obviously recognized to be far from settled. Of course, Trinity Broadcasting Network/NMTV did not do what Paul Crouch recognized should have been done. The Odessa application disclosed the minimum possible information about the relationship between Trinity Broadcasting Network and NMTV. It did not require a law degree to recognize that the Odessa application failed to:

"put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission."

Thus, Paul Crouch could not claim that he relied on counsel as to what information should have been in the Odessa application, especially since the record reflects that he never read the application, just as he had never read the application at issue in International Panorama. The bottom line is that Paul Crouch knew what should have been done, but he simply chose not to do it. This was his own decision, unrelated to any advice received from counsel.

624. There would have in any event been no reasonable basis for reliance on advice of the nature given by Colby May,

especially for an individual with Paul Crouch's experience. Colby May was an attorney with relatively limited experience. When he first advised NMTV concerning the low power preference, he had just established his own practice of which Trinity Broadcasting Network was the primary client. He was, of course, representing both Trinity Broadcasting Network and NMTV. It should have been readily apparent to a person with Paul Crouch's experience that any advice Colby May might give would be highly influenced by his desire to enable Trinity Broadcasting Network to accomplish its goals rather than a desire to independently advise NMTV as to its obligations. Moreover, Colby May's advice was given in a casual manner over the telephone. No written analysis was provided to Paul Crouch, who obviously did not require one. Nor did Paul Crouch inquire as to the basis for Colby May's advice. Moreover, while Colby May claims to have advised that the preferences could be claimed based only on NMTV's de jure ownership, no claim is made that Colby May told anyone that Trinity Broadcasting Network could in fact control NMTV. Ultimately, the factual question of whether Trinity Broadcasting Network controlled NMTV is not one that requires a law degree. Indeed, an outside counsel would never be in as good a position to answer such a question as a client who is aware of all the existing and anticipated circumstances relevant to control.

625. The credibility of any claimed reliance on counsel is further undermined by advice subsequently given by Colby May that the affairs of Trinity Broadcasting Network and NMTV should be kept as separate "as we could". This was inconsistent with his advice that all that mattered was the de jure composition of the NMTV board. If that were true, it would not seem necessary to also keep things as separate "as we could". Moreover, this remark can only reflect an awareness on Colby May's part that there was no real intention on the part of Trinity Broadcasting Network and NMTV to create a genuinely separate relationship. The advice to keep things as separate "as we could" suggests a plan to create a misleading impression of separateness intended to conceal the real circumstances.

626. Finally, even if reliance on counsel could excuse the actions of Trinity Broadcasting Network/NMTV at the time they first claimed the subject preferences, it could not excuse continued reliance on Colby May's advice after his views became subject to challenge in the Wilmington proceeding and later in this proceeding. These events should have alerted any reasonable client desirous of complying with the Commission's requirements to have sought truly independent legal advice as to what NMTV's legal obligations were.²⁵

²⁵ Indeed, it appears that the need for independent advice was evident to E. V. Hill and Phillip Aguilar, one or the other of whom suggested retaining a minority counsel to review the case. In

This, however, was never done. Rather, Trinity Broadcasting Network/NMTV have continued to maintain the same position and have refused to consider any changes unless advised by the Commission as to what changes are required. It is, however, the licensee's responsibility to ensure compliance with Commission requirements. Moreover, it is fair to conclude that the failure of NMTV to seek independent counsel even after its compliance was questioned reflected an awareness that any genuinely independent counsel would advise that the nature of the arrangements between Trinity Broadcasting Network and NMTV were unacceptable and that the only proper course would be a genuine separation of NMTV from Trinity Broadcasting Network. Since this was not advice that Trinity Broadcasting Network/NMTV wished to hear, no attempt was ever made to elicit it.

627. In sum, reliance on counsel fails to support any claim that the preferences were claimed in good faith. Rather, NMTV was created for the purpose of claiming preferences that Trinity Broadcasting Network could not. The purported advice of counsel appears to be little more than window dressing designed to conceal the underlying deception.

fact, Tyrone Brown was hired either by NMTV or Trinity Broadcasting Network. Whichever party hired him, however, it soon became evident that performing the duties for which he was hired required that he represent both parties. Thus, he was not independent. If he was ever asked for an opinion as to the propriety of the Trinity Broadcasting Network/NMTV relationship, it is not reflected in the record.

As noted, Paul Crouch should have learned from International Panorama the limits of relying on counsel. It rather appears that he in fact developed the attitude that he could escape the consequences of his own actions by blaming it on counsel.

c. Continuing Concealment and Lack of Candor

628. As noted, the HDO permitted consideration of lack of candor by Trinity Broadcasting Network/NMTV under this issue. As further noted, the Commission has recognized that the fact that a party attempts to conceal the facts concerning its actions is perhaps the best evidence that its actions were improperly motivated. WWOR-TV, supra. In this case, the nature of Trinity Broadcasting Network's relationship has been consistently concealed from the Commission from the beginning.

629. The initial claims of the low power minority preference, which occurred in 1984 amendments to applications filed in 1980 and 1981, provided no details of the relationship between Trinity Broadcasting Network and NMTV and did not address the issue. As noted, Paul Crouch recognized that full disclosure should be made in the context of the Odessa application, the first claim under the exemption to the 12-station limit. In fact, no disclosure was made beyond the bare minimum necessary to justify the exemption. No greater disclosure occurred in the Portland or Wilmington applications.

630. Subsequent challenges to NMTV's claim to be a minority controlled company resulted in three proceedings in which this issue has been considered -- the Wilmington assignment of license proceeding, a Request for Declaratory Ruling filed by NMTV and the instant proceeding. It twice became necessary for the Commission to direct comprehensive inquiries to NMTV concerning its control. This in itself is indicative of the fact that NMTV was not forthcoming in response to questions raised concerning its control. Moreover, it was only after the second of these Commission inquiries that something approaching full and candid disclosure was finally extracted from Trinity Broadcasting Network/NMTV, especially in the critical areas of the financial arrangements between Trinity Broadcasting Network and NMTV and the extent of NMTV's reliance upon Trinity Broadcasting Network for engineering services. The requirement of candor in dealing with the Commission contemplates that candor will be spontaneously forthcoming from an applicant. It clearly cannot tolerate a situation where minimally necessary facts can only be extracted after three proceedings and two comprehensive Commission inquiries.

631. The Wilmington application resulted in objections. NMTV in its response to those objections relied upon a strategy of faulting the objectors procedurally while implying that the objections were without merit. The essential vice of

NMTV's response was to convey the misleading impression that it was a fully functional broadcast licensee without disclosing that virtually all of its functions were dependent upon the support given by Trinity Broadcasting Network. Its performance was much like that of the licensee in RKO, supra, 670 F.2d at 228-230, 50 RR 2d at 835-37. The Court therein found that the licensee's statements may have been "technically correct", but failed to meet the licensee's "affirmative obligation to inform the Commission of the facts the FCC needed in order to license broadcasters in the public interest." 670 F.2d at 229, 50 RR 2d at 836. NMTV's lack of candor is highlighted by assertions made in the Wilmington opposition concerning its proposed reliance on bank financing, whereas it in fact ultimately relied upon a loan from Trinity Broadcasting Network. As reflected at para. 27-28 of the HDO, TBF defended against Glendale's request for a lack of candor/misrepresentation issue by suggesting that this merely reflected NMTV's ultimate choice to rely upon financing other than the bank loan. Presumably on this basis, the issue was not added. In fact, however, the record in this case discloses that NMTV never intended to rely upon the bank letter, which was obtained to conceal the fact of Trinity Broadcasting Network's involvement for purposes of negotiation. Of course, it was also used for the same purpose in the Wilmington opposition.

632. It became necessary for the Commission to request further information in the Wilmington proceeding, which in itself reflects adversely on the candor of NMTV's initial opposition. This necessitated a degree of involuntary candor; however, NMTV made clear that it was only disclosing that which was specifically called for in the Commission's letter. In fact, the concern underlying the Commission's letter was to determine the bona fides of the minority directors of NMTV, most particularly Phillip Aguilar. By the time NMTV responded, it was in fact aware of serious deficiencies in Phillip Aguilar's performance, including his lack of cooperation in responding to the Commission's letter itself. Shortly after the filing of NMTV's response, Phillip Aguilar's deficiencies resulted in his position being diluted by the addition of E. V. Hill to the NMTV board. None of the serious questions concerning the directorship of Phillip Aguilar were disclosed to the Commission in response to its letter. The Court in RKO made clear that "the Commission is not expected to play procedural games with those who come before it in order to ascertain the truth . . ." 670 F.2d at 229, 50 RR 2d at 836. That, however, has been the Commission's consistent experience in dealing with Trinity Broadcasting Network/NMTV.

633. NMTV's tactic of concealment was continued in a Request for Declaratory Ruling filed in November, 1991, shortly after the addition of E. V. Hill. NMTV continued to