

35), Crouch understood that the *applicant* had the duty to ensure that the Commission was fully informed about the relationship between TBN and NMTV and that the *applicant* had the duty to ensure that the Commission knew that TBN and NMTV interpreted the relevant rules to require nothing more than that NMTV's board have legal, but not actual working, control of the corporation. Tr. 2674. Plainly, TBN and NMTV, both of which had Crouch as president, did not fulfill their responsibilities.

4. Trinity's constitutional claims

36. Applying the maxim that the best defense is a good offense, Trinity, at pp. 464-70, contends that imposition of a penalty under the circumstances presented here would violate various constitutional and statutory provisions; namely, the First Amendment to the Constitution and the 1993 Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, 107 Stat. 1488. Trinity reasons that a conclusion that TBN exercised *de facto* control over NMTV would be tantamount to the government concluding that the Commission's minority ownership policy can be used by someone whose motivation is to make money or to further the goals of a community organization but can not be used by someone whose motivation is to spread religious gospel. In this regard, Trinity submits that Crouch has the same freedom to associate with minority individuals who share his religious goals as a non-minority commercial businessman has to associate with minority commercial businessmen. Trinity believes that a conclusion of *de facto* control means that the government has passed judgment on Crouch's religious beliefs and the religious beliefs of the minorities with whom he has chosen to associate, and the expression of those beliefs. Trinity argues that it would be

unconstitutional to base a conclusion of *de facto* control on TBN's provision of financial, legal and technical assistance at less than market rates to NMTV. Trinity contends that the members of both TBN and NMTV considered their internal organizational and business relationships to represent the activity of one religious body sponsoring and helping another.

37. The focus of this proceeding is not on what the members of the TBN and NMTV boards believed from a religious perspective or on whether their actions were consistent with those beliefs. Instead, the hearing looked at who was making the important decisions for NMTV. The evidence establishes that TBN, the dominant organization, and its agents, particularly Crouch, but also Duff, Miller and Juggert, usually decided what NMTV would do and when and how it would do it. TBN's provision of services for less than market rates played no more than an incidental role in determining control of NMTV. Likewise, the Bureau believes a sanction is warranted not because TBN and NMTV had a relationship, but because that relationship was so one-sided as to be a fiction. In short, TBN and Crouch went well beyond mere sponsorship or influence; they exercised prohibited *de facto* control.

38. As Trinity itself recognizes (see Trinity PFCs at pp. 402-05, 410, 413-15, 417, 419, 425-34, 443), the factual situations in which questions concerning *de facto* control have been raised encompass a wide range of factual situations. The entities scrutinized have included both profit and non-profit, religious as well as secular organizations. The standards used to ascertain who exercised control are basically the same, regardless of the peculiar characteristics of the licensee. See Hearing Designation Order, 8 FCC Rcd 2475, 2477,

2479-80. The results of those examinations have differed according to their peculiar facts. The law regarding *de facto* control preceded the formation of NMTV, much less the applications filed on its behalf. TBN and NMTV simply ignored that law.

39. Thus, there is no basis for concluding that review of the relationship between TBN and NMTV and their resulting activities raises constitutional questions. TBN and Crouch are not being punished for acting in accordance with their religious beliefs. Indeed, there is nothing but rhetoric to suggest that the religious practices of Crouch and TBN have been affected or will be affected in any way by this proceeding. Crouch and TBN are still free to associate with whomever they wish; they have never been free to exercise *de facto* control over a supposedly minority-controlled entity and thereby hold interests in more licenses than allowed by the multiple ownership rules. Cf. Faith Center, Inc., 82 FCC 2d 1, 18-21 (1980) (subsequent history omitted). Any conclusion that *de facto* control occurred is, at most, only incidentally related to the nature of the religious beliefs held by Crouch, Duff, Espinoza, Aguilar, Hill and Ramirez, and the exercise of those beliefs.

B. Glendale's Basic Qualifications

40. Glendale's treatment of the basic qualifying issue involving misrepresentations in Raystay's extension applications may fairly be characterized as hopelessly misleading. As a general matter, in dissecting and microscopically analyzing out of context each particular statement that Raystay made in Exhibit 1 to its extension applications, Glendale carefully

avoids making any reference to the overall purpose behind the applications. Clearly, each of the extension applications was designed to convince the Commission that, given more time, Raystay would place the four Lebanon and Lancaster LPTV stations in operation. However, in justifying each of its extension requests, Raystay deliberately distorted evidence of its lackluster attempts at constructing the stations and omitted decisionally significant information about its attempts to sell the unbuilt facilities.

41. For example, at pp. 196-201 and 376-380 of its PFCs, Glendale maintains that David Gardner "entered into lease negotiations" with persons at the Lebanon Quality Inn Hotel and Lancaster Ready Mixed Concrete Company. The sole basis for this claim is that David Gardner came away from two brief telephone calls of only a minute each to the hotel and concrete company in October 1991 with a feeling that the proposed sites were still available. This is utter nonsense. Glendale cannot seriously contend that either conversation involved negotiations about a lease. Indeed, there was no discussion about any terms, and the only reason David Gardner called the hotel and concrete company was to arrange for a visit to each site by an engineer working for Trinity, which was interested in buying the bare Lebanon and Lancaster construction permits from Raystay. Even assuming, arguendo, that David Gardner's October 1991 telephone calls provided justification for the claim in Raystay's December 1991 extension applications that it had engaged in lease negotiations, there is absolutely no evidence whatsoever to support the same claim in Raystay's July 1992 extension applications. Raystay's characterization of two brief, insignificant conversations as "lease negotiations" is simply unreasonable on its face and smacks of repeated attempts to

mislead the Commission.

42. Even if there were at least some justification for Raystay's other claims in its first set of extension applications, there was no such basis for making any of the identical claims in Raystay's second round of extension applications. Incredibly, at ¶ 395 of its PFCs, Glendale appears to suggest that there could be no misrepresentation or lack of candor in the July 1992 applications because "[t]he Exhibit 1 used in the second set of extension applications [did] not make any representation that any of the activities described therein took place between December 1991 and July 1992." If nothing else, this assertion reflects Glendale's apparent "Commission be damned" attitude about the information that George Gardner proffers to this agency. When a permittee has already received additional time to construct a broadcast facility, an application for a further extension of time is judged according to the progress made during the most recent construction period. Panavideo Broadcasting, Inc., 6 FCC Rcd 5259 (1991). Raystay's attempt to justify the July 1992 extension applications on the basis of activities that took place before the relevant construction period without disclosing that fact is abusive.

43. Glendale attempts at some length, at ¶¶ 401-406 of its PFCs, to justify why none of Raystay's extension applications revealed that Raystay was attempting to sell its unbuilt facilities. According to Glendale, while Raystay actively engaged in negotiating to sell its authorizations, it never actually decided to go through with the sale of any of the Lancaster or Lebanon stations. Of course, Raystay never decided to *build* any of its Lancaster or

Lebanon LPTV stations either. The point is that George Gardner gave the go-ahead to his staff to explore selling the facilities but never to construct them. He succeeded in selling off the Red Lion construction permit and wanted only to keep the others alive long enough to sell them, as well. The extension applications did not reveal Raystay's real intention to sell the construction permits. To the contrary, in a brazen lack of candor, Raystay sought in the extension applications to convey a dramatically different impression of its goals with respect to the four authorizations.

44. Glendale's further suggestion that Raystay's improprieties should not impact on Glendale's qualifications must be summarily rejected. George Gardner cannot simply divorce himself from these actions of Raystay. George Gardner is the controlling principal of both Raystay and Glendale. He was personally involved in reviewing and authorizing the statements contained in Raystay's eight extension applications. While there may arguably have been a basis for *some* of the representations in Raystay's first set of extension applications, George Gardner cannot seriously contend that the representations in Raystay's second set of extension applications were made in good faith. Indeed, the record in this case is devoid of any legitimate basis for any of the representations in Raystay's July 1992 filings. Moreover, assuming, arguendo, that George Gardner did not intend to deceive the Commission, his utter failure to ensure the accuracy of Raystay's representations to the Commission reflects a degree of carelessness that is so wanton, gross, and callous as to be the functional equivalent of a deliberate intent to deceive. See Golden Broadcasting Systems, Inc., 68 FCC 2d 1099, 1106 (1978). Accordingly, the evidence adduced under this issue

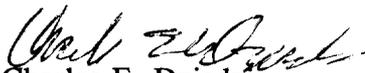
demonstrates George Gardner *and the entities that he controls* cannot be trusted to deal truthfully with the this agency.

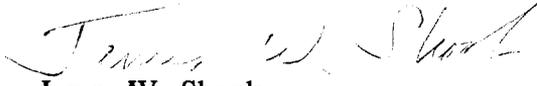
45. Based on the record evidence, the Bureau firmly believes that Glendale -- a George Gardner controlled entity -- lacks the requisite character qualifications to be a Commission licensee. Nothing presented by Glendale in its PFCs moves the Bureau to alter its position in this regard. Accordingly, the application of Glendale for a construction permit for a new television station on Channel 45 in Miami, Florida, should be denied.

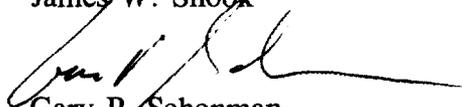
C. Conclusions

46. In sum, the Bureau continues to recommend: 1) grant of TBF's captioned application for renewal of license for Station WHFT(TV), Miami, Florida; 2) denial of Glendale's captioned application for a construction permit for a new television station in Miami, Florida; and 3) imposition of monetary forfeitures against TBN and NMTV in the amount of \$250,000 each.

Respectfully submitted,
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October 7, 1994

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 7th day of October, 1994, sent by regular United States mail or delivered by hand, copies of the foregoing, "**Mass Media Bureau's Reply to Proposed Findings of Fact and Conclusions of Law**" to:

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